



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

**Notice of Decision**

Decision Date: December 23, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000879

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

Dear [REDACTED],

On October 3, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace’s December 8, 2013 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).

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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**Issue**

The issue presented for review by the Appeals Unit of the NY State of Health is:

Did the Marketplace properly determine that, as of the December 8, 2013 and September 3, 2014 eligibility determinations, you were eligible to receive up to \$0.00 per month in advance premium tax credit?

**Procedural History**

The Marketplace received your application for health insurance on December 6, 2013. Your application was submitted and/or revised five times that day. The first application stated that you resided in the [REDACTED] in Livingston County. The four subsequent applications stated that you resided in the [REDACTED] in Monroe County.

On December 8, 2013, a notice was issued which stated that the maximum advance premium tax credit (APTC) amount for which you were eligible was \$0.00.

On June 24, 2014, you spoke with the Marketplace’s Customer Service Unit to request an explanation of the determination or file an appeal.

On August 25, 2014, you again spoke with the Marketplace’s Customer Service unit to see if you were eligible for more APTC and stated that you still wanted to appeal the determination insofar as it found you eligible for only \$0.00 in APTC.

On October 3, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) Your application indicates that you are single, and you testified that you plan on filing your 2014 tax return as single. You will claim no dependents on that tax return.
- 2) The last modification of your application on December 6, 2013 and the application on September 2, 2014 listed an annual expected income for 2014 of \$35,122.60.
- 3) You testified that you used your 2013 income tax return to complete the income information on your application.
- 4) You testified that you received \$10,355.00 from your job in 2013. You testified that you expect to make less this year from your job but you do not expect the drop in income to be significant.
- 5) You testified that you will receive \$15,068.00 from an annuity this year.
- 6) You testified that you will receive \$2,668.56 from a pension this year.
- 7) You testified that you receive \$585.92 a month from Social Security Survivor Benefits.
- 8) According to your most recent Marketplace application, you reside in Monroe County.
- 9) According to your testimony, you reside in Livingston County.
- 10) You testified that you are appealing because the online APTC calculator indicated that that you were eligible for up to \$30.00 in APTC. You further testified that you spoke to someone at Customer Service, who also stated that you should be eligible for up to \$30.00 in APTC.

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

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 300% but less than 400% of the 2013 Federal poverty level (FPL), the expected contribution is 9.50% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(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 \$11,490.00 for a one-person household (78 Fed. Reg. 5182, 5183).

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of insurance premiums must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and the actual income reported on their tax return. A person who takes a lower advance tax credit than the maximum they are entitled to may receive an income tax refund. A person who takes a higher advance tax credit than they can claim when they file their tax return will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

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## Legal Analysis

The issue is whether the Marketplace properly determined that you were eligible for \$0.00 in advance premium tax credit (APTC).

In your application, you credibly attested to an expected total annual income of \$35,122.60, based on your 2013 earnings. You testified that you expect to earn slightly less during 2014 but that the difference will not be significant. Therefore, your \$35,122.60 estimate, upon which the eligibility determination relied, is supported by the record.

According to the record, you are the only member of your household. You will be filing your 2014 tax return as single and will claim no dependents on that tax return.

One of the factors used to calculate the amount of APTC a person receives is county of residence. The final December 6, 2013 application, which the Marketplace relied upon to make the determination, states that you reside in Monroe County. In Monroe County, the second lowest cost silver plan available for an individual costs \$270.68 per month.

An annual income of \$35,122.60 is 305.68% of the 2013 FPL for a one-person household. At 305.68% of the FPL, the expected contribution to the cost of the health insurance premium is 9.5% of income, or \$278.05 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual in your county (\$270.68 per month in Monroe County) minus your expected contribution (\$278.05 per month). In Monroe County, where your more recent application indicated you lived, your expected contribution would exceed the actual expense of insurance, and if in fact you did live in Monroe County, computing to the nearest dollar, the Marketplace would have correctly determined your APTC to be \$0.00 per month.

Since the December 8, 2013 eligibility determination is correct according to the information provided in the application, it is **AFFIRMED**.

However, you credibly testified that you reside in Livingston County and not Monroe County as your application states. In Livingston County, the second lowest cost silver plan available for an individual through the Marketplace costs \$308.20 per month. Since the premiums for the second lowest cost silver plan are slightly higher in your county than in Monroe County, you may qualify for tax credit greater than \$0.00.

At the end of the tax year, people who are entitled to a premium tax credit reconcile that credit on their federal income tax return. If you should have received a tax credit greater than \$0.00 based on the second lowest cost silver plan in Livingston County, you may claim that tax credit when you file your 2014 income tax return.

## **Decision**

The December 8, 2013 eligibility determinations is AFFIRMED.

**Effective Date of this Decision:** December 23, 2014

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

This decision does not change your eligibility.

If you are entitled to a premium tax credit for the 2014 tax year, you may claim that credit on your federal income tax return.

## **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

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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 December 8, 2013 eligibility determinations is AFFIRMED.

This decision does not change your eligibility.

If you are entitled to a premium tax credit for the 2014 tax year, you may claim that credit on your federal income tax return.

### **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]