



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

## Notice of Decision

Decision Date: November 28, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000833

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On September 22, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 15, 2014 eligibility redetermination.

The attached 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 letter.

### 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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[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 you are eligible to receive an advance premium tax credit of up to \$186.00 per month and, if you select a silver-level qualified health plan, to receive cost-sharing reductions as of August 14, 2014?

Did the Marketplace properly determine that you are not eligible for Medicaid as of August 14, 2014?

## Procedural History

The Marketplace received your application on August 5, 2014, which you modified on August 14, 2014.

On August 14, 2014, the Marketplace prepared a preliminary eligibility redetermination in your case. It found that, based on an annual household income of \$32,888.00, you were eligible to receive an advance premium tax credit of up to \$186.00 per month, were eligible for cost-sharing reductions if you selected a silver-level qualified health plan, and were not eligible for Medicaid because your household income was over the allowable limit of \$21,707.00.

That same day, you spoke with a representative in the Marketplace's Customer Service Unit and appealed that determination.

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On August 15, 2014, the Marketplace issued a written notice of eligibility redetermination that was consistent with the August 14, 2014 preliminary eligibility redetermination.

After you requested a change of date for the scheduled hearing of September 26, 2014, the Marketplace rescheduled your telephone hearing for September 22, 2014, and sent you a Notice of Telephone Hearing on August 27, 2014.

On September 22, 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 (15) days to allow you the opportunity to submit documentary evidence of your current monthly income. The record was to be closed after 15 days or upon receipt of the submitted documentation, whichever occurs earlier.

On October 1, 2014, the Marketplace's Appeals Unit received a 3 page fax from you that consisted of a cover page and the NY Department of Labor's official Online Record of Unemployment Insurance Benefits, dated October 1, 2014. This three page fax was marked as "Appellant's Exhibit A" and made part of the record. The record was closed that same day.

## **Findings of Fact**

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

1. You are married, have no dependents, and live with your wife in Queens County, New York.
2. You testified that you and your wife plan on using the tax filing status of married filing jointly on your 2014 tax return.
3. Your earned income for 2014 is \$23,333.00, which consists of \$22,868.32 earned income plus two days' vacation pay that you received as severance pay.
4. You testified that you have monthly dividend earnings of approximately \$250.00, or \$3,000.00 annually.
5. You testified that your employer verbally laid you off from work and your last day of employment was July 25, 2014.
6. You testified that you applied for unemployment benefits the following Monday, July 28, 2014.

7. You testified and provided evidence that you were found eligible for \$347.00 a week in unemployment benefits. This is the amount you receive before taxes are deducted (Appellant's Exhibit A).
8. You testified and provided documentary proof that you received your first unemployment benefits check for the week ending August 19, 2014 on August 24, 2014. Your online report shows that you next received benefits in the amount of \$347.00 for the week ending August 28, 2014 (Appellant's Exhibit A).
9. You testified that you will receive unemployment benefits through the end of December 2014, unless you are able to find new employment. The total income you expect to receive from unemployment is \$6,593.00.
10. Your wife is not employed and has no sources of income.
11. You testified that since July 25, 2014, the only two sources of income you have received is from monthly dividend earnings and unemployment benefits.
12. Only you need health insurance through the Marketplace.
13. You testified that you cannot currently afford an insurance premium on your current monthly income.

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

## **Applicable Law and Regulations**

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; (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), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(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 the NY State of Health in the county where the taxpayer resides

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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 annual household income (26 USC § 36B(b)(3)(A)).

For annual household income in the range of at least 200% but less than 250% of the 2013 FPL, the expected contribution is between 6.3% and 8.05% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)).

For a two-person household, the 2013 FPL is \$15,510.00 (78 Fed Reg 5182, 5183 (2013)).

An individual is eligible for enrollment in Medicaid when he meets the nonfinancial criteria and has a monthly household income that is at or below the applicable Medicaid modified adjusted gross income standard (45 CFR § 155.305(c)).

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 435.603(d)(4), N.Y. Soc. Serv. Law § 366(1)(b)).

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 US Department of Health and Human Services, March 19, 2014).

For a Medicaid eligibility determination made during 2014 for a two-person household, the applicable FPL is \$15,730.00 (79 Fed. Reg. 3593 (2014)).

Once an individual becomes eligible for Medicaid, they are not eligible for APTC (see 45 CFR § 155.305(f)(1)(ii)(B), 26 CFR § 1.36B-2(c)(2)).

## Legal Analysis

According to the record, your tax household consists of you and your wife. You plan on filing your 2014 tax return as married filing jointly and will not claim any dependents. Therefore, you have a two-person household for purposes of this analysis.

You reside in Queens County, where the second lowest cost silver plan that is available through the Marketplace for an individual costs \$370.53 per month.

According to your Marketplace application and your evidence at the hearing, you earned \$23,333.00 during 2014 before you separated from employment, expect to receive \$6,593.00 in unemployment benefits this year, and expect to earn dividends of \$3,000.00 this year. This supports a finding that your expected 2014 income is \$32,888.00, which is the household income used for the August 14, 2014 determination.

An annual household income of \$32,888.00 equals 212.04% of the 2013 FPL for a two-person household. At 212.04% of the FPL, the expected contribution to the cost of the health insurance premium is 6.72% of income, or \$184.21 per month.

The maximum amount of APTC that can be authorized equals the cost of the second lowest cost silver plan in your county (\$370.53 per month) minus your expected contribution (\$184.21 per month), which equals \$186.32 per month. Therefore, the Marketplace correctly computed your APTC, as rounded to the nearest dollar, to be \$186.00 per month on an expected-income basis.

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 financial eligibility to be reconsidered.

You credibly testified that the only income you received during August 2014, the month during which you submitted your application, consisted of unemployment benefits and dividend earnings. You testified and provided proof that you received two unemployment benefits checks, for \$347.00.00 each, during August 2014 and \$250.00 in dividend earnings. Therefore, your income for August is \$944.00.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Medicaid is available to individuals whose household has a modified adjusted gross household income under 138% of the 2014 federal poverty level (42 CFR § 435.218). One hundred percent of the 2014 federal poverty level for a two-person household is \$15,730. For a two-person household, the maximum allowable income to be eligible for Medicaid is \$21,707 (138% of the 2014 FPL) which is \$1,809 per month.

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Since the record suggests that the Marketplace calculated your August 14, 2014 eligibility by expected annual income and not by monthly income, the case should be returned to the Marketplace for an eligibility determination on monthly income.

Therefore, the case is returned to the Marketplace to redetermine eligibility for a two-person household with an August 2014 income of \$944.00.

## **Decision**

The August 15, 2014 eligibility determination is MODIFIED to state that, at an attested annual household income of \$32,888.00, you are entitled to up to \$186.00 per month in advance premium tax credit as long as you are not eligible for Medicaid.

The case is REMANDED to the Marketplace for redetermination of the appellant's Medicaid eligibility for a household of two with a total income of \$944.00 for the month of August 2014.

**Effective Date of this Decision:** November 28, 2014

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

This decision does not change your eligibility, but it does direct the Marketplace to redetermine your Medicaid eligibility, taking into account the additional information you provided during and after your hearing. The Marketplace will issue another notice after it redetermines your eligibility.

Currently, you remain eligible for an advance premium tax credit of up to \$186.00 per month.

## **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:

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- 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 August 15, 2014 eligibility determination is MODIFIED to state that, at an attested annual household income of \$32,888.00, you are entitled to up to \$186.00 per month in advance premium tax credit as long as you are not eligible for Medicaid.

The case is REMANDED to the Marketplace for redetermination of the appellant's Medicaid eligibility for a household of two with a total income of \$944.00 for the month of August 2014.

This decision does not change your eligibility, but it does direct the Marketplace to redetermine your Medicaid eligibility, taking into account the additional information you provided during and after your hearing. The Marketplace will issue another notice after it redetermines your eligibility.

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## **Legal Authority**

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**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]