



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

Notice of Decision

Decision Date: January 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000968

[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 7, 2014, and August 8, 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).

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[REDACTED]
[REDACTED]
[REDACTED]

Issues

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

Did the Marketplace properly determine the amount of advance premium tax credit for which [REDACTED] was eligible as of August 6, 2014?

Did the Marketplace properly determine that [REDACTED] was eligible for cost-sharing reductions as of August 6, 2014?

Did the Marketplace properly determine that [REDACTED] was not eligible for Medicaid as of August 6, 2014?

Procedural History

The Marketplace received a nonfinancial assistance application for health insurance for your wife and son on July 28, 2014.

On August 6, 2014, the application was modified to request financial assistance. Your application stated that your household's annual expected income for 2014 was \$52,000.00. The Marketplace made a preliminary determination that your wife was eligible for up to \$66.00 in advance premium tax credit and eligible for cost-sharing reductions. Your son was eligible for Child Health Plus coverage at a cost of \$9.00 per month.

On August 7, 2014 and on August 8, 2014, the Marketplace issued notices of determination stating that, with a household income of \$52,000.00, your wife was

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eligible for up to \$0.00 of advance premium tax credit and eligible for cost-sharing reductions if she enrolled in a silver-level health plan. She was not eligible for Medicaid because the household income was over the allowable limit for that program.

On September 9, 2014, you spoke with the Marketplace's Account Review unit and appealed those determinations.

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 closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you are appealing only your wife's eligibility determination.
- 2) You testified that you and your wife plan to file your 2014 federal income tax return as Married Filing Jointly and claim two children as dependents on that tax return.
- 3) In your application, you attested that your household's annual expected income is \$52,000.00. You testified that this amount is correct and consists of \$48,000.00 from earned income from your job and \$4,000.00 in income from your wife's part-time job.
- 4) You testified that your household has many monthly expenses including \$1,500.00 in rent, \$800.00 in daycare, \$350.00 for after-school activities, and \$250.00 for transportation. You further testified that these bills should be taken into account when calculating how much income you have available to help pay for health insurance.
- 5) Your application states that your family resides in Kings County, New York.

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 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), 435.911(b)(1), 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 for the 2014 tax year is set by Federal law at 2% to 9.5% of household income (26 USC § 36B(b)(3)(A)).

For household income in the range of at least 200% but less than 250% of the 2013 FPL, the expected contribution is between 6.30% and 8.05% 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 \$23,550.00 for a four-person household (78 Fed. Reg. 5182, 5183).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their income tax form). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

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Cost-Sharing Reductions

Cost-sharing reductions are available only 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 FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR §§ 435.911(b)(1), 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).

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 §§ 155.510(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 taxpayer, gross income minus certain specific deductions, such as 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)).

Legal Analysis

The first issue is whether the Marketplace properly determined that the amount of your wife's advance premium tax credit (APTC) was properly determined.

In the application that was submitted on August 6, 2014, you attested to an expected yearly income of \$52,000.00, and the eligibility determinations relied upon that information.

Eligibility for APTC and cost-sharing reductions is based on your household's expected annual income. During the hearing, you testified that the amount that was currently listed on [REDACTED] application, \$52,000.00, was correct. However, you contended that the household's expenses for rent, daycare, after-school activities, and transportation expenses should be taken into consideration when calculating her annual household income.

Since 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 modified adjusted gross income for APTC purposes. Therefore, the Marketplace's decision not to deduct these expenses when calculating [REDACTED] APTC was correct, and her modified adjusted gross income was correctly determined to be \$52,000.00.

Since you and your wife plan to file your 2014 federal income tax return as Married Filing Jointly and claim two dependents, your wife is in a four-person household.

You reside in Kings County, where the second lowest cost silver plan that is available to an individual through the Marketplace costs \$370.52 per month.

An annual household income of \$52,000.00 equals 220.81% of the 2013 FPL for a four-person household. At 220.81% of the FPL, the expected contribution to the cost of the health insurance premium is 7.03% of income, or \$304.63 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan in your county (\$370.52 per month) minus your expected contribution (\$304.63 per month), which equals \$65.89 per month. Therefore, computing to the nearest dollar, in its preliminary determination, the Marketplace correctly determined your wife's APTC to be \$66.00 per month. The notices issued on August 7, 2014 and August 8, 2014 incorrectly found her approved for \$0.00 of APTC.

The second issue is whether or not the Marketplace correctly found [REDACTED] 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 [REDACTED] annual household income is 220.81% of the FPL, she was 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 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 \$52,000.00 is 218.03% of the 2014 FPL, the Marketplace properly found [REDACTED] to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the August 7, 2014 and August 8, 2014 eligibility determinations improperly stated that, based on the information you provided, [REDACTED] was eligible for APTC of \$0.00 per month, properly determined that she was eligible for cost-sharing reductions, and properly determined that she was not eligible for Medicaid, it is MODIFIED only to reflect that she was eligible for up to \$66.00 per month in APTC.

Note that the APTC is an advance on the tax credit you can claim on your 2014 federal tax return. This advance amount is based on expected income. Any difference between the advance credit you actually used for Marketplace health insurance premiums during the year and the final credit you can claim (based on your final 2014 income) should be reconciled when you file your federal tax return for 2014.

Decision

The August 7, 2014, and August 8, 2014 eligibility determinations are MODIFIED only to reflect that [REDACTED] is entitled claim an advance premium tax credit of up to \$66.00 per month during 2014.

Effective Date of this Decision: January 15, 2015

How this Decision Affects Your Eligibility

[REDACTED] is eligible for up to \$66.00 per month in advance premium tax credit. The advance premium tax credit is subject to reconciliation on your 2014 federal income tax return according to your household actual income for 2014.

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██████████ remains eligible for cost-sharing reductions if she enrolls in silver level health plan.

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

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months after the date of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

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.

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

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Summary

The August 7, 2014, and August 8, 2014 eligibility determinations are MODIFIED only to reflect that [REDACTED] is approved for the 2014 tax year for up to \$66.00 per month in advance premium tax credit, based on the household's expected income of \$52,000.00.

The advance premium tax credit is subject to reconciliation on your 2014 federal income tax return according to your household actual income for 2014.

[REDACTED] remains eligible for cost-sharing reductions if she enrolls in silver level health plan.

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]