



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

Notice of Decision

Decision Date: January 16, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000994

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On October 16, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's September 17, 2014 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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] [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 you and your spouse were eligible for \$155.00 per month in advance premium tax credit as of September 16, 2014?

Procedural History

The Marketplace received your initial application for health insurance for yourself and your spouse on December 25, 2013

On September 16, 2014, the Marketplace redetermined your eligibility using the information in your application as submitted on March 22, 2014.

On September 17, 2014, the Marketplace issued a notice of eligibility redetermination. The notice stated that you and your spouse were eligible to enroll in a qualified health plan and that, at an attested annual household income of \$72,672.00, you and your spouse were entitled to share up to \$155.00 per month in advance premium tax credit (APTC). It also stated that you were not eligible for cost-sharing reductions or Medicaid coverage.

On September 18, 2014, you spoke with the Marketplace Account Review Unit and appealed the determination insofar as it set your maximum APTC at \$155.00 per month.

On October 16, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing

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and was left open for up to 15 days to allow you to submit supporting evidence. The Marketplace's Appeals Unit received supporting income documentation for yourself and your spouse on October 21, 2014, which included paystubs for [REDACTED] as well as your household monthly expense sheet. Your evidence was marked collectively as Appellant's Exhibit A and incorporated into the record. The record was then closed on October 21, 2014.

Findings of Fact

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

- 1) You and your spouse are married and have one child.
- 2) You expect to file your 2014 tax return as married filing jointly.
- 3) You and your spouse expect to claim your child as a dependent.
- 4) You testified that you are currently employed by [REDACTED].
- 5) According to your March 22, 2014 Marketplace application, testimony, and supporting evidence, your income varies due to the nature of your employment; however, during the 2014 tax year you expect to earn about \$26,467.00 from [REDACTED] and about \$12,000.00 from [REDACTED].
- 6) According to your March 22, 2014 Marketplace application, testimony, and supporting evidence, your spouse's income varies as well. Your spouse is works at [REDACTED] and expects to receive about \$36,000.00 for the 2014 tax year.
- 7) In your March 22, 2014 Marketplace application, you attested to an expected household income of \$72,672.00. At the hearing, you confirmed that the income listed in your Marketplace application was still an accurate estimate of your expected income.
- 8) You testified that you entered graduate school in January 2011 and are currently enrolled in classes. You also testified that you are paying your own educational expenses. You pay \$16,000.00 in tuition every year.
- 9) You testified that you have no other sources of income.

- 10) You testified and provided evidence that you incur expenses every month, including \$1,100.00 for tuition and living expenses such as rent, utilities, cable and phone. You further testified that you believe these expenses should be taken into account when calculating your eligibility for financial assistance.
- 11) You and your family currently reside in New York County, New York.

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

Marketplace eligibility is determined using modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable social security income, non-taxable interest income and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1-36B-1(e)(2)).

“Adjusted gross income” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Living expenses, such as rent and utilities are not an allowable deductions in computing adjusted gross income. Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)). However, the law that allowed for a deduction from adjusted gross income of up to \$4000 in tuition and fees paid by the taxpayer during the tax year to a qualified educational institution expired as of December 31, 2013, and had not yet been renewed by Congress at the time of your application (26 USC § 222(e)).

On December 19, 2014, the Tax Increase Prevention Act of 2014 became law. It amended the Internal Revenue Code of 1986 to extend certain expiring provisions, including the Above the Line Deduction for Qualified Tuition and Related Expenses. The Qualified Tuition and Related Expense Deduction was extended through December 31, 2014 (H.R. 5771 - 113th Congress (2013-2014), Public Law No. 113-295, Title I, Subtitle A, Section 107).

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

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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 300% but less than 400% of the 2013 FPL, the expected contribution is 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 \$19,530.00 for a three-person household (78 Fed. Reg. 5182, 5183).

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and their actual gross income for that year. A person who received less tax credit than the maximum entitlement, based on gross income, may receive an income tax refund. A person who received more tax credit than the maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Hardship Exemptions

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a Qualified Health Plan (QHP). Such an exemption

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may be granted if that person can show financial hardship or 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 on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The only matter currently at issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$155.00 per month.

According to the record, you and your spouse have one child, expect to file your federal income tax return jointly, and expect to claim your child as a dependent. Therefore your tax household consists of 3 people.

In the application that was submitted on March 22, 2014, you attested to an expected yearly income of \$76,672.00, and the eligibility determination relied upon that information. During the hearing, you testified that the amount you provided in your application (\$76,672.00) was correct. You asked that your current expenses, which include graduate school tuition and other living expenses, be considered when calculating your annual household income.

Since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when the Marketplace computes your modified adjusted gross income for APTC purposes. Further, since the law that used to allow a qualified tuition deduction expired on December 31, 2013, and had not been renewed by Congress at the time of your application, this deduction was not used in calculating your adjusted gross income either.

While Congress did renew the qualified tuition deduction for tax year 2014 as part of the Tax Increase Prevention Act of 2014, it did not become law until December 19, 2014 (H.R. 5771 - 113th Congress (2013-2014), Public Law No. 113-295, Title I, Subtitle A, Section 107). Since the law was passed late in the year, it was not possible to use the qualified tuition deduction in calculating your APTC at the time of your application. However, at the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income

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reported to the Marketplace and their actual gross income for that year. If you received less tax credit than your maximum entitlement, based on gross income, you may receive an income tax refund.

Therefore, your expected household income for 2014 is \$72,672.00, which is 372.10% of the 2013 federal poverty level (FPL) for a three-person household. At 372.10% of the FPL, the expected contribution to the cost of the health insurance premium is 9.5% of your household income, or \$575.32 per month.

You and your family reside in New York County, where the second lowest cost silver plan for couple's coverage available through the Marketplace costs \$730.57 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$730.57 per month) minus your expected contribution (\$575.32 per month), which equals \$155.25 per month. Therefore, calculated to the nearest dollar, the Marketplace correctly computed your APTC to be \$155.00 per month.

You testified that you and your spouse cannot afford to pay a health insurance premium if your APTC will not cover the full cost of your plan.

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)).

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

Decision

The eligibility determination issued on September 17, 2014 is AFFIRMED.

Effective Date of this Decision: January 16, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

As of September 16, 2014, you and your spouse were eligible to enroll in a qualified health plan with up to \$155.00 per month in advance premium tax credit but ineligible for cost-sharing reductions or Medicaid coverage.

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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

Summary

The eligibility determination issued on September 17, 2014 is AFFIRMED.

This decision does not change your eligibility.

As of September 16, 2014, you and your spouse were eligible to enroll in a qualified health plan with up to \$155.00 per month in advance premium tax credit but ineligible for cost-sharing reductions or Medicaid coverage.

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] [REDACTED]
[REDACTED]
[REDACTED]