



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

Notice of Decision

Decision Date: September 29, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000685

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Dear [REDACTED],

On June 30, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 3, 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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[REDACTED]
[REDACTED] [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 not eligible for an advance premium tax credit (APTC) as of March 3, 2014?

Procedural History

You applied for health insurance through the Marketplace on March 3, 2014.

On March 3, 2014, the Marketplace prepared a preliminary determination and you were found ineligible for financial assistance.

On March 4, 2014, the Marketplace issued a notice based on the March 3, 2014 eligibility determination. It said that you are eligible to enroll in a qualified health plan (QHP) through the New York State of Health but you are not eligible to receive tax credits to help pay for the cost of your insurance because you are not a joint tax filer.

On May 22, 2014, you spoke with the Marketplace’s Customer Service Unit and appealed the preliminary determination.

On June 30, 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) You are currently married.
- 2) You have been separated from your spouse since December 2013.
- 3) You and your spouse have one child. The child currently resides with your spouse.
- 4) You have applied for a divorce from your spouse. Your application for divorce was submitted in March 2014.
- 5) You expect to be divorced by the end of 2014.
- 6) You live in a household of one person and do not anticipate claiming anyone as a dependent for the 2014 tax year. Your spouse is claiming your child in her tax return for the current tax year.
- 7) You attested to an expected income of \$33,000.00 for the 2014 tax year.
- 8) You expect to file your 2014 tax return as "Single" because you anticipate being divorced by the end of 2014.
- 9) You testified that you cannot afford the health insurance premium.
- 10) 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

An advance premium tax credit (APTC) may be 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).

Generally, a taxpayer who is married must file a joint return with his or her spouse to be eligible for advance premium tax credits (APTC) (45 CFR § 155.310(d)).

However, an individual will be treated as not married for the whole year if, on the last day of the tax year, the individual:

1. Is legally separated from his spouse under a decree of divorce or of separate maintenance, or
2. Meets all of the following criteria:
 - he files a separate return from his spouse and maintains his household as the primary home for a qualifying child, and
 - he pays more than one half of the cost of keeping up his home for the tax year, and
 - his spouse is not a member of the household during the last 6 months of the taxable year

(26 USC § 7703).

Legal Analysis

In general, to qualify for an advanced premium tax credit (APTC), a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

According to the documents in the record and your testimony at the hearing, you:

- are still married but have filed for divorce as of March 2014;
- are not divorced or legally separated from your spouse, but expect to be divorced on the last day of the 2014 tax year; and
- plan to file your tax return as “Single” for the 2014 tax year.

Although you have applied for a divorce, the divorce decree has not yet been issued, so the Marketplace cannot find that you qualify to be treated as “not married” for purposes of this Decision.

Since you are married but plan to file your income tax return separately, you are not currently eligible for an advance premium tax credit.

However, when your divorce decree is issued, this may affect your eligibility for financial assistance through the Marketplace. It is important to report a change in circumstances, like divorce, to the Marketplace in order to qualify for the proper amount and type of financial assistance (see IRS Publication 5152 (8/14) - Affordable Care Act Individuals and Families).

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When your divorce becomes final, you can update your information directly in your account on the Marketplace website. You also can contact Marketplace Customer Service for help with this.

Decision

The March 3, 2014 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: September 29, 2014

How this Decision Affects Your Eligibility

Your eligibility has not changed.

You do not qualify for an advance premium tax credit because you are married but filing your individual income tax return separately.

When your final decree of divorce is issued, you can report this change to the Marketplace and ask that your eligibility be redetermined. That may change your eligibility for financial assistance.

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))

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 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 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 3, 2014 eligibility determination is **AFFIRMED**.

Your eligibility has not changed.

You do not qualify for an advance premium tax credit because you are married but filing your individual income tax return separately.

When your final decree of divorce is issued, you can report this change to the Marketplace and ask that your eligibility be redetermined. That may change 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] [REDACTED]
[REDACTED]