



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

## Notice of Decision

Decision Date: September 26, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000682

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On June 25, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 22, 2014 eligibility determination.

The attached 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 letter.

### Legal Authority

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

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## Decision

Decision Date: September 26, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000682

[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] was eligible to enroll in a qualified health plan (QHP) through the Marketplace, but was not eligible for financial assistance for health insurance?

## Procedural History

The Marketplace received your initial application for health insurance on May 21, 2014.

On May 21, 2014, the Marketplace prepared a preliminary eligibility redetermination in your case. It said you were eligible to enroll in a QHP but that you were not eligible for financial assistance. That same day, you appealed that determination.

On May 22, 2014, the Marketplace issued a notice confirming the preliminary redetermination. The notice stated that you were not eligible to receive financial assistance because your income of \$48,000.00 was over the allowable income limit of \$45,960.00.

On June 25, 2014, you 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 a period of fifteen (15) days in order to provide you an opportunity to submit documentation about your income. Immediately after the hearing, you

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submitted to the Appeals Unit via facsimile documentation from [REDACTED] regarding your disability benefits and the tax forms relating to those benefits (Appellant Exhibit 1). The record was closed on July 10, 2014, which was 15 days after the hearing date.

## **Findings of Fact**

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

- 1) You are single.
- 2) You were born on May 26, 1969, and are 45 years old.
- 3) You testified that you had been out of work on disability since August of 2012. You further testified that you receive disability benefits from [REDACTED] in the amount of \$4,000.00 per month.
- 4) You live with your father.
- 5) You received the disability insurance policy through your job. You paid monthly premiums, and you are not sure if your employer paid part of the premiums or if you paid the entire premium amount for the insurance.
- 6) Your accountant told you that your disability benefits are not taxable and are not included as income on your tax return.
- 7) Because your accountant told you that your disability benefits are not taxable you did not file a tax return for 2013.
- 8) You testified that since you did not file a tax return for 2013, your father had claimed you as a dependent on his tax return for 2013. You testified that you live with your father and no one else.
- 9) In the application in your Marketplace account, you stated that your father was claiming you as a dependent on his tax return.
- 10) You testified that you do not expect to have any income for 2014 other than the non-taxable disability benefits you receive from [REDACTED]. If you do not have taxable income you will not file a tax return for 2014.
- 11) You have submitted a cover letter from [REDACTED] dated January 8, 2014, in which they have enclosed your 2013 Form W-2 forms summarizing the disability benefits and other income paid to you.

The W-2 forms you submitted indicated that the payments made to you were non-taxable sick pay, as evidenced by the “J” in box 12 on the forms. The three W-2 forms documented payments totaling \$50,356.47 in non-taxable disability benefits. One of the W-2 forms documented taxable income of \$486.20.

- 12) You currently reside in Queens county.

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

## **Applicable Law and Regulations**

### Household Composition

For purposes of Medicaid eligibility for an adult who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent, with some exceptions that are not applicable here (42 CFR § 435.603(f)(2)).

For purposes of APTC, the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse and (3) any claimed dependents (26 USC § 36B(d)(1)).

Typically, a taxpayer may claim as dependent a “qualifying relative” who: (1) bears a relationship to the taxpayer as provided for under 26 USC § 152(d)(2), which includes a child of the taxpayer, (2) has a gross income of the less than the \$3,950.00 exemption amount, (3) receives at least one-half of his support from the taxpayer, and (4) is not a “qualifying child” of the taxpayer or of any other tax payer, in each case during the taxable year (see 26 USC § 152(d); 26 USC § 151(d); IRS, *In 2014, Various Tax Benefits Increase Due to Inflation Adjustments* (IR-2013,87, Oct. 31, 2013).

### APTC Eligibility

A tax filer is eligible for an advance premium tax credit (APTC) if (1) the tax filer is expected to have a household income of at least 100% but not more than 400% of the Federal Poverty Level (FPL), (2) the tax filer expects to claim a personal exemption deduction on his or her tax return for an applicant who meets the eligibility requirements to enroll in a qualified health plan and (3) is not eligible for minimum essential coverage except for coverage in the individual market (45 CFR § 155.305(f); 26 CFR § 1.36B-2).

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With regard to your possible eligibility for an advance premium of tax credit (APTC), an individual must assert that he will be filing a tax return and that no one else will be claiming him as a dependent (45 CFR § 155.310(d)(2)).

### Medicaid Eligibility

Medicaid through the Marketplace can be provided to adults who: (1) are age 19 or older and under age 65; (2) are not pregnant; (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act; (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and (5) have a household modified adjusted gross income that is at or below 138% of the federal poverty level for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

### Income

NY State of Health uses Internal Revenue Service rules to determine an applicant's eligibility for various health insurance programs. Many of the programs require a determination of a taxpayer's Modified Adjusted Gross Income (MAGI) in order to determine eligibility.

A taxpayer'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)).

Generally, a taxpayer's MAGI equals the adjusted gross income *plus* foreign earned income, tax-exempt interest, and any untaxed Social Security benefits which were not included in gross income received by the taxpayer under 26 USC § 86 for the taxable year (26 USC § 36B(d)(2)). "Adjusted gross income" is the gross income of the taxpayer minus the deductions permitted (26 USC § 62).

Gross income will include a taxpayer's wages and salaries, but it can also include income from other sources, such as unemployment benefits, alimony, taxable interest, capital gains and self-employment profits (26 USC § 61). However, there is no provision in law for non-taxable sick pay to be added back into MAGI for the purposes of eligibility for either Medicaid or APTC in the Marketplace.

## Legal Analysis

The issue under review is whether the Marketplace properly found that you were eligible to enroll in a qualified health plan (QHP) through the Marketplace, but were not eligible for financial assistance for health insurance.

In this case you testified that you did not file an income tax return for 2013, that you will not file a tax return for 2014 if you do not earn enough taxable income to be required to file taxes, and that your father claimed you as a dependent in 2013. Additionally, your application submitted on May 22, 2014 indicated that your father anticipates claiming you as a dependent again in 2014. Therefore, based on your testimony that you do not expect file a tax return for 2014 and on the information contained in your application, you will not be entitled to APTC.

In this case, the Marketplace's determination that you were not eligible for APTC was not based on the fact that you would not be filing a tax return or that you had been claimed as a dependent on your father's tax return, but rather was based on the income level you submitted on your application and an apparent household of one person.

The Internal Revenue Service Instructions for Forms W-2 and W-3 Box 12 codes list code J as "Nontaxable sick pay." The instructions to this form state "Show any sick pay that was paid by a third-party and was not includible in income (and not shown in boxes 1, 3, and 5) because the employee contributed to the sick pay plan..."

As noted on Appellant's Exhibit 1, the Internal Revenue Service Instructions for Forms W-2 and W-3 that relate to box 12, code J, and your testimony during the hearing that these disability payments are the only income you anticipate receiving in 2014, there is credible evidence to show that your disability payments should not be included in your household income for purposes of determining MAGI.

However, without additional evidence or testimony, we are unable to determine your MAGI income for 2014 since while the record supports that your own taxable income for 2014 is \$0.00, the total amount of income your father expects to receive and his contribution towards your support remains unknown.

Regardless of your MAGI income, the outcome that you are not entitled to APTC is correct, because you do not anticipate filing a tax return for 2014.

With regard to Medicaid, since your father anticipates claiming you as a dependent for 2014, your eligibility for Medicaid must be determined by the household of the taxpayer claiming you as a tax dependent, pursuant to 42 CFR § 435.603(f)(2).

Again, there is insufficient evidence regarding your father's income or whether he has other individuals that must be included in his household for the purpose of determining your eligibility for Medicaid.

Therefore, the May 22, 2014 determination must be RESCINDED, pending submission of sufficient evidence to determine your overall household size and household income. Please submit documentary evidence regarding your father's tax filing status, total dependents claimed, income and his household size within 60 days of the date of this decision, and if necessary, a second hearing can be scheduled for additional testimony from you and your father.

## **Decision**

The Marketplace's eligibility determination issued on May 22, 2014 is RESCINDED.

The matter will remain open for 60 days from the Decision Date (noted above), pending submission of additional evidence in order for the Marketplace to issue a new determination in your case.

**Effective Date of this Decision:** September 26, 2014

## **How this Decision Affects Your Eligibility**

The Marketplace's May 22, 2014 eligibility determination is RESCINDED.

As soon as you submit the necessary documentation, which would include information regarding your father's tax filing status, total dependents claimed, income and household size, the Marketplace will issue a new eligibility determination in your case.

## **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:

- 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)).

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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 Marketplace's eligibility determination issued on May 22, 2014 is RESCINDED.

The matter will remain open for 60 days from the Decision Date (noted above), pending submission of additional evidence in order for the Marketplace to issue a new determination in your case.

### **Legal Authority**

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

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**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]