



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

Notice of Decision

Decision Date: November 21, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000784

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On September 2, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 4, 2014 preliminary 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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Issue

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

Did the Marketplace properly determine that you are eligible for an advance premium tax credit up to \$256.00 monthly and cost-sharing reductions as of August 4, 2014?

Did the Marketplace properly determine that that you are not eligible for Medicaid as of August 4, 2014?

Procedural History

The Marketplace received your application on August 4, 2014, and provided you with a preliminary eligibility determination.

On August 4, 2014, you spoke with the Marketplace's Customer Service Unit and appealed that preliminary determination.

The Marketplace sent you a Notice of Telephone Hearing on August 14, 2014 for a scheduled telephone hearing on September 2, 2014.

On August 30, 2014, the Marketplace issued a notice of eligibility determination on your August 4, 2014 application. It is consistent with the preliminary determination and says that you are eligible to enroll in a qualified health plan, for up to \$256.00 monthly of advance premium tax credit (APTC), and for cost-sharing reductions. It also says you are not eligible for Medicaid because the household income you provided of \$18,991.60 is over the allowable income limit of \$16,105.00.

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On September 2, 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 up to fifteen days to allow you to submit documentary evidence.

On September 3, 2014, you faxed to the Appeals Unit the following documents: (1) Termination Notice/Certificate of Coverage from CDPHP, dated August 26, 2014; (2) Page 2 of the 2013 Amendment to your Separation Agreement; and (3) Schedule A (Form 1040) Itemized Deductions for 2013. These documents along with the fax cover sheet total 4 pages and have been marked collectively as "Appellant's Exhibit C."

There being no further documents expected, the record was closed.

Findings of Fact

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

- 1) You are legally divorced and plan on filing your 2014 taxes as single, with no dependents (Testimony of 9/2/14; Marketplace Application).
- 2) You live in Ulster County, New York.
- 3) You were injured on June 2, 2014, in a motor vehicle accident and expect your recovery to be long-term (Testimony of 9/2/14).
- 4) You were notified by your employer in a June 26, 2014 e-mail that a new employee had been hired to replace you, due to the unknown length of your recovery period (Testimony of 9/2/14; Appellant's Exhibit B). According to the October 3, 2014 correspondence from your employer, your "date of departure" from employment was June 10, 2014.
- 5) An August 26, 2014 notice from CDPHP informed you that your group health insurance health coverage would terminate on August 31, 2014 (Appellant's Exhibit C, p. 2).
- 6) You confirmed that your year-to-date income from employment was \$8,541.60, as indicated on your last pay stub (Testimony of 9/2/14; Appellant's Exhibit A).
- 7) You testified and provided proof that you receive \$1,400.00 monthly in alimony and maintenance payments from your ex-husband (Testimony of 9/2/14; Appellant's Exhibit C, p. 3).

- 8) You did not apply for unemployment insurance benefits because you are receiving no-fault benefits from your accident (Testimony of 9/2/14).
- 9) You testified that you own real estate that does not produce any income and that you expect to claim \$6,350.00 in deductions on your 2014 income tax return for real estate taxes paid (Testimony of 9/2/14; Appellant's Exhibit C, p. 4).
- 10) You have no other sources of income and do not expect to return to work or look for work during 2014 (Testimony of 9/2/14).
- 11) You stated you cannot afford to pay any monthly premium for health insurance because you lost your job and income and still have bills to pay (Testimony of 9/2/14).

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

Applicable Law and Regulations

Financial eligibility for the advance premium tax credit (APTC) and Medicaid coverage through the Marketplace is based on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 436.603(a)). Generally, MAGI is adjusted gross income plus any non-taxable social security income, non-taxable interest income and non-taxable foreign income received during the tax year (see 26 USC § 36B(d)(2)(B), 26 CFR § 1-36B-1(e)(2)).

A taxpayer's adjusted gross income is gross income reduced by pre-tax (above-the-line) deductions. Gross income means all income from whatever source it is derived, which includes, but is not limited to, income derived from business, interest, rent, royalties, compensation for services, etc. (26 USC § 61). Alimony received in a given year is included in gross income (26 USC § 71).

Above-the-line deductions are deductions taxpayers can take to reduce the amount of their gross income. Such deductions include alimony payments made, interest on student loans, and other items that are included on page one of a taxpayer's U.S. Individual Income Tax Return Form 1040 (26 USC § 62). However, they do not include charitable contributions, mortgage interest, real property taxes, and other "below-the-line" deductions, which are itemized deductions and claimed on Form 1040, Schedule A, Itemized Deductions (26 USC § 63(d)).

The advance premium tax credit is available to a person who is eligible to enroll in a qualified health plan and

- 1) expects to have a household income between 138% and 400% of the 2013 federal poverty level (FPL) and
- 2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a qualified health plan and
- 3) is eligible for minimum essential coverage only through the individual Marketplace

(see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4), N.Y. Soc. Serv. Law § 366(4)(c)).

In an analysis of APTC eligibility, the determination is based on the FPL “for the benefit year for which coverage is requested (45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2013 FPL, which is \$11,490.00 for a one-person household (78 Fed. Reg. 5182, 5183).

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

- 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 (26 USC § 36B(b)(3)(A)).

For household income in the range of at least 200% but less than 250% of the 2013 federal poverty level (FPL), the expected contribution is from 6.30% to 8.05% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)).

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),
- 2) has a household income less than 250% of the FPL, and
- 3) enrolls in a silver level QHP through the Marketplace

(45 CFR § 155.305(g)).

Medicaid can be provided through the Marketplace to adults who meet all the following criteria: (1) are age 19 or older and under age 65; (2) are not pregnant; (3) are not entitled to or enrolled for Medicare benefits; (4) are not otherwise eligible for and enrolled for mandatory coverage under Medicaid; 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)), N.Y. Soc. Serv. Law § 366(1)(b)).

Medicaid is available to an individual who has a modified adjusted gross household income under 138% of the 2014 federal poverty level (42 CFR § 435.218). One hundred percent of the federal poverty level (FPL) for one person in 2014 is \$11,670. Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. (42 CFR § 435.603(h)(1), SPA 13-0055-MM3).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

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 she 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 currently defers 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 first issue is the amount of advance premium tax credit (ATPC) that can be authorized, based on the information in your August 4, 2014 application.

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).

According to the record, you are the only member of your tax household. You expect to file as single on your tax return for 2014 and claim no dependents.

You reside in Ulster County, where the lowest cost silver plan that is available through the Marketplace for an individual costs \$330.41 per month.

The August 4, 2014 preliminary determination and the August 30, 2014 notice of eligibility determination are based on your attested household income of \$18,991.60, which includes your 2014 income from employment (\$8,541.60) and alimony payments (\$16,800.00) less \$6,350 in deductions. An income of \$18,991.60 equals 165.29% of the 2013 FPL for a one-person household. At 165.29% of the FPL, the expected contribution to the cost of the health insurance premium is 4.7% of income, or \$74.39 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan in your county (\$330.41 per month) minus your expected contribution (\$74.39 per month), which equals \$256.02 per month.

Therefore, computing to the nearest dollar, the Marketplace correctly determined your APTC to be \$256.00 per month on an attested income of \$18,991.60.

Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since your household income is 165.29% of the 2013 FPL, you are eligible for cost-sharing reductions.

During your hearing, you testified that the expected household income that you provided on your application no longer reflects your current income situation and asked that your eligibility for Medicaid be reconsidered.

Eligibility for Medicaid is determined based on an applicant's current monthly income. You testified that you had insurance coverage until August 31, 2014, and this is confirmed by CDPHP's August 2014 notice of termination. Therefore, your eligibility for Medicaid is based on your monthly income for the month of August.

According to the record, your only August income is an alimony and maintenance payment of \$1,400.00. Since your income is greater than the maximum allowable income limit for a one-person household of \$1,343 per month, you do not qualify for Medicaid based on your August 2014 income.

Finally, you stated that you cannot afford to pay for the monthly premium of silver-level health plan even with APTC and CSR. If you wish to be considered for a hardship exemption, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

Since the August 30, 2014 eligibility determination is correct in stating that, with an attested household income of \$18,991.60, you are eligible for APTC of \$256.00 per month and eligible for cost-sharing reductions, the determination is correct and is AFFIRMED.

However, the August 30, 2014 determination relies on your attestation that your 2014 expected income is \$18,991.60. This consists of income from employment (\$8,541.60) plus alimony payments (\$16,800.00) less \$6,350.00 in deductions. According to the record, the \$6,350.00 that you deducted from your income is for taxes that you expect to pay on your real property. Although this sum may be deducted from your income taxes, it is not an above-the-line deduction that can reduce your MAGI income, and that is number used to determine APTC and Medicaid eligibility. Your MAGI household income is \$25,341.60 (\$8,541.60 earned income plus \$16,800.00 alimony). The Marketplace should use this corrected information to redetermine your eligibility based on an anticipated 2014 income of \$25,341.60.

Decision

The August 28, 2014 eligibility determination is AFFIRMED.

The case is returned to the Marketplace for a redetermination of your eligibility based upon a one-person household with an expected 2014 income of \$25,341.60.

Effective Date of this Decision: November 21, 2014

How this Decision Affects Your Eligibility

This Decision does not decide your final eligibility.

It returns your case to the Marketplace to redetermine your eligibility based upon a one-person household with an expected 2014 income of \$25,341.60.

If you wish to apply for a hardship exemption, you may do so directly to the U.S. Department of Health and Human Services at www.healthcare.gov

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 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 eligibility determination of August 28, 2014 is **AFFIRMED**.

The case is returned to the Marketplace for redetermination of eligibility based on a 2014 income of \$25,341.60 for a one-person household.

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 apply for a hardship exemption, you may do so directly to the U.S. Department of Health and Human Services at www.healthcare.gov

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]