



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: AP000000000962

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

On October 9, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 28, 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).

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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Issue

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

Did the Marketplace properly determine that the members of your household were not eligible for financial assistance as of August 28, 2014?

Procedural History

On August 26, 2014, the Marketplace received an application for health insurance for you and your two children.

On August 26, 2014, you uploaded copies of your paystubs to your account.

On August 27, 2014, the Marketplace made a preliminary eligibility determination that you were not eligible for financial assistance because you were not a joint tax filer.

On August 28, 2014, the Marketplace issued a notice of eligibility determination on the August 26, 2014 application. It stated that you and your children were not eligible for Medicaid, because your household income of \$24,321.00 was over the allowable income limit; not eligible for advance premium tax credit (APTC), because you were already enrolled in or eligible for another public insurance program; and not eligible for cost-sharing reductions, because you were not eligible for APTC.

On September 9, 2014, you spoke with the Marketplace's Account Review unit and appealed that determination only as it applied to yourself. It was confirmed

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during that telephone conversation that you were not eligible for APTC because you were married, but not filing jointly with your spouse.

On October 9, 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 allow you time to submit proof of your income. On October 21, 2014, you uploaded the requested documentation to your Marketplace account. The record is now closed.

Findings of Fact

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

- 1) You testified that you are only appealing your own eligibility determination because your children have coverage through other insurance programs.
- 2) You testified that you are not currently eligible for or enrolled in other public insurance programs.
- 3) You testified that you are currently married.
- 4) You testified that you filed your U.S. Income Tax Return for 2013 as married filing separately. You further testified that you wanted to file as Head of Household but your husband lived with you during the 2013 tax year.
- 5) You testified that you would like to file your U.S. Income Tax Return for 2014 as Head of Household but you are not sure if you will be permitted to by the IRS. If you are unable to, you plan on filing as married filing separate.
- 6) You testified that at this time you do not expect to be legally separated or divorced from your spouse by the end of the 2014 tax year.
- 7) You testified that you have lived apart from your spouse since the end of July 2014 and do not plan to reside with him for the rest of the 2014 tax year.
- 8) You testified that you have two children. However, you only expect to claim one of those children as a dependent on your tax return.
- 9) You testified that the primary residence of your children is with you and that they reside with you for at least six months out of the year.

- 10) You testified that you pay more than half of the cost of maintaining your home.
- 11) Your application states that your household's annual expected income for 2014 is \$24,321.00.
- 12) You testified that you were last employed part time with [REDACTED], which is a business that operates seasonally. You further testified that your last day of work with [REDACTED] was September 23, 2014.
- 13) You provided evidence that you received your last paycheck from [REDACTED] on October 3, 2014 for a gross payment amount of \$41.40.
- 14) You testified that you were approved for unemployment benefits on April 28, 2014. You provided a print-out of the Official Record of Benefit Payment History from your New York State Department of Labor Unemployment Insurance Benefits online account. The print-out states that your weekly benefit amount is \$294.00.
- 15) Your Official Record of Benefit Payment History from the New York State Department of Labor shows that prior to September 28, 2014, you did not always receive \$294.00 in unemployment benefits per week. You testified that this is because you worked part time at [REDACTED] and the pay you received from [REDACTED] resulted in a lowered amount in your weekly unemployment benefits.
- 16) Your Official Record of Benefit Payment History from the New York State Department of Labor shows that in October, you began receiving checks again for \$294.00 on October 14, 2014. You testified that you plan on receiving this amount every week for the rest of October.
- 17) Your application states that you reside in Ontario 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 and (1) expects to have a household income between 138% and 400% of the 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

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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)).

A taxpayer who is married must file a joint return with his or her spouse to be eligible for a premium tax credit (26 CFR § 1.36B-2(b)(2)).

However, an individual will be treated as not married at the close of the taxable year if the individual

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
 - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
 - b. pays more than one half of the cost of keeping up his/her home for the tax year; and
 - c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703(a); 26 USC § 7703(b)).

In other words, if you meet the above criteria for either (1) or (2), you will be treated as not married for purposes of APTC eligibility (26 USC § 2).

Cost-Sharing Reductions

Cost-sharing reductions 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 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 qualified health plan (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

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federal poverty level or the applicable family size (42 CFR §§ 435.119(b), 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).

Family size means the number of persons counted as a member of an individual's household. In the case of an individual who expects to file a tax return and does not expect to be claimed by another taxpayer, the household consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1)).

Legal Analysis

The August 28, 2014 eligibility determination does not state the correct reason as to why the Marketplace found you not eligible for financial assistance. That determination states that you are not eligible for APTC to help pay for your insurance because you were already enrolled in or eligible for another public insurance program. The preliminary eligibility determination issued on August 27, 2014 states that you were not eligible for financial assistance because you are not a joint tax filer. This was also confirmed by Customer Service when you filed your appeal. Furthermore, you testified that you are not currently eligible for or enrolled in other public insurance programs. Therefore, we must RESCIND the August 28, 2014 eligibility determination notice because it is defective.

The issue under review is whether the Marketplace properly determined that you are not eligible for APTC because of your tax filing status.

As noted above, in order for a married person to qualify for an advance premium tax credit, she must either file taxes jointly with her spouse or qualify as "not married" at the close of the tax year.

According to the documents in the record and your testimony at the hearing, you

- 1) are still married to your spouse,
- 2) are not divorced or legally separated from your spouse, and
- 3) do not plan to file a joint tax return with your spouse for the 2014 tax year.

There are certain factors that would permit the Marketplace to treat you as "not married" for purposes of making an APTC eligibility determination. While you do

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maintain your household as the primary home of your children, and pay more than half the cost to maintain that home, you testified that you have resided with your spouse for at least 7 months of the 2014 tax year. Therefore, the record does not support a finding that you are “not married” for purposes of being eligible for APTC.

However, at the hearing you testified that your household’s 2014 expected annual household income no longer reflects your current income situation and that you would like your eligibility for Medicaid to be reconsidered.

You testified and provided evidence of your income from the month of October. In October, you received your last check from ██████████ for the gross pay amount of \$41.40. In October, you also received money from unemployment benefits. You provided evidence that on October 14, 2014 you received your first check from unemployment in October for \$294.00. You testified that you will receive \$294.00 every week for the foreseeable future, which means you will receive a total of \$882.00 from unemployment in October. Therefore, your October 2014 monthly income is \$923.40.

Household size for Medicaid purposes is determined based on your tax payer status and how many dependents you will claim for the tax year. You testified that you plan on filing taxes and claiming one of your children as a dependent on your 2014 tax return. Therefore, for Medicaid eligibility purposes you are in a two-person household.

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 previous eligibility by expected annual income but not by monthly income, the case should be returned to the Marketplace for an eligibility determination on monthly income.

Therefore, your case is RETURNED to the Marketplace to redetermine your eligibility for financial assistance based on a two-person household in Ontario County, with an October 2014 income of \$923.40 and your declared anticipated annual earnings of \$24,321.40.

Decision

The August 28, 2014 eligibility determination is RESCINDED.

Your case is REMANDED to the Marketplace for redetermination of eligibility for Medicaid using a two-person household in Ontario County, monthly income of \$923.40, and your declared anticipated annual earnings of \$24,321.40.

Effective Date of this Decision: January 5, 2015

How this Decision Affects Your Eligibility

Please note that this decision is not a final determination of your eligibility.

Your case is being returned to the Marketplace for a redetermination of your eligibility for Medicaid. You receive a new determination notice in the mail.

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:

- 4) 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

- 5) 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 28, 2014 eligibility determination is **RESCINDED**.

Your case is **REMANDED** to the Marketplace for redetermination of eligibility for Medicaid using a two-person household in Ontario County, monthly income of \$923.40, and your declared anticipated annual earnings of \$24,321.40.

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]