



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

## Notice of Decision

Decision Date: November 10, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000791

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On September 9, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 27, 2014 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).

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## Issues

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 \$156.00 per month and, provided you are enrolled in a silver-level qualified health plan, for cost-sharing reductions as of June 27, 2014?

Did the Marketplace properly determine that you are not eligible for Medicaid as of June 27, 2014?

## Procedural History

The Marketplace received your application on February 11, 2014, which was modified several times, including on June 27, 2014.

On June 28, 2014, the Marketplace issued an eligibility redetermination on your June 27 application. It said that, based on your reported household income of \$27,362.00, you were temporarily eligible to receive up to \$156.00 monthly of advance premium tax credit and could also get cost-sharing reductions provided you enrolled in a silver level qualified health plan. It also said you were not eligible for Medicaid because your household income of \$27,362.00 was over the allowable income limit of \$21,707.00.

On August 6, 2014, you spoke with a representative in the Marketplace's Customer Service Unit and appealed that determination.

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On September 9, 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 additional documentation. The record was to be closed on September 24, 2014, or upon receipt of the submitted documents, whichever occurred earlier.

On September 12, 2014, the Marketplace's Appeal Unit received a fax from you consisting of a cover page and your daughter's recent pay stubs, dated August 29, 2014 and September 12, 2014. The fax has been marked as "Appellant's Exhibit 3" and has been received into evidence. The record is now closed.

## **Findings of Fact**

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

- 1.) You reside in Erie County, New York, with your daughter.
- 2.) Your daughter, who turned 18 years old on July 1, 2014, is listed as a dependent on your Marketplace application.
- 3.) You testified that you are not certain if you will claim your daughter as a dependent on your 2014 income tax return.
- 4.) You stopped working after undergoing surgery and began collecting long-term disability benefits during July or August 2013.
- 5.) On July 10, 2014, you provided the Marketplace with a six-page fax. It consisted of (1) a cover page, (2) two pages of the Explanation of Benefits regarding your long term disability benefits, and (3) a copy of a July 3, 2014 letter of acknowledgment from the Social Security Administration (SSA) (Appellant's Exhibit 1).
- 6.) The gross monthly amount of your long-term disability benefits is \$1,976.00 (Appellant's Exhibit 1, pp. 2-3). You testified this is the only source of income you have for 2014.
- 7.) You reported on your Marketplace application that your expected 2014 income is \$11,856.00.
- 8.) According to the July 3, 2014 letter from the SSA, your application for Social Security Disability Benefits has been filed and is being processed (Appellant's Exhibit 1, p.4).
- 9.) You provided the Marketplace with four pay stubs from your daughter's employment during 2014. You also provided the Marketplace's Appeals

Unit with her most recent pay stub, dated September 12, 2014, which shows year-to-date earnings of \$5,958.17 as of September 7, 2014 (Appellant's Exhibit 2; Appellant's Exhibit 3, p.3).

- 9) You testified and provided documentary proof that your daughter is paid every other week. Pay stubs for the four weeks from 8/11/2014 to 8/24/2014 and 8/25/2014 to 9/7/2014 show that your daughter earned \$827.00 (\$391.05 + \$435.95) during that period (Appellant's Exhibit 3, pp. 2 and 3).
- 10) You testified that your daughter has reduced the number of hours she works because she is attending college during fall 2014. Therefore, she does not expect to make \$11,000.00 this year as was reported on your Marketplace application.
- 11) You testified and provided documentary proof that your daughter's Title II monthly benefits during 2014 were \$751.00 (Appellant's Exhibit 4). You testified that her Title II benefits ended in June 2014, because she turned 18 on July 1, 2014. She received \$4,506.00 in Title II benefits during 2014 (\$751.00 x 6 months).
- 12) You testified that your daughter does not expect any other changes to her income for 2014.
- 13) You do not feel your daughter's income should be included in your household income because you support her and her benefits and earnings are used to pay for her car insurance and go toward her college tuition.
- 14) You would like to be considered for Medicaid because you feel that, even with an advance premium tax credit, the monthly premium is not affordable.

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

## **Applicable Law and Regulations**

Medicaid can be provided through the Marketplace to adults who meet all of 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 under part A or B of title XVIII of the Act; (4) Are not otherwise eligible for and enrolled in mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and (5) Have household income that is at or below 138% of the 2014 federal poverty level for the applicable family size (see 42 CFR §§ 435.119(b), 435.603(d)(4), N.Y. Soc. Serv. Law § 366(1)(b)).

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The Marketplace determines APTC and Medicaid eligibility using an applicant's modified adjusted gross income (MAGI) ((45 CFR 155.300(a), 42 CFR 435.603(a)). "The term 'modified adjusted gross income' means adjusted gross income plus any nontaxable social security income, nontaxable interest income and nontaxable foreign income (see 26 USC § 36B(d)(2)(B), 26 CFR § 1-36B-1(e)(2)).

The MAGI of a tax filer's household includes the MAGI of the tax filer plus the MAGI of each member of the household who is claimed as a dependent and is required to file a federal income tax return (26 CFR § 1-36B-1(e)(2) (42 CFR § 435.603(f)(1); Soc. Serv. Law § 366(1)(a)(5)(i)).

The income of a child is not included in a taxpayer's MAGI household income if the child is not required to file a tax return (26 USC § 6012, 45 CFR 155.300(a), 42 CFR § 435.603(d)(2)). A child whose gross income is less than the applicable federal standard deduction is not required to file a return (26 USC § 6012(a)(1)). The standard deduction for the 2014 tax year is \$6,200.00 (IR-2013-87).

Long term disability benefits count as taxable income if the employer paid for the disability plan. If both the employee and employer paid premiums for the plan, only the portion of the benefits received due to the employer's payments is taxable. If an individual paid the premiums through a cafeteria plan, and the amount was not included as taxable income, the premiums are considered paid by the employer, and the disability benefits are fully taxable (26 USC §104).

The advance premium tax credit (APTC) 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; (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 not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR §§ 435.119(b), 435.603(d)(4), N.Y. Soc. Serv. Law § 366(4)(c)).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their income tax form). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

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 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 that is at least 150% but less than 200% of the 2013 federal poverty level (FPL), the expected contribution is from 4.0% to 6.3% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)).

The 2013 federal poverty level for a two-person household is \$15,510.00 (78 Fed Reg 5182, 5183 (2013)

Cost-sharing reductions are available to a person who (1) is eligible to enroll in a qualified health plan (QHP) through the Marketplace, (2) meets the requirements to receive an advance premium tax credit, (3) is expected to have a household income that does not exceed 250% of the FPL for the plan year coverage is requested and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)).

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); State Plan Amendment (SPA) 13-0055-MM3, as approved by the Department of Health and Human Services, March 19, 2014).

The 2014 federal poverty level for a two-person household is \$15,730.00 (79 Fed. Reg. 3953).

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 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**

Of the Medicaid eligibility requirements listed above, the one currently at issue is the income requirement.

According to your Marketplace application as of June 27, 2014, your expected household income was \$27,362.00 for the 2014 tax year. This included your daughter's projected 2014 income of \$11,000.00 and Title II benefits of \$4,506.00 plus your expected 2014 disability benefits of \$11,856.00.

According to the record there are two people in your household, you and your daughter. Your Marketplace application states your tax filing status is "Qualifying widow(er) with dependent child." Although you testified that you may not be claiming your daughter as a dependent on your 2014 tax return, you did not indicate clearly that you were changing the statement that you made on your application. Therefore, this analysis will be based on a two-person household.

The Marketplace uses modified adjusted gross income (MAGI) to determine eligibility. Your MAGI household income consists of your MAGI income and that of each dependent in your household who must file a tax return.

For 2014, only a child whose gross income is less than the federal standard income tax deduction of \$6,200.00 is not required to file a federal income tax return.

Your daughter received Title II benefits of \$751.00 until July 1, 2014, which equals \$4,506.00 for 2014. Her earned income as of September 7, 2014 was \$5,958.17. Since the total of these two income sources equals \$10,464.17, your daughter will be required to file a federal income tax return. If you claim her as a tax dependent, her income is included in the MAGI-based income for your two-person household.

She began attending school in the fall and so expects to work fewer hours for the rest of the year. You submitted pay stubs showing that she earned \$827.00 during the four-week period from August 11, 2014 to September 7, 2014. This averages out to a weekly income of \$206.75. Since this appears to be the most reliable information on her expected earning, we rely on it here to conclude that she can expect to earn \$3,308.00 between September 7, 2014 and the end of the year.

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The record reflects that you initially applied for health insurance through the Marketplace on February 11, 2014 and modified the application several times thereafter. The application of June 27, 2014, which resulted in the eligibility determination of June 28, 2014, is currently under review.

You reside in Erie County, where the second lowest cost silver plan available through the Marketplace costs \$275.35 per month.

In the June 27, 2014 application, you indicated an expected 2014 income of \$27,362.00, which is 176.42% of the 2013 FPL for a two-person household. At 176.42% of the FPL, the expected contribution to the cost of the health insurance premium is 5.22% of income, or \$119.02 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan in your county (\$275.35 per month) minus your expected contribution (\$119.02 per month), which equals \$156.33 per month.

Therefore, computing to the nearest dollar, the Marketplace correctly determined your APTC to be \$156.00 per month, using the information that you provided on your application.

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 176.42% of the FPL, you are eligible for cost-sharing reductions.

While approving your APTC and cost-sharing reductions, the determination also found that you were not eligible for Medicaid coverage. Medicaid is available to an adult who has a household income that is up to 138% of the 2014 FPL. Since the 2014 FPL for a two-person household is \$15,730.00, an income of \$27,362.00 would equal 173.95% of the FPL. Therefore, the June 28, 2014 determination correctly stated that you were not eligible for Medicaid, computed on the annual income provided on your application.

You testified, however, that the household income amount on your June 27, 2014 application is no longer accurate and does not reflect your current financial situation. Additionally, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

According to your testimony and the documentary proof you provided, your gross long term disability payments are \$1,976.00 per month and these benefits are your only source of income during 2014.

The 2014 FPL for a two-person household is \$15,730.00. For a household of two people, the maximum allowable household income for an adult 19 to 64 years of age to be eligible for Medicaid is \$21,707.00 (138% 2014 FPL), which is

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\$1,808.00 per month. At a reported monthly income of \$1,976.00, you do not qualify for Medicaid at this level even if your daughter's income is not considered.

Since the June 28, 2014 eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$156.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.

Finally, it should be noted that the full amount of your long term disability benefits of \$1,976.00 per month count as taxable MAGI-based income only if the employer paid the premiums for the disability insurance plan.

If you contributed to paying the long term disability insurance premiums (for example, by a deduction from your paycheck) the entire amount of your \$1,976.00 per month may not count as MAGI-based income.

Also, your Marketplace application indicates that your daughter will receive Social Security (Title II) benefits for the entire year. If her benefits terminate before the end of the year, this should be reported to the Marketplace.

If the Marketplace does not have the correct income information for these, or other categories, you can contact Marketplace customer service for assistance.

You stated, however, that you cannot afford to pay for the monthly premium of silver-level health plan even with advance premium tax credits and cost-sharing reductions. 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](http://www.healthcare.gov)) for additional information and an application.

## **Decision**

The June 28, 2014 notice of eligibility determination was correct when made and is AFFIRMED.

**Effective Date of this Decision:** November 10, 2014

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

This decision does not change your eligibility, and it does not affect any Marketplace determination made after June 28, 2014.

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).

You are not eligible for Medicaid.

You remain eligible for advance premium tax credits and cost-sharing reductions.

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](http://www.healthcare.gov)) for additional information and an application.

### **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:

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- By fax: 1-855-900-5557

## **Summary**

The June 28, 2014 notice of eligibility determination was correct when made and is AFFIRMED.

This decision does not change your eligibility, and it does not affect any Marketplace determination made after June 27, 2014.

You are not eligible for Medicaid.

You remain eligible for advance premium tax credits and cost-sharing reductions.

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](http://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]