



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

## Notice of Decision

Decision Date: October 27, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000812

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

Dear [REDACTED],

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

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## Decision

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

## Issues

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

Did the Marketplace properly determine that [REDACTED] was eligible for \$310.00 per month in advance premium tax credit as of August 8, 2014?

Did the Marketplace properly determine that [REDACTED] was not eligible for Medicaid through the Marketplace as of August 8, 2014?

## Procedural History

The Marketplace received your application for health insurance on August 8, 2014. That same day, a preliminary eligibility determination was rendered which stated that you were eligible for \$310.00 per month in advance premium tax credit (APTC).

Also on August 8, 2014, you spoke to the Marketplace's Customer Service Unit and appealed that preliminary determination.

On August 9, 2014, the Marketplace issued a notice of eligibility determination on your August 8, 2014 application. That notice states that you are eligible to enroll in a qualified health plan (QHP) and, at an attested annual household income of \$17,000.00, entitled to up to \$310.00 per month in APTC. The notice also states that you are not eligible for Medicaid because the household income you provided of \$17,000.00 is over the allowable income limit of \$16,105.00.

On September 8, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing

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and was left open for 15 days to allow you to submit supporting evidence. On September 15, 2014, the Marketplace's Appeals Unit received your supporting documentation including a copy of your Second Quarter Federal Tax Return for 2014 and a copy of your final employment contact. The record was closed on September 23, 2014.

## **Findings of Fact**

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

- 1) You testified that you expect to file your 2014 tax return as Single and will claim no dependents on that tax return. You also do not expect anyone to claim you as a dependent.
- 2) You testified that you were diagnosed with breast cancer in April 2014.
- 3) You testified that you are self-employed but have been unable to work due to your current medical condition. You testified and provided evidence that your last contract was completed on March 31, 2014. You have been unable to work since that date.
- 4) In your Marketplace application, you attested to earning \$17,000.00 between January 1, 2014 and March 31, 2014. At the September 8, 2014 hearing, you confirmed that income was still accurate for those months.
- 5) You received your last contract payment in mid-April 2014. From mid-April 2014 to the date of the hearing, you testified and provided evidence that you have not received any income from employment contracts. However, you did testify that you now receive about \$2,500.00 per month in rental income. This rental income, however, is offset by a mortgage payment for that property that exceeds the rental income.
- 6) You currently have Freelancers health insurance coverage through Blue Cross/Blue Shield and pay \$496.00 per month in premiums.
- 7) According to your August 9, 2014 application, you currently reside in New York County, New York.
- 8) You testified that you cannot afford an insurance premium on your current monthly income. You would like your eligibility for Medicaid to be considered.
- 9) On September 15, 2014, the Marketplace's Appeals Unit received supporting evidence through your Marketplace account. These documents

included a copy of your Second Quarter Federal Tax Return for 2014 and a copy of your final employment contract.

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

## **Applicable Law and Regulations**

A person may qualify for APTC if their annual household income is between 138% and 400% of the 2013 Federal Poverty Level (FPL) (45 CFR §§ 155.300(a), 155.305(f)). The annual 2013 Federal Poverty Level (FPL) for a one-person household is \$11,490.00 (78 Fed Reg 5182, 5183 (2013)). Therefore, a one-person household may qualify for APTC if the annual household income is between \$15,857.00 (138% of 2013 FPL) and \$45,960.00 (400% of 2013 FPL).

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 2.0% to 9.5% of annual household income (26 USC § 36B(b)(3)(A)).

For annual household income in the range of at least 133% but less than 150% of the 2013 Federal Poverty Level (FPL), the expected contribution is between 3.00% and 4.00% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)).

Medicaid can be provided through the Marketplace 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 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)).

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The annual 2014 Federal Poverty Level (FPL) for a one–person household is \$11,670. (79 Fed Reg 3593 (2014)). For a household of one in 2014, the maximum allowable income to be eligible for Medicaid is \$16,105.00 (138% Federal Poverty Level (FPL)), which is \$1,343.00 per month.

Generally, the Marketplace must determine financial eligibility for Medicaid based on the applicant’s household income (42 CFR § 435.603)(c)). Household income is calculated based on Modified Adjusted Gross Income (MAGI) methodologies (42 CFR § 435.603)(d)(1)). Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits must be based on current monthly household income and family size (42 CFR § 435.603(h)(1)). However, there are certain eligibility groups to which MAGI-based methods do not apply (42 CFR § 435.603)(j)).

People who do not qualify for Medicaid through the Marketplace on a MAGI basis may nevertheless qualify for Medicaid while they require treatment for breast and/or cervical cancer (see 42 US § 1396a(a)(10)(A)(ii)(XVIII); NY Soc Serv Law §§ 366.1(c)(7)), 366.4(d)).

Individuals may qualify for this program if they:

- 1) are under 65 years of age,
- 2) have been screened for breast and/or cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program
- 3) need treatment for breast or cervical cancer, and
- 4) are not otherwise covered under creditable coverage as defined in the federal public health service act

(NY Soc Serv Law § 366.4(d); see *also* 42 USC § 1396a(aa)).

In this context, “creditable coverage” includes coverage such as that provided by group health plans; public health plans; health insurance plans; Medicaid provided on another basis; Medicare; programs for members of the military, military dependents, and members of the Peace Corps; and programs of the Indian Health Service or tribal organizations (see 42 USC §§ 1396a(aa), 300gg(c)).

Additional information about New York State’s Medicaid Cancer Treatment Program (MCTP) is available at Department of Health’s website (<https://www.health.ny.gov/diseases/cancer/treatment/mctp/>).

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Applications for the MCTP can be submitted through the Cancer Services Program (CSP). These applications are not accepted by the NYSOH Marketplace or local offices of the Department of Social Services.

If you think this program will benefit you or someone you know, you should contact your local CSP. Check the Department of Health website at: <http://www.health.ny.gov/diseases/cancer/> or Public Health Program List or call The Cancer Services Program at 1-866-442-2262.

## **Legal Analysis**

The first issue is the amount of APTC to which you are entitled, based on your 2014 expected annual household income at the time of the August 8, 2014 eligibility determination.

According to the record, you are the only member of your tax household. You expect to file as single on your 2014 tax return, do not expect to claim any dependents, and do not expect anyone to claim you as a dependent.

You reside in New York County, where the second lowest cost silver plan that is available through the Marketplace for an individual costs \$365.28 per month. The August 8, 2014 eligibility determination was based on an annual household income of \$17,000.00, which you testified is the amount of income you earned during 2014 through the completion of your final contract on March 31, 2014. An annual household income of \$17,000.00 equals 147.95% of the 2013 Federal Poverty Level (FPL) for a one-person household. At 147.95% of the FPL, the expected contribution to the cost of the health insurance premium is 3.88% of your income, or \$54.95 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$365.28 per month) minus your expected contribution (\$54.95 per month), which equals \$310.33 per month. Therefore, calculated to the nearest dollar, the Marketplace correctly computed your APTC to be \$310.00 per month as of August 8, 2014.

However, at the hearing you testified that your 2014 expected annual household income no longer reflects your current income situation and that you would like your eligibility to be reconsidered.

Eligibility for Medicaid through the Marketplace may be based on an applicant's current monthly income. The record reflects that you applied for health insurance through the Marketplace on August 8, 2014. Therefore, your eligibility for Medicaid is based on your income for the month of August.

You credibly testified that you are self-employed and you completed your final contract on March 31, 2014. You received your final payment from that contract in mid-April 2014. From mid-April 2014 to the date of the hearing, you testified that you have not received any income from employment contracts. You now, however, receive \$2,500.00 per month from a rental property. Even though there may be a mortgage on this rental property, the rental income you receive is included as part of your household modified adjusted gross income.

Therefore, your monthly income for August was \$2,500.00 which puts you at 256.94% of the federal poverty level (FPL).

To be eligible for Medicaid through the Marketplace, you cannot have a household income higher than 138% of the federal poverty level (FPL) which is \$1,343.00 per month. Since your monthly income for August (\$2,500.00) is above this threshold (\$1,343.00), you are not eligible for Medicaid as of August 2014 based on MAGI-based methodology.

If your monthly income has changed since August 2014, your eligibility may also have changed. If your monthly income has changed, you may reapply to the Marketplace with updated income information.

You also credibly testified that you have been diagnosed with breast cancer. You may contact the Cancer Services Program if you are interested in the Medicaid Cancer Treatment Program, discussed above.

## **Decision**

The August 9, 2014 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** October 27, 2014

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

Your eligibility has not changed. You are eligible for an advance premium tax credit of up to \$310.00 per month. As of August 2014 you were not eligible for Medicaid coverage.

If your monthly income has changed since August 2014, your eligibility may also have changed. If your monthly income has changed, you may reapply to the Marketplace with updated income information.

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Additionally, you may contact the Cancer Services Program if you are interested in the Medicaid Cancer Treatment Program.

### **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

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## **Summary**

The August 9, 2014 eligibility determination is AFFIRMED.

Your eligibility has not changed. You are eligible for an advance premium tax credit of up to \$310.00 per month. As of August 2014 you were not eligible for Medicaid coverage.

If your monthly income has changed since August 2014, your eligibility may also have changed. If your monthly income has changed, you may reapply to the Marketplace with updated income information.

Additionally, you may contact the Cancer Services Program if you are interested in the Medicaid Cancer Treatment Program.

## **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]  
[REDACTED]