



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

Notice of Decision

Decision Date: November 25, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000824

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On September 17, 2014, you appeared by telephone at a hearing on your appeal of the NY State of Health Marketplace's August 12, 2014 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of 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 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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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000824

[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] [REDACTED] were collectively eligible for up to \$47.00 per month of advance premium tax credit, but ineligible for cost-sharing reductions, as of August 12, 2014?

Procedural History

The Marketplace received your application for health insurance on August 7, 2014; at that time, you were seeking coverage only for yourself and your spouse.

On August 8, 2014, the Marketplace issued a notice eligibility of determination in your case. It said that you and your spouse were eligible to enroll in a qualified health plan (QHP), eligible to receive up to \$47.00 per month of advance premium tax credit (APTC) and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR). This determination was based on a household income of \$90,999.99.

On August 11, 2014, you modified your application to state that your four children would be seeking insurance through the Marketplace as well.

That same day, the Marketplace prepared a preliminary eligibility redetermination, the findings of which were consistent with those contained in the August 8, 2014 notice of eligibility determination. The Marketplace also indicated that additional information would be needed to make any eligibility determinations for your children.

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On August 11, 2014, you spoke with the Marketplace's Customer Service unit and appealed the August 11, 2014 preliminary eligibility determination.

On August 12, 2014, the Marketplace issued a notice of eligibility redetermination that formalized the findings of the August 11, 2014 preliminary determination.

On September 17, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open to provide you an opportunity to submit as additional evidence: (1) documents relating to your ongoing Chapter 7 bankruptcy proceeding, and (2) statements relating to tuition and fees you have paid for your children to attend private school. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier. However, no additional documents were received from you by October 2, 2014.

Accordingly, the record was closed on October 2, 2014.

Findings of Fact

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

- 1) You are married to [REDACTED] and have four children: [REDACTED] (16 year-old son), [REDACTED] (13 year-old son), [REDACTED] (9 year-old daughter) and [REDACTED] (4 year-old son) (NYSOH Exhibit A, pg. 1; Appellant testimony 9/17/14).
- 2) You expect to file a U.S. Income Tax return for the 2014 tax year, file as "married filing jointly," and claim your four children as dependents (NYSOH Exhibit A, pg. 2; Appellant testimony 9/17/14).
- 3) You live in Kings County, New York (NYSOH Exhibit A, pg. 1; Appellant testimony 9/17/14).
- 4) You testified that you are seeking insurance through the Marketplace for you and your spouse only, since your four children are already enrolled in Child Health Plus outside of the Marketplace.
- 5) Your spouse expects to earn \$90,999.99 during 2014, which is based on his weekly earnings of \$1,750.00 per week as an employee of [REDACTED]. (NYSOH Exhibit A, pg. 15; Appellant testimony 9/17/14).

- 6) You testified that you and your spouse are currently in a Chapter 7 bankruptcy proceeding. You further testified that your household income varies on a week-to-week basis and that as a result of a court order issued in the bankruptcy proceeding, your spouse's weekly wages from [REDACTED] are garnished in order to pay your creditors (Appellant testimony 9/17/14).
- 7) You contended that your monthly living expenses, which include your mortgage, car payment, credit card payments, groceries, and student tuition, make health insurance through the Marketplace unaffordable unless your household is determined eligible for a greater amount of advance premium tax credit (Appellant testimony 9/17/14).

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

Applicable Law and Regulations

Eligibility for the advance premium tax credit (APTC) is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR 155.300(a)). As used in an APTC analysis, the term "modified adjusted gross income" means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) social security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1-36B-1(e)(2)).

Subject to some limitations, interest on a qualified educational loan may be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, for taxpayers whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)).

The law that allows for a deduction from adjusted gross income of up to \$4000 in tuition and fees paid by the taxpayer during the tax year to a qualified educational institution expired as of December 31, 2013, and has not yet been renewed by Congress (26 USC § 222).

The maximum amount of APTC that can be approved equals:

- 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

- the taxpayer's expected contribution amount

(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, as a percentage of the federal poverty level (FPL) (26 USC § 36B(b)(3)(A)).

That contribution is determined on a sliding scale, in a linear manner, as follows:

- up to 133% FPL, 2.0%
- 133% up to 150% FPL, 3.0% to 4.0%
- 150% up to 200% FPL, 4.0% to 6.3%
- 200% up to 250% FPL, 6.3% to 8.05%
- 250% up to 300% FPL, 8.05% to 9.5%
- 300% up to 400% FPL, 9.5%

(26 USC § 36B(b)(3)(A)).

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 \$31,590.00 for a six-person household (78 Fed. Reg. 5182, 5183).

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).

Cost-sharing reductions (CSR) are available to a person who is eligible to enroll in a qualified health plan (QHP) and:

- is eligible for an advanced premium tax credit (APTC),
- has a household income less than 250% of the FPL, and
- enrolls in a silver level health plan through the Marketplace

(45 CFR § 155.305(g)(1)).

Legal Analysis

The matters at issue are whether, as of August 11, 2014, you were eligible for an advance premium tax credit greater than \$47.00 per month and whether you were not eligible for cost-sharing reductions.

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Each application submitted to the Marketplace through August 11, 2014 includes an attestation that your expected 2014 household income is \$90,999.99.

You testified that your monthly expenses include tuition and fees for your children's education. However, the law allowing a deduction for tuition and fees, from adjusted gross income ended on December 31, 2013, and has not been renewed by Congress. At this time, it is not known if Congress will renew the law.

You further testified that your household income is reduced because your spouse's wages are garnished to pay creditors' claims as part of an ongoing bankruptcy proceeding. However, there is no provision that permits the Marketplace to subtract those garnished wages from a calculation of your MAGI-based income. Therefore, according to the credible evidence of record, your expected MAGI-based household income for 2014 is \$90,999.99.

According to the record, for the 2014 tax year you expect to file as "married filing jointly" and claim your four children as dependents. Therefore, for purposes of this Decision you are a six-person household.

You reside in Kings County, where the second lowest cost silver plan that is available through the Marketplace for a couple costs \$741.05 per month.

The August 12, 2014 eligibility determination which you are appealing was based on an expected annual household income of \$90,999.99. You testified that is the amount of income your spouse expects to earn from [REDACTED]. An annual household income of \$90,999.99 equals 288.07% of the 2013 FPL for a six-person household. At 288.07% of the FPL, the expected contribution to the cost of the health insurance premium is 9.15% of income, or \$693.88 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$741.05 per month) minus your expected contribution (\$693.88 per month), which equals \$47.17 per month. Therefore, to the nearest dollar, the Marketplace correctly computed your APTC to be \$47.00 per month, given the information that was available at that time.

Cost-sharing reductions (CSR) are available to a person who has an annual household income no greater than 250% of the FPL. Since your annual household income is 288.07% of the FPL for purposes for APTC and CSR, you were correctly found ineligible for CSR as of August 12, 2014.

Decision

The Marketplace's eligibility determination made on August 12, 2014 is **AFFIRMED**.

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Effective Date of this Decision: November 25, 2014

How this Decision Affects Your Eligibility

The August 12, 2014 eligibility determination is AFFIRMED.

You remain eligible to enroll in a qualified health plan and to receive up to \$47.00 per month of advance premium tax credit.

You are not eligible for cost-sharing reductions

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:

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- By calling the Customer Service Center at 1-855-355-5777
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Summary

The August 12, 2014 eligibility determination is AFFIRMED.

You remain eligible to enroll in a qualified health plan and to receive up to \$47.00 per month of advance premium tax credit.

You are not eligible for cost-sharing reductions

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]