



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

## Notice of Decision

Decision Date: January 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001027

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

On October 28, 2014, you and your Authorized Representative, [REDACTED], appeared by telephone at a hearing on your appeal of the NY State of Health Marketplace's October 1, 2014 eligibility determination.

The attached 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]  
Appeal Identification Number: AP000000001027

[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 were ineligible for an advance premium tax credit as of September 30, 2014?

## Procedural History

The Marketplace received your initial application for health insurance on September 26, 2014.

On September 27, 2014, the Marketplace issued a notice of eligibility redetermination based on your September 26, 2014 application. It found you and your two children eligible to enroll in a qualified health plan but that you were ineligible for an advance premium tax credit (APTC) because you are married and not a joint tax filer. You were also ineligible for cost-sharing reductions.

On September 30, 2014, you submitted a modified application for redetermination, and the Marketplace made a preliminary redetermination you and your two children were eligible to enroll in a qualified health plan but without APTC or cost-sharing reductions.

On September 30, 2014, you appealed the September 30, 2014 preliminary determination.

On October 1, 2014, the Marketplace sent you a written notice of eligibility redetermination, the findings of which were consistent with the September 30, 2014 preliminary determination.

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On October 28, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. [REDACTED], your Authorized Representative, also attended the hearing. 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) On September 30, 2014, you applied for health insurance through the Marketplace with the marital status of "separated" and tax filing status of "head of household."
- 2) You testified that you are currently married, and have two children, a 22-year-old daughter and a 21-year-old son.
- 3) You testified that you expect to file a U.S. Income Tax return for 2014, to file as "Head of Household," and to claim your children as dependents.
- 4) You testified that you are seeking health insurance for yourself and your children.
- 5) In your application, you attested that you reside in Suffolk County, New York.
- 6) You testified that your spouse has not lived with you since June 2014 and that you do not expect her to rejoin your household at any time during 2014.
- 7) You testified that while you and your spouse have submitted the necessary documents to the courts in order to obtain a divorce on an uncontested basis, you have not yet received a divorce decree. You expect to receive such a decree during 2015.
- 8) You testified that you currently reside with your two children and pay virtually all costs for their support and the upkeep of your home.
- 9) You testified that your expected income during 2014 is \$52,000.00.
- 10) You designated your sister, [REDACTED], as your Authorized Representative at the time of the hearing.

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 applicable 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), 435.911(b)(1), 435.603(d)(4)).

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).

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)).

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).

## **Legal Analysis**

The only issue is whether you were eligible for an advance premium tax credit (APTC) as of September 30, 2014.

The record shows that you identified your marital status as “separated” in your September 30, 2014 application and your tax filing status as “head of household.” You also indicated that you would be claiming your two children as dependents. You testified at the hearing that you have obtained neither a legal separation nor a divorce decree from your spouse.

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 file a separate return from your spouse, claiming your two children as dependents, (2) you will pay virtually the entire cost of upkeep for your home for 2014, which is the primary home for your children, (3) your spouse has not been a member of the household since June 2014, and (4) you expect that your spouse will not rejoin the household.

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

Since the October 1, 2014 eligibility determination issued by the Marketplace was based your marital status as being “separated” for purposes of determining your eligibility for APTC, it is MODIFIED to reflect that you were eligible for consideration for APTC based on your filing status as head of household, with two qualifying dependents. When you file your 2014 tax return, you will be able to reconcile any tax credit that may be owed to you.

## **Decision**

The September 11, 2014 eligibility determination is MODIFIED to reflect that you were eligible for consideration for APTC based on your filing status as head of

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household, with two qualifying dependents. When you file your 2014 tax return, you will be able to reconcile any tax credit that may be owed to you.

**Effective Date of this Decision:** January 21, 2015

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

The September 11, 2014 eligibility determination is MODIFIED to reflect that you were eligible for consideration for APTC based on your filing status as head of household, with two qualifying dependents. When you file your 2014 tax return, you will be able to reconcile any tax credit that may be owed to you.

Please also note that it is important to report a change in circumstances, like divorce, to the Marketplace in order to qualify for the proper amount and type of financial assistance (see IRS Publication 5152 (Rec. 8-2014) - Affordable Care Act Individuals and Families).

When your divorce becomes final, for either the current or upcoming plan year, you can update your information directly in your account on the Marketplace website. You also can contact Marketplace Customer Service for help with this.

## **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.

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## **If You Have Questions about this Decision (Customer Service Resources):**

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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 APTC based on your filing status as head of household, with two qualifying dependents.

When you file your 2014 tax return, you will be able to reconcile any tax credit that may be owed to you.

## **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]