



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

## Notice of Decision

Decision Date: December 8, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000863

[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 22, 2014 eligibility redetermination.

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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Appeal Identification Number: AP000000000863

[REDACTED]  
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[REDACTED]

### Issues

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

Did the Marketplace properly determine that you and your spouse were collectively eligible for \$0.00 per month of advance premium tax credit and ineligible for cost-sharing reductions, as of August 21, 2014?

Did the Marketplace properly determine that your four children were eligible for coverage under Child Health Plus at a total premium cost of \$135.00 per month, as of August 21, 2014?

### Procedural History

The Marketplace received your non-financial assistance application for health insurance on November 8, 2013; only you were seeking insurance coverage.

On November 11, 2013, the Marketplace issued a notice of eligibility determination in your case. It found you eligible to enroll in a qualified health plan.

On August 21, 2014, you submitted a modified application in which you requested financial assistance for insurance coverage for yourself, your spouse, and your four children.

On August 21, 2014, the Marketplace made a preliminary determination that you and your spouse were eligible for up to \$0.00 in advance premium tax credit (APTC), pending the receipt of documentation to verify your income and that your four children were eligible to enroll in Child Health Plus (CHP) at a cost of \$45.00

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per child, per month. These preliminary determinations were based, in part, on an attested household income of \$96,530.00.

On August 21, 2014, you spoke with the Marketplace Customer Service Unit and appealed that preliminary determination.

On August 22, 2014, the Marketplace issued a notice of eligibility redetermination stating that, with a household income of \$96,530.00, you and your husband were eligible for APTC of up to \$0.00 per month but ineligible for cost-sharing reductions or Medicaid coverage. It also issued a notice of determination that, with a household income of \$96,530.00, your children were eligible for CHP coverage at a total premium rate of \$135.00 per month but ineligible for Medicaid coverage.

On August 26, 2014, you resubmitted your application for a redetermination, and the Marketplace again made a preliminary determination that, with a household income of \$96,530.00, you and your husband were eligible for up to \$0.00 in APTC. However, in the CHP determination: the two younger children were eligible to enroll at a cost of \$45.00 per child, per month, but the two older children were eligible only at the full cost of the premium.

On August 27, 2014, the Marketplace sent a notice on the CHP determination. It stated that the two younger children remained eligible for premium assistance “[b]ased on your household income of \$96,530.00” but that the two older children were ineligible for a subsidy “[b]ecause your household income of \$96,530.00, is over the Child Health Plus limit of \$127,880.00.”

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 because the Hearing Officer directed you to provide the following as additional evidence to corroborate your testimony: (1) documents to verify unemployment benefits received by you during August 2014 and (2) business records reflecting income received by your spouse relating to his co-ownership of [REDACTED]

The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier. The documents were not received within the time allowed, and the record was closed.

## **Findings of Fact**

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

- 1) You are married and have four dependent children (NYSOH Exhibit A, p. 1; Appellant testimony 9/17/14).

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- 2) You expect to file a U.S. Income Tax return for 2014, file as “married filing jointly,” and claim your four children as dependents (NYSOH Exhibit A, p. 2; Appellant testimony 9/17/14).
- 3) You reside in Monroe County, New York (NYSOH Exhibit A, p. 1; Appellant testimony 9/17/14).
- 4) You testified that are seeking insurance for yourself and your spouse, since your four children were found eligible for coverage through Child Health Plus (CHP) (NYSOH Exhibit A, p. 1).
- 5) You testified that while you were satisfied that your four children were eligible for coverage through CHP, you would also like a review of the premium amounts for each child (Appellant testimony 9/17/14).
- 6) You testified that during 2014 you earned approximately \$50,000.00 from [REDACTED] prior to the elimination of your position on June 30, 2014 (Appellant testimony 9/17/14; letter dated 8/25/14).
- 7) You further testified that while you were awarded \$405.00 per week of unemployment benefits in either the second or third week of July 2014 for your employment with [REDACTED], you previously received unemployment benefits of \$405.00 per week relating to an earlier claim during the same benefit year. Accordingly, you expected to receive approximately \$10,530.00 in unemployment benefits during 2014 between the two claims (Appellant testimony 9/17/14).
- 8) Your August 21, 2014 application states that your spouse’s expected yearly income for 2014 is \$36,000.00. In the Income Details section of the application, \$3,000.00 is listed both as the monthly gross sales for his business and as his average net income.
- 9) Your spouse took a \$2,000.00 draw in income from [REDACTED] on July 21, 2014 (cancelled check, 7/21/14; Appellant testimony 9/17/14).
- 10) You did not provide documents, as directed by the Hearing Officer, to corroborate your testimony that your spouse’s \$2,000.00 draw from [REDACTED] on July 21, 2014 was his only income between July 2014 and September 2014, which you stated was due to the seasonal nature of his business.
- 11) The attested household income on your August 21, 2014 application is \$96,530.00.

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

## **Applicable Law and Regulations**

### Advance Premium Tax Credit

The maximum amount of advance premium tax credit (APTC) that can be approved 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 towards the cost of health insurance premiums is set by Federal law at 2% to 9.5% of income, depending on household's income (26 USC § 36B(b)(3)(A)).

For household income in the range of at least 300% of the federal poverty level (FPL) but less than 400% FPL, the expected contribution is 9.5% of the household income (26 CFR § 1.36B-3(g)(2)).

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).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a qualified health plan through the Marketplace, (2) meets the requirements to receive advanced premium tax credits, (3) is expected to have an annual 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 qualified health plan (45 CFR § 155.305(g)(1)).

### Child Health Plus

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A child who meets the eligibility requirements for Child Health Plus may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the FPL (N.Y. Public Health Law (PHL) § 2511(2)(a)(iii)).

The amount of the premium payment, if any, that must be made on behalf of an eligible child who enrolls in Child Health Plus is dependent upon the child's family household income in relation to the relevant FPL for the given family size (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the federal poverty level. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month. (PHL § 2510(9)(d)).

The Child Health Plus premium is \$45.00 per month for a child whose family household income is between 301% and 350% of the FPL, with the aggregate premium payment not to exceed \$135 per month for a family (PHL § 2510(9)(d)(v)).

### Medicaid

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 FPL 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)).

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if his or her household's modified adjusted gross income falls at or below 154% of the federal poverty level (FPL) (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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 \$31,970.00 for a six-person household (79 Fed. Reg. 3593, 3593).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits can be based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

## Legal Analysis

The issues on appeal are whether, as stated in the August 22, 2014 notice, you and your spouse were properly found to be eligible for advance premium tax credit (APTC) of \$0.00 and ineligible for cost-sharing reductions (CSR) or Medicaid and whether your children were eligible for Child Health Plus coverage at an aggregate premium rate of \$135.00 but ineligible for Medicaid.

In the application that was submitted on August 21, 2014, you attested to an expected yearly income of \$96,530.00, and the eligibility determination relied upon that information.

For purpose of this Decision, you are in a six-person household, as you will be filing a U.S. Income Tax return for 2014 as “married filing jointly” and claiming your four children as dependents.

Since your children have coverage through Child Health Plus (CHP), you are seeking a separate policy for yourself and your husband. You reside in Monroe County, where the second lowest cost silver plan that is available through the Marketplace for a couple costs \$541.37 per month.

An annual income of \$96,530.00 equals 305.57% of the 2013 federal poverty level (FPL) for a six-person household. At 305.57% of the 2013 FPL, the expected contribution to the cost of the health insurance premium is 9.5% of income, or \$764.20 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$541.37 per month) minus your expected contribution (\$764.20 per month). Since your expected contribution exceeds the cost of the second lowest cost silver plan in your county, the maximum amount of APTC you are eligible for is \$0.00. Therefore, the Marketplace correctly computed your APTC to be \$0.00 per month.

CSR is available to a person who has an annual household income no greater than 250% of the FPL. Since your expected annual household income is 305.57% of the FPL for purposes for APTC and CSR, you were correctly found ineligible for CSR as of August 21, 2014.

Medicaid can be provided through the Marketplace to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138.0% of the FPL for the applicable family size. On the date of your application, the relevant FPL was the 2014 FPL of \$31,970.00 for a six-person household. Since \$96,530.00 is 301.94% of the 2014 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.



Since the August 22, 2014 notice of eligibility redetermination for yourself and your husband properly stated that, based on the information you provided in the application, you were eligible for APTC of up to \$0.00 per month, ineligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.

A child who meets the eligibility requirements for CHP coverage may be eligible for subsidized premiums if the household income is at or below 400% of the FPL. No payments are required at a household income lower than 160% of the FPL, and premiums range from \$9.00 per month to \$60.00 per month between 160% and 140% of the FPL.

At a household income between 301% and 350% of the FPL, the CHP premium is \$45.00 per child, per month, but the cost is capped at \$135.00 per month for the family. Since an income \$96,530.00 is 301.94% of the 2014 FPL, the Marketplace correctly set the premium at \$45.00 per child. Since you need coverage for four children, the total CHP premium was correctly capped at \$135.00 per month.

Medicaid can be provided through the Marketplace to children between the ages of 1 and 19 if the household's income falls at or below 154% of the FPL. Since an income \$96,530.00 is 301.94% of the 2014 FPL, Marketplace properly found your children to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the August 22, 2014 notice of eligibility redetermination for your children properly stated that, based on the information you provided in the application, they were eligible for CHP coverage at a total premium cost of \$135.00 per month and ineligible for Medicaid, it is correct and is AFFIRMED.

You testified that you now expect a 2014 household income lower than the \$96,540.00 stated on your application. You explained that your spouse will earn less than \$36,000.00 from his business during 2014, that he draws less income during the months of July 2014 through September 2014 because his business is seasonal, and that he took a single draw of \$2,000.00 from the business on July 21, 2014. However, since you did not provide the documentary evidence requested to support that testimony, the record lacks sufficient evidence to permit the Marketplace to identify a more accurate estimated income for 2014 and make a new eligibility determination based on it.

Finally, it should be noted that when the Marketplace redetermined eligibility on your August 26, 2014 application, it made a determination on CHP premiums that contained an error. Rather than finding all four children eligible for coverage at \$45.00 per month, it stated that two were eligible for full-cost coverage. This error was carried forward into the notice issued on August 27, 2014.

According to the August 27, 2014, the younger children are eligible for premium assistance “[b]ased on your household income of \$96,530.00” but the older children are ineligible for a subsidy “[b]ecause your household income of \$96,530.00, is over the Child Health Plus limit of \$127,880.00.” Since the August 27, 2014 notice is defective on its face, it is MODIFIED to state, as the August 22, 2014 notice does, that with a household income of \$96,530.00, your four children are eligible for CHP coverage at a total premium rate of \$135.00 per month but ineligible for Medicaid coverage.

## **Decision**

The August 22, 2014 eligibility redeterminations are AFFIRMED.

The August 27, 2014 eligibility redetermination for the appellant’s children is MODIFIED to state that all four children are eligible for Child Health Plus coverage at a total premium rate of \$135.00 per month and that they are not eligible for Medicaid coverage.

**Effective Date of this Decision:** December 8, 2014

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

This decision does not change your eligibility. You and your spouse continue to be eligible to enroll in a qualified health plan, eligible to receive up to \$0.00 of advance premium tax credit, ineligible for cost-sharing reductions, and ineligible for Medicaid. The aggregate premium for Child Health Plus coverage for your four children remains \$135.00 per month, and they are ineligible for Medicaid.

## **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:

- 3) 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)).

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AND/OR

- 4) 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 August 22, 2014 eligibility redeterminations are **AFFIRMED**.

The August 27, 2014 eligibility redetermination for the appellant's children is **MODIFIED** to state that all four children are eligible for Child Health Plus coverage at a total premium rate of \$135.00 per month and that they are not eligible for Medicaid coverage.

This decision does not change your eligibility. You and your spouse continue to be eligible to enroll in a qualified health plan, eligible to receive up to \$0.00 of advance premium tax credit, ineligible for cost-sharing reductions, and ineligible for Medicaid. The aggregate premium for Child Health Plus coverage for your four children remains \$135.00 per month, and they are ineligible for Medicaid.

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

[REDACTED]  
[REDACTED]  
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