



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000622

Decision Date: August 29, 2014

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On June 12, 2014, you appeared at a hearing on your appeal of NY State of Health Marketplace's April 2, 2014, and May 1, 2014 eligibility determinations.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

This page intentionally left blank.



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000622

Decision Date: August 29, 2014

[REDACTED]
[REDACTED]
[REDACTED]

Issue

The Issue presented for review by the Appeals Unit of the State of Health is:

Did the Marketplace properly determine that as of April 2, 2014, and May 1, 2014, [REDACTED] was not eligible for any financial assistance because her income was over the allowable limit?

Procedural History

The Marketplace received your initial, non-financial assistance application for health insurance on November 1, 2013. On November 4, 2013, an eligibility determination notice was issued stating that you were eligible to enroll in a qualified health plan.

On April 1, 2014, the Marketplace received an updated application, which requested financial assistance. On April 1, 2014, the Marketplace received a letter from you, requesting financial subsidies. The letter was submitted with a copy of your 2013 federal income tax return.

On April 1, 2014, the Marketplace prepared a preliminary determination on your new application. A notice reflecting this preliminary determination was issued on April 2, 2014. It stated that you continued to be eligible to enroll in a qualified health plan but that you were not eligible for APTC because your income was over the allowable limit.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

On May 5, 2014, you spoke with Marketplace Customer Service and appealed the APTC denial.

On June 12, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At the hearing, both you and your husband testified on your behalf. The record was developed and it was closed at the end of the hearing.

Findings of Fact

A review of the record supports the following finding of fact:

- 1) You are married and live with your husband.
- 2) For the 2014 tax year, you expect to file married filing jointly. You will not claim any dependents.
- 3) Your April 1, 2014 application stated that your household income would be approximately the same as last year, \$74,468.00; your expected yearly income for 2014 was \$74,452.40. This amount included your husband's yearly Social Security amount of \$24,452.40 (based on a monthly rate of \$2,037.70) and additional income from an IRA disbursement of \$50,000.00. There were no deductions listed on the application.
- 4) At the hearing, your husband testified that the \$50,000.00 IRA amount listed as income in the application was a lump sum amount that was taken out in February 2014 to help cover debts related to your recently closed business. There was no more money that could be taken out of that IRA account.
- 5) You and your husband testified that he received \$2,338.00 per month in Social Security benefits, which is somewhat higher than the \$2,037.70 listed on the April 1, 2014 and subsequent applications. Currently, this is the only income either of you receives.
- 6) You testified that in December of 2012, you and your husband suffered a catastrophic business loss. This resulted in a massive amount of debt relating to the business closure.
- 7) On April 1, 2014, you faxed your 2013 joint tax return to the Marketplace which showed an adjusted gross income of less than \$0. The 2013 tax return states the following information about the Appellant's income: \$739,897 in taxable interest; \$32,099 in business income; \$806,603 in IRA distribution income (non-taxable); \$26,465 in Social Security benefits (non-taxable); \$18,293 in Unemployment Compensation; \$519,180 in

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

losses; -\$2,161,442 in "Rental real estate, royalties, partnerships, S corporations, trusts, etc."; \$2,268 as the deductible part of self-employment tax, \$3,124 in self-employed health insurance deduction, and \$2,916 in penalties on early withdrawal of savings.

- 8) You and your husband testified that your adjusted gross income for the foreseeable future will be less than \$0, as indicated on line 37 of your tax return, because you will still be accounting for the \$519,180 in business losses and the \$2,161,442 in losses from "Rental real estate, royalties, partnerships, S corporations, trusts, etc." that were stated on your 2013 tax return.
- 9) You are the only person seeking health insurance through the Marketplace.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

An advance premium tax credit (APTC) is available to a tax filer who expects to (1) have a household income of at least 100% but not more than 400% of the Federal Poverty Level (FPL) and (2) claim a personal exemption deduction on his or her tax return for an applicant who is eligible to enroll in a qualified health plan and can obtain minimum essential coverage only through the individual Marketplace (45 CFR § 155.305(f); 26 CFR 1.36B-2).

On the other hand, an individual is eligible for enrollment in Medicaid when he or she meets the non-financial criteria and has a household income that is at or below the applicable Medicaid MAGI-based income standard (45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)); that is, a modified adjusted gross household income under 138% of the 2014 federal poverty level (42 CFR 435.218).

The Marketplace calculates MAGI using the same methods used in section 36B(d)(2)(B) of the Internal Revenue Code (26 USC § 36B(d)(2)(B)), with the exception of lump sum payments, certain educational scholarships, and certain American Indian and Alaska Native income (NY Soc. Serv. Law § 366(1)(a)(7)).

Under the Internal Revenue Code, "'modified adjusted gross income' means adjusted gross income increased by -- (i) any amount excluded from gross income under section 911 (which includes foreign earned income and the cost of housing for the individual), (ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and (iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in

section 86(d) which is not included in gross income under section 86 for the taxable year” (26 USC § 36B(d)(2)(B)).

A taxpayer’s adjusted gross income is gross income reduced by pre-tax (above-the-line) deductions. Gross income means all income from whatever source it is derived from, which includes but not limited to income derived from business, interest, rent, royalties, compensation for services, etc. (26 USC § 61). Above-the-line deductions are deductions taxpayers can make to reduce the amount of their gross income. Such deductions include alimony payments made, interest on student loans, and other items that are included on page one of a taxpayer’s U.S. Individual Income Tax Return Form 1040 (26 USC § 62). However, they do not include charitable contributions, mortgage interest and other “below-the-line” deductions or items that are not otherwise considered deductible for tax purposes.

Legal Analysis

Your household size for APTC purposes is two (yourself and your husband), and you expect to file married filing jointly on your tax return for 2014.

At the time of your eligibility determination, your application showed a total household income of \$74,452.40. There were no deductions listed on your application that would have prompted the Marketplace to lower this household income amount.

Therefore, your MAGI-based income, as stated in your Marketplace account at the time of your financial assistance application, was \$74,452.40, which placed you at 480.13% of the FPL. The maximum income amount for APTC eligibility for a two-person household is \$62,040.00 (400.00% FPL). Since your application listed an income amount that was more than the allowable maximum amount for this program, you were appropriately found not to be eligible for APTC as of April 2, 2014 and May 1, 2014.

However, also on April 1, 2014, you faxed a copy of your 2013 tax return to the Marketplace. The tax return showed the following information:

- \$739,897 in taxable interest
- \$32,099 in business income
- \$806,603 in IRA distribution income
- \$26,465 in Social Security benefits
- \$18,293 in Unemployment Compensation
- -\$519,180 in gains and losses income
- -\$2,161,442 in rental real estate, royalties, partnerships, S corporations, trusts, etc.

Your 2013 tax return also showed the following “above-the-line” deduction amounts

- \$2,268 in deductible part of self-employment tax
- \$3,124 in self-employed health insurance deduction
- \$2,916 in penalty in early withdrawal on savings

The income and deduction amounts listed above result in an adjusted gross income of -\$1,898,549, as reflected on your tax return.

In order to calculate your MAGI-based income for purposes of determining your eligibility for financial assistance, the Marketplace takes your adjusted gross income and adds to it any relevant amount excluded from gross income, including foreign earned income and the cost of housing for the individual, interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and an amount equal to the portion of the taxpayer's social security benefits which is not included in your gross income. You did not receive any foreign earned income or interest that was tax exempt. Even when your husband's social security benefits are added to the adjusted gross income, your MAGI-based income in 2013 was -\$1,872,084.

At the hearing, you credibly testified that your gross income for 2014 will be similar to that of 2013. You will still be paying off and claiming the business debts of \$519,180 and \$2,161,442 on your tax return until at least 2017, and the only household income you expect to receive to help pay for this debt is from your husband's social security in the amount of \$24,452.40 a year. These amounts would give you an adjusted gross income of less than \$0 for the foreseeable future. Therefore, your eligibility for financial assistance to purchase health insurance through the Marketplace should have been calculated based on an income of \$0.

Decision

The Marketplace's eligibility determinations made on April 2, 2014 and May 1, 2014 are **RESCINDED**.

However, your case is returned to the Marketplace for a redetermination of your eligibility for financial assistance based on your testimony and 2013 tax return that your adjusted gross income is and will continue to be less than \$0.

Effective Date of this Decision: August 29, 2014

How this Decision Affects Your Eligibility

Until there is a redetermination, you are not eligible to receive financial assistance because the income on your application was greater than the allowable limits.

However, your case has been returned to the Marketplace for a redetermination of your eligibility based on the testimony and documents you presented at the hearing showing that your actual income is less than \$0.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Submit an appeal request to the U.S. Department of Health and Human Services appeals entity within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)),

AND/OR

- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which appears on the first page of this Decision.

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact your local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:

NY State of Health Appeals
P.O. Box 11729

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The Marketplace's eligibility determinations made on April 2, 2014 and May 1, 2014 are RESCINDED.

Your case is returned back to the Marketplace for a redetermination of your eligibility for financial assistance.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]