



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

Notice of Decision

Decision Date: January 20, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001050

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On November 14, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 16, 2014 preliminary determination, which was set out in a written notice of eligibility determination issued on December 1, 2014.

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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Issues

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

Did the Marketplace properly determine that you and your spouse were eligible to share up to \$440.00 per month of advance premium tax credit and, if you enrolled in a silver-level plan, to receive cost-sharing reductions as of October 16, 2014?

Did the Marketplace properly determine that you and your spouse were ineligible for Medicaid, as of October 16, 2014?

Procedural History

The Marketplace received your initial application for health insurance on August 7, 2014.

On October 16, 2014, you resubmitted your application, and the Marketplace made a preliminary redetermination that you and your spouse were eligible to share up to \$440.00 per month in advance premium tax credit, and, if you selected a silver-level plan, eligible for cost-sharing reductions (this preliminary determination was formalized in a written notice issued on December 1, 2014).

On October 16, 2014, you spoke with the Marketplace's Account Review Unit and appealed the October 16, 2014 preliminary determination.

On November 14, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open to allow you to provide as additional evidence as directed by

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the Hearing Officer: (1) your paystubs reflecting at least four consecutive weeks of income received during the months of August 2014, September 2014, and/or October 2014 and (2) your spouse's paystubs reflecting at least four consecutive weeks of income received during the months of August 2014, September 2014, and/or October 2014. The Hearing Officer further directed that whatever paystubs you were able to provide regarding the earnings of you and your spouse should be from the same month.

The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier. No documents were received from you by November 29, 2014.

Accordingly, the record was closed on November 29, 2014.

Findings of Fact

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

- 1) You are married and have no children.
- 2) You testified that you expect to file a U.S. Income Tax return jointly with your spouse for 2014 and claim no dependents.
- 3) You are seeking health insurance for both you and your spouse through the Marketplace.
- 4) You reside in Albany County, New York.
- 5) You testified that you are employed by [REDACTED]. You further testified that for 2014, you expected to receive approximately \$9,100.00 in earned income from [REDACTED] which is based on an average weekly income of \$175.00.
- 6) Your spouse testified that he is currently employed by [REDACTED]. He further testified that during 2014, he expected to receive approximately \$20,800.00 in earned income from [REDACTED], which is based on a biweekly average income of \$800.00.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

Advance Premium Tax Credit

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 approved 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

(26 USC § 36B; 26 CFR § 1.36B-3).

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The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2014 is set by federal regulation at 2% to 9.5% of annual household income (26 USC § 36B(b)(3)(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 August 8, 2014 and October 16, 2014 applications, that was the 2013 FPL, which is \$15,510.00 for a two-person household (78 Fed. Reg. 5182, 5183).

For annual household income in the range of at least 150% FPL but less than 200% FPL, the expected contribution is from 4.00% to 6.30% of the household income (26 CFR § 1.36B-3(g)(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 FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 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).

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 August 8, 2014 and October 16, 2014 applications, 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).

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Legal Analysis

You submitted an application on October 16, 2014 and the Marketplace made a preliminary determination that same day. The Marketplace did not issue its written notice of eligibility determination on your October 16, 2014 application until December 1, 2014.

Although the Marketplace did not issue a timely notice of eligibility determination, this does not prevent the Appeals Unit from reaching the merits of your case on your October 16, 2014 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews of Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

The second issue is whether the Marketplace properly determined that you and your spouse were eligible to share up to \$440.00 of advance premium tax credit (APTC) per month and, if you enrolled in a silver-level plan, eligible for cost-sharing reductions.

In the application submitted on October 16, 2014, you attested to an expected yearly income of \$29,900.00, and the eligibility determination relied on that information.

According to the record, you expect to file as “married, filing jointly” on your tax return for 2014 and claim no dependents. Therefore, for purposes of this decision, you are in a two-person household.

You reside in Albany County, where the second lowest cost silver plan that is available through the Marketplace for a couple costs \$588.28 per month.

An annual household income of \$29,900.00 is 192.78% of the 2013 federal poverty level (FPL) for a two-person household. At 192.78% of the FPL, the expected contribution to the cost of the health insurance premium is 5.97% of income, or \$148.75 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$588.28 per month) minus your expected contribution (\$148.75 per month), which equals \$439.53 per month.

Therefore, rounding to the nearest dollar, the Marketplace correctly determined your APTC to be \$440.00 per month.

Cost-sharing reductions are available to a person who has an annual expected household income no greater than 250% of the FPL. Since a household income of \$29,900.000 is 192.78% of the FPL, you were correctly found eligible for cost-sharing reductions.

The third issue is whether the Marketplace properly determined that you and your spouse were not eligible 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 August 7, 2014 and October 16, 2014 applications, your expected income was 190.08% of the 2014 FPL. Therefore the Marketplace properly found you to be ineligible for Medicaid coverage based on the information provided in your application.

Since the August 8, 2014 eligibility determination, the October 16, 2014 preliminary determination, and the December 1, 2014 eligibility determination all stated that, based on the information you provided, you were eligible for up to \$440.00 per month of APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, they are correct and AFFIRMED.

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

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Since you did not provide the documentation as directed by the Hearing Officer to verify income you and your spouse received during August 2014, September 2014, or October 2014, we are unable to review your eligibility for Medicaid on that basis.

Decision

The Marketplace did not issue a timely notice of eligibility determination in connection with your October 16, 2014 application. However, the lack of such a notice does not affect your eligibility to select a plan or your eligibility for subsidized coverage through the Marketplace.

The August 8, 2014 and the December 1, 2014 eligibility determinations are AFFIRMED.

Effective Date of this Decision: January 20, 2015

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How this Decision Affects Your Eligibility

You and your spouse remain eligible to share an advance premium tax credit of up to \$440.00 per month and, if you select a silver-level plan, eligible for cost-sharing reductions.

You remain ineligible for Medicaid.

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 December 1, 2014 notice of eligibility determination and the October 16, 2014 preliminary determination on which it is based are AFFIRMED.

You and your spouse remain eligible to share an advance premium tax credit of up to \$440.00 per month and, if you select a silver-level plan, eligible for cost-sharing reductions.

You remain ineligible for Medicaid.

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]