



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

## Notice of Decision

Decision Date: September 23, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000716

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On July 8, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 11, 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).

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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000716

[REDACTED]  
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## Issues

The issues presented for review by the Appeals Unit of the NY State of Health are:

Did the Marketplace properly determine that your son's Child Health Plus premium was \$9.00 per month as of June 11, 2014?

Did the Marketplace properly determine that you were not eligible for an advance premium tax credit (APTC) as of June 11, 2014?

## Procedural History

The Marketplace received your application for health insurance on June 2, 2014.

On June 3, 2014, the Marketplace issued a notice that stated your son might be eligible for health insurance through New York State of Health, but that more information was needed to make a determination. It said that in order for his eligibility to be determined, the Marketplace would need proof of your income.

On June 9, 2014, you uploaded copies of paystubs into your account.

On June 11, 2014, the Marketplace issued two eligibility determinations, both of which were based on a household income of \$28,589.86. One notice stated that your son was eligible to enroll in Child Health Plus and that the monthly premium for his coverage would be \$9.00. The other stated that you were not eligible for APTC because you were married and not a joint tax filer.

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On June 16, 2014, you spoke with the Marketplace's Customer Service unit and appealed those determinations.

On July 8, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was 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 filed your U.S. Income Tax Return for 2013 as married filing separately.
- 3) You testified that at this time you do not expect to be legally separated or divorced from your spouse by the end of the 2014 tax year.
- 4) You testified that you have lived apart from your spouse since 2011 and do not plan to reside with him during the 2014 tax year.
- 5) You testified that you have one child, who is currently 10 years old. He lives with you for at least six months out of the year. You are the only person who claims him as a dependent on a tax return.
- 6) You testified that you pay more than half of the cost of maintaining your home.
- 7) You testified that the expected 2014 household income of \$28,589.86 on your application is correct.

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

## **Applicable Law and Regulations**

### **Child Health Plus**

A child who meets the eligibility requirements for Child Health Plus may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (New York Public Health Law (PHL) § 2511(2)(a)(iii)).

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The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in Child Health Plus depends upon the child's family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the federal poverty level. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The Child Health Plus premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the federal poverty level (PHL § 2510(9)(d)(ii)).

When a child lives with one parent, the child's eligibility is determined on a two-person family household (42 CFR § 435.603(f)).

The 2014 FPL for a two-person household is \$15,730.00 (79 Federal Register 3593).

### **Premium Tax Credit Eligibility**

Generally, a taxpayer who is married must file a joint return with his or her spouse to be eligible for a premium tax credit (45 CFR §§ 155.305(f), 155.310(d); 26 CFR § 1.36B-2).

However, an individual will be treated as not married at the close of the taxable year if the individual

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

(26 USC § 7703(a); 26 USC § 7703(b)).

In other words if you meet the above criteria for either (1) or (2), you may qualify to file as 'Head of Household' and may be treated as "not married" for purposes of this Decision (26 USC § 2(b)).

## **Special Enrollment Period**

An individual or enrollee is eligible to enroll in or change enrollment in a qualified health plan during a special enrollment period when an individual or enrollee experiences a triggering event. Triggering events include a change in a person's eligibility for APTC or cost-sharing reductions (CSR) (45 CFR § 155.420 (d)(6)).

## **Legal Analysis**

The first issue under review is whether the Marketplace properly determined the proper amount of your son's Child Health Plus (CHP) premium.

The amount of your son's CHP premium is calculated for a household of two people, yourself and your son.

At the hearing, you testified that the household income amount on your application, \$28,589.86, is correct.

The 2014 FPL for a two-person household is \$15,730.00. Your household income of \$28,599.86 equals 181.75% of that FPL.

A CHP premium payment is required for an eligible child whose family household income is at least 160% of the FPL. The premium is \$9.00 for a family with a household income between 160% and 222% of the FPL. Since your income falls within that range, the Marketplace was correct when it determined that your son's CHP premium would be \$9.00 per month.

The second issue under review is whether the Marketplace properly determined that you were not eligible for Advance Premium Tax Credits (APTC) because of your tax filing status.

As noted above, in order for a married person to qualify for an advance premium tax credit, she must either file taxes jointly with 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:

1. still married to your spouse,
2. are not divorced or legally separated from your spouse, and
3. do not plan to file a joint tax return with your spouse for the 2014 tax year.

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However, you:

1. maintain your household as the primary home of your son,
2. pay more than half the cost of maintaining that home,
3. have not resided with your spouse in the last 6 months, and
4. do not plan to reside with him again.

Therefore, the record supports a finding that you may qualify to be treated as “not married” for purposes of making an APTC eligibility determination, by filing as head of household.

Therefore, you may be eligible for APTC if you continue to maintain your household as the primary residence of your child, pay more than half of the cost of keeping up your home, do not reside with your spouse for the remainder of the 2014 tax year, and file your taxes for the 2014 tax year as “Head of Household.”

The Marketplace therefore will provide you 60 days from the date of this determination to change your tax filing status in your Marketplace application for health insurance to “Head of Household.” As soon as any change is made, the Marketplace will then redetermine your eligibility and issue a new notice.

If your APTC eligibility changes at that time, you will be granted 60 days from the date on the decision changing your eligibility to enroll in, or change your enrollment in, a qualified health plan through the Marketplace.

This decision does not decide whether you should get APTC. It simply provides you an opportunity to change your tax filing status on your application and, if you do so, your case will be sent back to the Marketplace with a direction to redetermine your eligibility using a “head of household” status.

However, BE AWARE that the IRS is ultimately the final decision-maker on how you are allowed to file your taxes. If your testimony was incorrect, it may result in you NOT being eligible to file as “Head of Household” for the 2014 tax year. If this is the case, you should not be treated as not married for purposes of obtaining APTC through the Marketplace.

## **Decision**

The June 11, 2014 eligibility determination that the appellant’s son is eligible to enroll in Child Health Plus with a premium of \$9.00 per month is **AFFIRMED**.

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).

The June 11, 2014 eligibility determination that the appellant is authorized to enroll in a qualified health plan but is denied an advance premium tax credit (APTC) due to your tax filing status is **RESCINDED** to allow you the opportunity to change your tax filing status on your application for health insurance if you choose to do so.

If you do choose to modify your application, the case will be returned to the Marketplace for a redetermination of eligibility using a two-person household, an expected income of \$28,589.86, and any new tax filing status.

If your eligibility for APTC changes as a result of the redetermination, the appellant will be granted a 60-day special enrollment period from the date of any new determination, in order to enroll, or change enrollment, in a plan.

**Effective Date of this Decision:** September 23, 2014

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

Your son's June 11, 2014 eligibility determination was correct. Your son's Child Health Plus premium remains at \$9.00 a month.

The June 11, 2014 eligibility determination that you are authorized to enroll in a qualified health plan but denied an advance premium tax credit (APTC) due to your tax filing status is **RESCINDED** to allow you the opportunity to change your tax filing status on your application for health insurance if you choose to do so.

If you do choose to modify your application, the case will be returned to the Marketplace for a redetermination of eligibility using a two-person household, an expected income of \$28,589.86, and any new tax filing status. If you choose not to change your status, the June 11, 2014 eligibility determination will be reinstated.

If your eligibility for APTC changes as a result of the redetermination, you will be granted a 60-day special enrollment period from the date of any new determination, in order to enroll, or change enrollment, in a plan.

### **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.

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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**

Your son's June 11, 2014 eligibility determination was correct and is **AFFIRMED**. His Child Health Plus premium remains at \$9.00 a month.

Your son's June 11, 2014 eligibility determination was correct. Your son's Child Health Plus premium remains at \$9.00 a month.

The June 11, 2014 eligibility determination that you are authorized to enroll in a qualified health plan but denied an advance premium tax credit (APTC) due to your tax filing status is **RESCINDED** to allow you the opportunity to change your tax filing status on your application for health insurance if you choose to do so. If

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you choose not to change your status, the June 11, 2014 eligibility determination will be reinstated.

If you do choose to modify your application, the case will be returned to the Marketplace for a redetermination of eligibility using a two-person household, an expected income of \$28,589.86, and any new tax filing status.

If your eligibility for APTC changes as a result of the redetermination, you will be granted a 60-day special enrollment period from the date of any new determination, in order to enroll, or change enrollment, in a plan.

## **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]