



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

## Notice of Decision

Decision Date: January 14, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000973

[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 September 11, 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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## Decision

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NY State of Health Number: [REDACTED]  
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[REDACTED]  
[REDACTED]  
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## Issues

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

Did the Marketplace properly determine that [REDACTED] was ineligible for an advance premium tax credit?

Did the Marketplace properly determine that [REDACTED] was ineligible for Medicaid?

## Procedural History

The Marketplace received your application on September 10, 2014.

On September 10, 2014, the Marketplace made a preliminary determination on your September 10, 2014 application. It found you eligible to enroll in a qualified health plan but ineligible for an advance premium tax credit (APTC) because you are married and not a joint tax filer and ineligible for cost-sharing reductions. Your son was found eligible for coverage under subsidized Child Health Plus. Both you and your son were found ineligible for Medicaid.

That same day, you spoke with the Marketplace's Account Review Unit and appealed that preliminary determination.

On September 11, 2014, the Marketplace sent you a notice of eligibility determination that was consistent with your September 10, 2014 preliminary determination but did not include the eligibility determination for your son. It also indicated that you were not eligible to enroll in a qualified health plan outside the open-enrollment period.

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On October 3, 2014, you appeared for 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 expect to file a U.S. Income Tax return for 2014, file as "Head of Household," and claim your son as your sole dependent.
- 2) You testified that, since your son was determined eligible for Child Health Plus as of September 11, 2014, you are seeking health insurance only for yourself.
- 3) You reside in Suffolk County, New York.
- 4) You testified that you are married and have not obtained a divorce decree or a legal separation order from your spouse.
- 5) You testified that you have not resided with your spouse since at least February 2013, when he was incarcerated, and that you do not expect him to rejoin your household at any time during 2014.
- 6) You testified that you currently reside with your four year-old son and pay for more than one-half of the cost of keeping up your home.
- 7) On your September 10, 2014 application, you attested that you expected annual income was \$28,600.00, which was based on an expected receipt of approximately \$550.00 per week.
- 8) You testified during the hearing that as a result of your promotion by your employer in November 2013, your expected annual household income for 2014 was closer to \$35,000.00, which included your salary and tips.
- 9) During the hearing you provided paystubs you received for the period between August 27, 2014 and September 24, 2014, as additional evidence of your income.
- 10) Your paychecks during the month of your application, September 2014, were for \$694.93, \$801.42, \$692.65, and \$1,104.32. As of

September 24, 2014, you had earned a total of \$37,246.50 during 2014.

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), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

In general, a tax filer who is married is eligible for APTC only if he or she files a joint return with his or her spouse (45 CFR § 155.305(f), 45 CFR § 155.310(d), 26 CFR § 1.36B-2).

However, a tax filer 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 requirements:
  - files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child; and
  - pays more than one half of the cost of keeping up his/her home for the tax year; and
  - his/her spouse is not a member of the household during the last 6 months of the taxable year

(26 USC § 7703(a); 26 USC § 7703(b)).

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 annual 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% and 6.3% 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 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 (MAGI) 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)).

Medicaid is currently available to children who are at least one year of age but under the age of nineteen who have a modified adjusted gross income at or

below 154% of the FPL of the applicable family size (see 42 CFR § 435.118(c); NY Department of Health Administrative Directive 13ADM-03).

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, or \$1,310.83 per month (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 not eligible for an advance premium tax credit (APTC).

The record shows that within your September 10, 2014 application you identified yourself as “married” and attested that your tax filing status was “head of household” and that you would be claiming your son as a dependent.

In general, to qualify for APTC, a person who is married must either file taxes jointly with his or 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 are still married, are not legally separated from your spouse, and do not plan to file a joint tax return with your spouse for the 2014 tax year.

However, you credibly testified during the hearing that: (1) you expect to claim your son as your sole dependent, (2) you will pay more than one-half of the cost of keeping your home for 2014, and (3) your spouse has not been a member of the household since his incarceration in February 2013 and you expect that to remain the case for the duration of 2014.

Therefore, the record supports a finding that you, as a head of household, with a qualifying dependent, qualify to be treated as “not married” for purposes of this Decision and eligible for consideration for APTC.

In addition providing testimony regarding your marital status, tax filing status, and living situation, you credibly testified that your expected income for 2014 was not \$28,600.00 as stated within your September 10, 2014 application, but rather

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closer to \$35,000.00 as a result of your promotion in November 2013. During the hearing, you submitted paystubs you received for the period between August 27, 2014 and September 24, 2014 as additional evidence of your income; these indicated you had already earned \$37,246.50. These documents also reflect that you earned a total of \$3,293.32 in the month of September 2014.

Your income information in the record indicates that your average weekly earnings as of September 24, 2014 were \$955.04. If you continued to earn at the same rate until the end of the year, your annual earnings would increase by \$13,370.56, for total earnings in 2014 of \$50,617.06. Therefore, the record permits an inference that your expected earnings for 2014 are \$50,616.06.

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

An annual income of \$50,617.06 is 326.35% of the 2013 FPL for a two-person household. At 326.35% of the FPL, your income is below the allowable limit for this program. However, because the 2014 tax year has ended, this discrepancy can most effectively be reconciled when you file your federal income tax return for 2014. The premium tax credit you get will be based on your final income as stated in your 2014 federal tax return. If you are eligible for a tax credit you did not receive in advance to reduce the cost of your health insurance premiums, the amount of tax you owe may be reduced or a refund may be increased.

The second issue is whether the Marketplace properly determined that you were ineligible for Medicaid.

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 \$15,730.00 for a two-person household. Since the \$28,600.00 in income you attested to in your application is 181.82% of the 2014 FPL and \$50,617.06 is 321.79% of the 2014 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using either the information provided in your application or the information subsequently submitted.

## **Decision**

The September 11, 2014 eligibility determination is MODIFIED to reflect that you were eligible for consideration for an advance premium tax credit based on your filing status as head of household, with one qualifying dependent.



When you file your 2014 tax return, you can claim any premium tax credit that may be owed to you if you purchased 2014 insurance coverage for yourself through the Marketplace.

**Effective Date of this Decision:** January 14, 2015

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

You were eligible for consideration for advance premium tax credit during 2014 based on your filing status as head of household, with one qualifying dependent.

When you file your 2014 tax return, you can claim any premium tax credit that may be owed to you if you purchased 2014 insurance coverage for yourself through the Marketplace.

### **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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P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The September 11, 2014 eligibility determination is MODIFIED to reflect that you were eligible for consideration for an advance premium tax credit based on your filing status as head of household, with one qualifying dependent.

When you file your 2014 tax return, you can claim any premium tax credit that may be owed to you if you purchased 2014 insurance coverage for yourself through the Marketplace.

## **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]