



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

## Notice of Decision

Decision Date: January 5, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000888

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

On October 6, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 26, 2014 and September 4, 2014 eligibility determinations.

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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## Decision

Decision Date: January 5, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000888

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issue

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

Did the Marketplace properly determine that [REDACTED] was eligible to receive up to \$80.00 per month in advance premium tax credit but ineligible for cost-sharing reductions and Medicaid?

## Procedural History

The Marketplace received your application for health insurance on August 25, 2014. That day, a preliminary eligibility determination was rendered which stated that you were eligible for \$80.00 in advance premium tax credit (APTC).

On August 25, 2014, you spoke with the Marketplace's Account Review unit and appealed that preliminary determination.

On August 26, 2014, the Marketplace issued notices of eligibility determination that were consistent with the August 25, 2014 preliminary determination. The notices stated that you were eligible to enroll in a qualified health plan and receive up to \$80.00 per month in APTC. You were not eligible for cost-sharing reductions or Medicaid because your annual expected income was over the allowable limit for those programs.

On September 3, 2014, your application was resubmitted and the Marketplace made a preliminary determination, which you appealed. On September 4, the Marketplace issued a notice stating that you were eligible to enroll in a qualified health plan and receive up to \$80.00 per month in APTC. You were not eligible

for cost-sharing reductions or Medicaid because your annual expected income was over the allowable limit for those programs.

On October 6, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was left open for 15 days to give you the opportunity to submit additional evidence. The Appeal's Unit received a fax later that day containing the additional evidence. The record is now closed.

## **Findings of Fact**

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

- 1) You are the only member of your household applying for insurance through the Marketplace at this time.
- 2) You testified that you plan on filing your 2014 federal income tax return as married filing jointly with your husband. You will claim no dependents on that tax return.
- 3) You testified that your husband's last day of employment was August 13, 2014.
- 4) You testified that the only income your household has received so far in 2014 has been from your husband's job and your husband's Social Security retirement benefits.
- 5) You testified that your husband received his last paycheck from his job on August 22, 2014, and that the year-to-date income on his last check was \$26,854. You explained that this amount is higher than the number given on your August 25, 2014 and September 3, 2014 applications for health insurance because it includes your husband's paid vacation time.
- 6) According to a Social Security Benefit Statement (form SSA-1099), your husband received \$17,656.00 in Social Security benefits during 2013. You testified that this is the same amount you expect him to receive in 2014.
- 7) Your August 25, 2014 and September 3, 2014 applications state that your expected annual household income for 2014 is \$41,648.00. This includes your husband's earned income amount of \$23,996.00 and Social Security retirement benefits of \$17,652.00.
- 8) You testified that you do not work and have not worked in 2014.

- 9) You testified that your husband is currently in the process of applying for long-term disability benefits. However, at this time he has not been approved or denied and you do not know what amount he would receive if he was approved.
- 10) The record contains a September 24, 2014 Notice of Total or Partial Rejection of Claim for Disability Benefits from Aetna. According to the notice, the date of first day of disability is August 13, 2014, and benefits of \$170.00 per week were paid from August 20, 2014 to October 31, 2014 (Exhibit 1). The form does not indicate what percentage of the payments are taxable as gross income.
- 11) According to your Marketplace application, you reside in Suffolk County.
- 12) 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**

### Modified Adjusted Gross Income

Eligibility in the Marketplace is based on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR §§ 155.510(b)(1)(i)(A), 155.300(a)). “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)).

Adjusted gross income means, in the case of an individual, gross income minus certain specific deductions such as certain trade and business expenses of employees, losses from sale or exchange of property, and moving expenses (26 USC § 62(a)).

Generally, gross income does not include “amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer)” (26 USC § 104(a)(3)).

## Advance Premium Tax Credit

The advance premium tax credit (APTC) 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 (FPL); (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 250% but less than 300% of the 2013 FPL, the expected contribution is between 8.05% and 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 \$15,510.00 for a two-person household (78 Fed. Reg. 5182, 5183).

## Cost-Sharing Reductions

Cost-sharing reductions are available to a person who (1) is eligible to enroll in a QHP through the Marketplace, (2) meets the requirements to receive APTC, (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 QHP (45 CFR § 155.305(g)(1)).

## Medicaid

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

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 \$15,730.00 for a two-person household (79 Fed. Reg. 3593, 3593).

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).

## **Legal Analysis**

The first issue is whether the Marketplace properly determined that you were eligible for \$80.00 in advance premium tax credit (APTC).

In the application that was submitted on August 25, 2014, you attested to an expected yearly income of \$41,648.00, and the eligibility determination relied upon that information.

According to the record, there are two members of your tax household. You testified that you expect to file as married filing jointly with your husband on your tax return for 2014 and to claim no dependents.

You reside in Suffolk County, where the second lowest cost silver plan that is available through the Marketplace for an individual costs \$378.00 per month.

An annual household income of \$41,648.00 equals 268.52% of the 2013 FPL for a two-person household. At 268.52% of the FPL, the expected contribution to the cost of the health insurance premium is 8.59% of income, or \$298.13 per month.

The maximum amount of APTC that can be authorized equals the cost of the second lowest cost silver plan in your county (\$378.00 per month) minus your expected contribution (\$298.13 per month), which equals \$79.87 per month. Therefore, rounding to the nearest dollar, you would be eligible for APTC up to \$80.00 per month, as previously determined by the Marketplace.

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The second issue is whether or not the Marketplace correctly found you eligible for cost-sharing reductions.

Cost-sharing reductions are available to a person who has an annual household income no greater than 250% of the FPL. Since a household income of \$41,648.00 is 268.52% of the 2013 FPL, the Marketplace correctly found you to be ineligible for cost-sharing reductions.

Finally, 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 (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$15,730.00 for a two-person household. Since \$41,648.00 is 264.77% 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 26, 2014 and September 4, 2014 eligibility determinations properly stated that, based on the information you provided, you were eligible for APTC of up to \$80.00 per month, not eligible for cost-sharing reductions, and not eligible for Medicaid, it is correct and is AFFIRMED.

However, at the hearing you testified that your 2014 expected annual household income no longer reflects your current income situation.

In your application, you attested to an expected annual income for 2014 of \$41,648.00. This figure included an earned income amount of \$23,996.00 and social security retirement benefits of \$17,652.00. You testified that during 2014 your husband earned \$26,854.00 before he retired and that he would receive \$17,656.00 in social security retirement benefits. The form from Aetna suggests that your husband also received \$1,700.00 in disability benefits (\$170.00 per week for 10 weeks). This adds up to an annual income of \$46,210.00.

If your final 2014 income will be higher than your expected income of \$41,648.00, this will affect the amount of premium tax credit you can claim on your 2014 federal income tax return. This should be reconciled when you file your taxes.

Further, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Since the record suggests that the Marketplace calculated your eligibility as of August 26, 2014 and September 4, 2014 by expected annual income but not by monthly income, the case should be returned to the Marketplace for an eligibility determination on monthly income.



Your testimony credibly indicates that in most months your household income consists of your husband's social security retirement benefits. The September 24, 2014 notice from Aetna suggests that your husband also received disability benefits of \$170.00 per week from August 20, 2014 to October 31, 2014. The form does not state what part (if any) of the payments counts as gross income. Therefore, there is not enough information in the record to allow the Marketplace to determine whether your August, September, and October income consists of social security benefits alone or social security benefits plus disability payments.

Since the payments from Aetna were scheduled to end on October 31, 2014, your November household income would have consisted solely of your husband's social security retirement benefits. You testified that he receives \$17,656.00 a year. You further testified that he receives a check every month. This permits an inference that your household income for the month of November 2014 is \$1,471.33.

Therefore, your case is returned to the Marketplace to redetermine eligibility for financial assistance based on a two-person household in Suffolk County, with a November 2014 income of \$1,471.33.

## **Decision**

The August 26, 2014 and September 4, 2014 eligibility determinations are AFFIRMED.

However, your case is being returned to the Marketplace for a redetermination of your eligibility for financial assistance based on your monthly income from November 2014 of \$1,471.33 and a two-person household in Suffolk County.

**Effective Date of this Decision:** January 5, 2015

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

This decision does not change your eligibility.

It returns your case to the Marketplace to redetermine your eligibility based on your November 2014 income of \$1,471.33 and a two-person household in Suffolk County.

## **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

## **Summary**

The August 26, 2014 and September 4, 2014 eligibility determinations are **AFFIRMED**.

This decision does not change your eligibility.

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It returns your case to the Marketplace to redetermine your eligibility based on your November 2014 income of \$1,471.33 and a two-person household in Suffolk County.

## **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]