



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: AP000000000961

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On October 8, 2014, you appeared by telephone at a hearing on your appeal of the NY State of Health Marketplace August 30, 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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Issues

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

Did the Marketplace properly determine that, as of August 29, 2014, you were eligible for up to \$230.00 per month in advance premium tax credit and eligible for cost-sharing reductions but not eligible for Medicaid?

Procedural History

Your application for health insurance was initially submitted to the Marketplace August 22, 2014 and resubmitted on August 29, 2014.

On August 30, 2014, the Marketplace issued a notice of eligibility determination stating that, with a household income of \$37,232.00, you were eligible for up to \$230.00 per month in advance premium tax credit and eligible for cost-sharing reductions but not eligible for Medicaid

On September 9, 2014, you spoke with the Marketplace Account Review Unit and appealed that determination.

On October 8, 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:

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- 1) You testified that you are only appealing your own eligibility determination.
- 2) You testified that you and your husband plan on filing your 2014 tax return as Married Filing Jointly and that you will claim your two children as dependents on that tax return.
- 3) You testified that you do not plan on taking any deductions on your tax return.
- 4) You testified that the only income your family receives is from your husband's job. You further testified that he receives \$1,432.00 every two weeks.
- 5) On your application, you attested to annual household earnings of \$37,232.01. You testified that the current annual expected income amount on your application is accurate.
- 6) You testified that you have a lot of bills including rent, utilities, and other expenses. You further testified that you felt that these bills should be taken into account when calculating how much income you have available to pay for health insurance.
- 7) You testified that you reside in Nassau County.

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 advance premium tax credit (APTC) is available to a person who is eligible to enroll in a qualified health plan (QHP) 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 QHP, 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 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 household income (26 USC § 36B(b)(3)(A)).

For annual household income in the range of at least 150% but less than 200% of the 2013 FPL, the expected contribution is between 4.00% and 6.30% of 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 \$ 23,550.00 for a four-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

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)).

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 \$23,850.00 for a four-person household (79 Fed. Reg. 3593, 3593).

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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 March 19, 2014).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR 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 taxpayer, gross income minus certain specific deductions, such as for expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, and deductions attributable to royalties ((26 USC § 62(a)).

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a QHP. Such an exemption may be granted if that person can show that she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for advance premium tax credit (APTC) of up to \$230.00 per month.

In the application that was submitted on August 29, 2014, you attested to an expected yearly income of \$37,232.01, and the eligibility determination relied upon that information.

Eligibility for APTC and cost-sharing reductions is based on your expected annual income. During the hearing, you testified that the amount that was currently listed on your application was correct. However, you stated that your expenses for rent, utilities, and other living expenses should be taken into consideration when calculating your annual household income.

However, because the Internal Revenue Service rules do not allow these expenses to be deducted from the calculation of your adjusted gross income, they also cannot be deducted when the Marketplace computes your modified adjusted gross income for APTC purposes. Therefore, the Marketplace's decision not to deduct these expenses when calculating your APTC was correct, and your household income for purposes of calculating your eligibility for APTC and cost-sharing reductions was \$37,232.01.

Since you plan on filing your taxes as married filing jointly with your husband, and claim two dependents on your 2014 tax return, you are in a four-person household.

You reside in Nassau County, where the second lowest cost silver plan that is available to an individual through the Marketplace costs \$365.28 per month.

An annual household income of \$37,232.01 equals 158.10% of the 2013 federal poverty level (FPL) for a four-person household. At 158.10% of the FPL, the expected contribution to the cost of the health insurance premium is 4.37% of income, or \$135.59 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 in your county (\$365.28 per month) minus your expected contribution (\$135.59 per month), which equals \$229.69 per month. Therefore, computing to the nearest dollar, the Marketplace correctly determined your APTC to be \$230.00 per month.

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 your annual household income is 158.10% of the FPL, you were correctly found eligible for cost-sharing reductions.

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

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modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$23,850.00 for a four-person household. Since \$37,232.01 is 156.11% 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 23, 2014, August 27, 2014, and August 30, 2014 eligibility determinations properly stated that, based on the information you provided, you were eligible for APTC of up to \$230.00 per month, eligible for cost-sharing reductions, and not eligible for Medicaid, they are correct and are AFFIRMED.

You testified that you cannot afford to pay the monthly insurance premium even if you have an APTC and cost-sharing reductions because your expenses exceed your income. If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2014, consult the federal marketplace website (www.healthcare.gov) for additional information and an application.

Decision

The August 30, 2014 eligibility determination is AFFIRMED.

Effective Date of this Decision: January 5, 2015

How this Decision Affects Your Eligibility

You remain eligible for \$230.00 per month in advance premium tax credits.

You remain eligible for cost-sharing reductions if you enroll in silver level health plan.

Please note that this decision only applies to your eligibility for advance premium tax credit for use in a qualified health plan for 2014.

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.

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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 30, 2014 eligibility determination is AFFIRMED.

You remain eligible for \$230.00 per month in advance premium tax credits.

You remain eligible for cost-sharing reductions if you enroll in silver level health plan.

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Legal Authority

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A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]