



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

Notice of Decision

Decision Date: August 4, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000628

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On June 27, 2014, your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 14, 2014 eligibility determination.

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).

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Decision

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[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did the Marketplace properly determine that [REDACTED] [REDACTED] are eligible for \$134.00 monthly of Advance Premium Tax Credit (APTC) and not eligible for cost-sharing reductions (CSR) as of March 14, 2014?

Procedural History

The Marketplace received your application on January 16, 2014. The application was modified on March 13, 2014 and March 18, 2014.

On March 14, 2014, the Marketplace issued an eligibility determination in your case. It said you and your daughter are eligible to receive up to \$134.00 monthly of APTC, but are not eligible for CSR or Medicaid because your household income of \$56,138.04 is over the allowable income limits for these programs.

On March 27, 2014, the Marketplace issued an eligibility redetermination in your case based on updated information. It said you alone are eligible to receive up to \$0.00 monthly of APTC and are not eligible for CSR or Medicaid because your household income of \$64,484.00 is over the allowable limits for these programs.

On March 30, 2014, you wrote to the Marketplace and appealed those determinations.

On April 17, 2014, the Marketplace issued an eligibility redetermination in your case based on updated information. It said you alone are eligible to receive up to \$0.00 monthly of APTC and are not eligible for CSR or Medicaid because your household income of \$48,825.00 is over the allowable limits for these programs.

On May 5, 2014, your application was again modified and the Marketplace prepared a preliminary redetermination on a household income of \$48,825.00. At this level you were eligible for up to \$134.00 monthly of APTC and ineligible for CSR and Medicaid. That same day you spoke to a representative in the Marketplace's Customer Service Unit and again requested an appeal.

On May 6, 2014, the Marketplace issued a notice of redetermination consistent with the May 5, 2014 preliminary determination.

The Marketplace sent you a Notice of Telephone Hearing on May 19, 2014, for a scheduled telephone hearing on June 10, 2014. You did not appear for that hearing but did ask that a new hearing be scheduled. Your second hearing was scheduled for June 27, 2014.

On June 27, 2014, your husband, [REDACTED], acting as your authorized representative, had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for 15 days, until July 12, 2014, for the sole purpose of providing your authorized representative an opportunity to submit your 2013 tax return.

The Marketplace received page one of your household's 2013 tax return (Form 1040) on June 27, 2014. This document was received into the record as Appellant's Exhibit B.

No further documents were expected, and the record was closed on June 27, 2014.

Findings of Fact

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

- 1) You authorized your husband to serve as your authorized representative at the hearing held on June 27, 2014.

- 2) You and your husband plan on filing your 2014 income tax return as married filing jointly and to claim your daughter as a dependent.
- 3) Your 2013 household income was \$35,473.00, and your husband/authorized representative testified it will be similar for 2014 (Appellant's Exhibit B).
- 4) On the first page of your 2013 1040A tax return, you and your husband reported the following: Wages of \$29,567.00, unemployment compensation of \$576.00, and Social Security (Title II) benefits of \$25,031.00, of which you claimed \$5,330.00 as taxable (Appellant's Exhibit B).
- 5) You had a workplace injury in 2013 and were out of work for 6 months that year and remained out of work until May 2014, so your expected income dropped for both years.
- 5) You and your family live in Orange County.
- 6) Your authorized representative testified that you and your navigator tried to correct the income amount in your online Marketplace account but ran into technical difficulties.
- 7) The authorized representative testified that you have not paid any premiums to the carrier for the health insurance plan that was to begin on May 1, 2014.

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 whose household income is not expected to be more than 400% of the Federal Poverty Level (FPL) for the benefit year in which coverage is requested (45 CFR § 155.305(f)(1)(i)).

A tax filer's household income includes the modified adjusted gross income (MAGI) of all the individuals in the taxpayer's family who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1)).

NY State of Health uses Internal Revenue Service rules to determine who is in a taxpayer's family for purposes of calculating APTC. Generally, a taxpayer's family includes the people for whom the taxpayer claims a tax deduction. A

taxpayer may claim a deduction for himself or herself, his or her spouse, and his or her tax dependents (26 CFR § 1.36B-1).

Modified adjusted gross income means the adjusted gross income under section 62 of the Internal Revenue Code (IRC) increased by foreign earned income that has been excluded from gross income under IRC § 911 and social security benefits that were not included in gross income under IRC § 86 for everyone who resides in the taxpayer's household (26 CFR § 1.36B-1(e)(2)).

A household of three people is eligible for APTC if the household's income is from 138% to 400% of the FPL. The applicable FPL for a household of three was \$19,530.00 (100%), so a household of three people can qualify for APTC if their household income is between \$26,951.00 (138%) and \$78,120.00 (400%).

The maximum amount of APTC that can be awarded equals

1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through the NY State of Health in the county where the taxpayer resides

minus

2) the taxpayer's expected contribution amount

(see IRC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution towards the cost of health insurance premiums is set by Federal regulation at 2% to 9.5% of income, depending on household's income. For household income in the range of at least 150% of the FPL but less than 200% of the FPL, the expected contribution is from 4.00% to 6.30% of the household income (26 CFR § 1.36B-3(g)(2)).

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund. A person who received more tax credit than her maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR 1.36B-4).

Cost sharing reductions (CSR) are available to a person who is eligible to enroll in a qualified health plan (QHP) and:

1) is eligible for an advanced premium tax credit (APTC),

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2) has a household income less than 250% of the FPL, and

3) enrolls in a silver level health plan

(45 CFR § 155.305(g)).

A household of three people is eligible for CSR if the household's income is from 138% to 250% of the FPL for an individual to be eligible, which is from \$26,951.00 (138%) up to \$48,825.00 (250%).

Legal Analysis

The matters at issue are whether the Marketplace properly determined that the maximum amount of your APTC was \$134.00 per month and then at \$0.00 per month, and properly determined that you were not eligible for CSR.

According to the record there are three people in your household, yourself, your husband, and your daughter, whom you and your husband plan to claim as a dependent on your tax return.

On the Marketplace application that you and a navigator attempted to modify in March 2014, the household income was reported as \$56,138.04 on March 13, 2014 and March 18, 2014.

At the hearing on June 27, 2014, the Hearing Officer learned that your taxable income for 2013 was actually \$35,473.00, as confirmed by page one of your 2013 tax return (Appellant's Exhibit B). The tax return shows that the income reported included \$29,567.00 in wages, salaries, tips, etc.; \$576.00 in unemployment benefits; and \$25,031.00 in Social Security benefits, of which \$5,330.00 was taxable. Because only a portion of the Social Security benefits was taxable, adjusted gross income was \$35,473.00 for tax purposes. However, for APTC purposes, the full amount of Social Security benefits must be counted. Therefore, your household income in 2013 was \$55,174.00 for APTC purposes (\$29,567 in wages + \$576 in unemployment benefits + \$25,031 in Social Security Benefits).

The Hearing Officer further learned that your income dropped in 2013 and 2014 because you suffered a work-related injury and were out of work for six months in 2013 up until May 2014. Your authorized representative credibly testified that, because you did not work for about four months in 2014, your expected 2014 household income would be comparable to your 2013 income.

The information you reported on your online Marketplace account was properly relied upon by the Marketplace when it issued the March 14, 2014 eligibility determination on a household income of \$56,138.04.

However, the credible evidence of record indicates that the March 27, 2014; April 17, 2014; and May 6, 2014 eligibility redeterminations were based on inaccurate household incomes and so are not correct.

Since the Marketplace now has an accurate expected income for 2014 (\$55,174.00), it will look at your application again, figure out how much of an advance premium tax credit (APTC) you can get, see if you are now eligible for cost-sharing reductions (CSR), and issue a new eligibility determination with an effective date of March 27, 2014.

The new eligibility determination will replace the notices dated March 27, 2014; April 17, 2014; and May 6, 2014.

Decision

The March 14, 2014 eligibility determination is **AFFIRMED**.

The March 27, 2014; April 17, 2014; and May 6, 2014 eligibility determinations are **RESCINDED**.

The case is **REMANDED** to the Marketplace for redetermination of eligibility as of March 27, 2014, based on a household size of three people and an expected 2014 household income of \$55,174.00.

Effective Date of this Decision: March 27, 2014

How this Decision Affects Your Eligibility

This decision sends your case back to the Marketplace to redetermine your eligibility back to March 27, 2014, the first day you modified your application for health insurance.

You will get a new notice of eligibility determination.

If You Disagree with this Decision (Appeal Rights)

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 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:

- Make 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 the 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 the 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 the local County Bar Association, Legal Aid, or Legal Services for assistance.

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
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 14, 2014 eligibility determination is **AFFIRMED**.

The March 27, 2014; April 17, 2014; and May 6, 2014 eligibility determinations are **RESCINDED**.

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The case is REMANDED to the Marketplace for redetermination of eligibility as of March 27, 2014, based on a household size of three people and an expected 2014 household income of \$55,174.00.

This decision sends your case back to the Marketplace to redetermine your eligibility back to March 27, 2014, the first day you modified your application for health insurance. The redetermination will be based on a household size of three people and an expected household income of \$55,174.00

You will get a new notice of eligibility determination, which will replace the determinations issued on March 27, 2014; April 17, 2014; and May 6, 2014.

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]

[REDACTED]
[REDACTED]
[REDACTED]