



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

Notice of Decision

Decision Date: October 1, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000646

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

On June 18, 2014 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 18, 2015 eligibility redetermination.

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

Decision Date: October 1, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000646

[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] is eligible for \$0.00 monthly of Advance Premium Tax Credit (APTC) as of April 18, 2014?

Procedural History

The Marketplace received your application on December 25, 2013. On December 28, 2013, the Marketplace issued an eligibility determination. It said, based on a household of two and an annual income of \$57,000, you were eligible to receive \$0.00 monthly of APTC and were not eligible for cost-sharing reductions (CSR) because your household income was over the allowable limit.

On April 18, 2014, the Marketplace issued an eligibility redetermination in your case with the same finding.

On May 15, 2014, you spoke with a representative in the Marketplace's Customer Service unit and appealed that determination.

On June 18, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) Your online application indicates that your household consists of you and your wife and that only you are seeking insurance through the Marketplace.
- 2) You and your wife expect to file your 2014 individual income taxes as married filing jointly (Marketplace Account – Application; Testimony of 6/18/2014).
- 3) You testified that they have two daughters, who will be claimed as dependents on your tax return. You did not list them as dependents on your Marketplace application (Testimony of 6/18/2014).
- 4) You testified that the expected household income for 2014 is \$57,000, as reported in your online application (Testimony of 6/18/2014; Marketplace Account – Application).
- 5) You and your family reside in New York County (Marketplace Account).
- 5) You testified that you pay \$4,200 monthly in tuition and fees to [REDACTED] [REDACTED] for your daughter's college tuition and expect to take the full deduction of \$4,000 for tuition and fees when you file your 2014 income tax return (Testimony of 6/18/2014).
- 6) You testified that you cannot afford to pay for health insurance because you "run a deficit every month" due to your current monthly expenses of mortgage, essential living needs, and tuition payment and that you must draw upon a line of credit monthly (Testimony of 6/18/2014).

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

Applicable Law and Regulations

The maximum amount of APTC that can be authorized 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

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2) the taxpayer's expected contribution amount

(see 26 USC § 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 is set by Federal law at 2% to 9.5% of household income as a percentage of the 2013 federal poverty level (FPL) (26 USC § 36B(b)(3)(A)).

That contribution is determined on a sliding scale, in a linear manner, as follows:

- up to 133% FPL, 2.0%
- 133% up to 150% FPL, 3.0% to 4.0%
- 150% up to 200% FPL, 4.0% to 6.3%
- 200% up to 250% FPL, 6.3% to 8.05%
- 250% up to 300% FPL, 8.05% to 9.5%
- 300% up to 400% FPL, 9.5%

(26 USC § 36B(b)(3)(A)).

For a two-person household, the 2013 FPL is \$15,510.00; for a four-person household, the 2013 FPL is \$23,550.00 (78 Fed Reg 5182, 5183 (2013)).

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:

- is eligible for an advanced premium tax credit (APTC),
- has a household income less than 250% of the FPL, and
- enrolls in a silver level health plan through the Marketplace

(45 CFR § 155.305(g)).

"Adjusted gross income" is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)).

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The law that allows for a deduction from adjusted gross income of up to \$4000 in tuition and fees paid by the taxpayer during the tax year to a qualified educational institution expired as of December 31, 2013, and has not yet been renewed by Congress (26 USC § 222).

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a Qualified Health Plan (QHP). Such an exemption may be granted if that person can show that he experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a qualified health plan (45 CFR § 155.605(a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The credible evidence of record shows that your expected household income for 2014 is \$57,000.00.

You testified that you expect to take the maximum deduction of \$4,000 for tuition and fees from your adjusted gross income. However, the law allowing this deduction expired on December 31, 2013, and has not been renewed by Congress this year. At this time, it is not known if Congress will renew the law. Therefore, this deduction cannot be used in calculating your adjusted gross income, which must remain at \$57,000.00 for purposes of this decision.

The credible evidence of record also shows that there are four people in your tax household: you, your wife, and your two dependent children.

Only you and your wife were listed on your Marketplace application, so your eligibility was determined on a two-person household.

The 2013 federal poverty level (FPL) for a two-person household is \$15,510.00. At that level, your \$57,000.00 household income equals 367.50% of the FPL. The Marketplace based your eligibility for financial support on this information.

Since there are four people in your household, your eligibility should have been computed using the FPL for a four-person household, which is \$23,550.00. At

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that level, your \$57,000.00 household income equals 242.01% of the FPL. Your eligibility for financial support should be based on this information.

Since your eligibility determination was based on incorrect information about your household size, it is not supported by the evidence of record and must be **RESCINDED**.

You testified that you cannot afford to pay the monthly insurance premium even if you have an advance premium tax credit and cost-sharing reductions because your expenses exceed your income. If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2014, you can check the Federal marketplace website (www.healthcare.gov) for an application.

Decision

The April 18, 2014 eligibility determination is **RESCINDED**.

The case is **REMANDED** to the Marketplace for redetermination of your eligibility, taking into account that you are the only person in your household seeking insurance, that you are in a four-person household, and that you have an expected 2014 income of \$57,000.00.

Effective Date of this Decision: April 18, 2014

How this Decision Affects Your Eligibility

This Decision does not make a final determination on your eligibility.

The eligibility determination that you appealed is rescinded because it was based on an incorrect household size. The Marketplace will redetermine your eligibility on the corrected information that you provided at your hearing and issue a new determination.

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 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).

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

Summary

This Decision does not make a final determination on your eligibility.

The April 18, 2014 eligibility determination is RESCINDED.

The eligibility determination that you appealed is rescinded because it was based on an incorrect household size.

The case is REMANDED to the Marketplace for redetermination of your eligibility, taking into account that you are the only person in your household seeking

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insurance, that you are in a four-person household, and that you have an expected 2014 income of \$57,000.00.

The Marketplace will redetermine your eligibility on the corrected information that you provided at your hearing and issue a new determination.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

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]