



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

**Notice of Decision**

Decision Date: February 20, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001060

[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 1, 2014 preliminary determination, which was formalized in a written decision issued on November 27, 2014.

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 the 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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## Decision

Decision Date: February 20, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001060

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issues

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

Did the Marketplace properly determine that you and your spouse were eligible to receive up to \$431.00 monthly of advance premium tax credit (APTC) as of October 1, 2014?

Did the Marketplace properly determine that you and your spouse were eligible for cost-sharing reductions as of October 1, 2014, if they enrolled in a silver-level plan?

Did the Marketplace properly determine that you and your spouse were no longer eligible for additional APTC Premium Assistance under Social Services Law § 367-a(3)(e) as of October 1, 2014?

## Procedural History

The Marketplace received your initial application for health insurance on December 31, 2013, which requested insurance for you, your spouse, and your eldest daughter.

On February 16, 2014, the Marketplace issued three notices of eligibility determination stating that, with a household income of \$51,350.01, your daughter was eligible for Medicaid while you and your spouse were eligible for up to \$504.00 monthly of advance premium tax credit (APTC) and cost-sharing

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reductions. The notice also indicted that you were eligible for additional APTC Premium Assistance because you were a parent or caretaker and your income was within the allowable limits for that program (that is, between \$49,142.00 and \$53,415.00).

On August 13, 2014, your application for health insurance was modified to reflect increased earnings by your daughter.

On August 14, 2014, the Marketplace issued a eligibility determination stating that, with a household income of \$58,780.01, you were eligible for up to \$431.00 monthly of APTC and cost-sharing reductions.

On September 30, 2014, you reapplied for health insurance through the Marketplace. On October 1, 2014, the Marketplace made a preliminary determination that, with a household income of \$58,780.01, you were eligible for up to \$431.00 monthly of APTC and cost-sharing reductions. According to your account, the Marketplace determined you were ineligible for additional APTC Premium Assistance because you were “over income.”

On October 25, 2014, you spoke to the Marketplace’s Account Review Unit and submitted an appeal request.

On November 14, 2014, you appeared for the scheduled telephone hearing. Testimony was taken at the hearing. The record was held open until November 28, 2014, because you were directed to submit additional documentation.

On November 23, 2014, you provided your daughter’s most recent Earnings Statement from [REDACTED] and a statement explaining her 2014 income. The evidence was made part of the record collectively as Appellant’s Exhibit A, and the record was closed. The record is now complete and closed.

On November 27, 2014, the Marketplace issued its written notice of eligibility on your September 30, 2014 application.

## **Findings of Fact**

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

- 1) You testified that you are married and have five children.
- 2) You testified that you plan to file your 2014 federal income tax return with the tax status “married filing jointly” and claim your five children as dependents.

- 3) According to your September 30, 2014 health insurance application and your testimony, your own 2014 expected income is \$36,400.01.
- 4) According to your September 30, 2014 health insurance application and your testimony, your spouse's 2014 expected income is \$14,950.00.
- 5) According to your September 30, 2014 Marketplace application, your eldest daughter is single, is your dependent, and is not blind or more than 65 years old.
- 6) According to your September 30, 2014 health insurance application, your eldest daughter had a 2014 expected yearly income of \$7,430.00. She expected to earn \$800.00 from [REDACTED], and \$127.50 weekly from [REDACTED].
- 7) On November 23, 2014, you provided your eldest daughter's most recent Earnings Statement from [REDACTED] and a statement explaining her 2014 income. The Earnings Statement was for the pay period from November 5, 2014 to November 11, 2014 and documented gross pay that period of \$63.00 and a year-to-date gross pay of \$1,654.63. You also provided a November 22, 2014 written statement in which your daughter asserts that she expects "to earn about \$4000 for the tax year of 2014" (Appellant's Exhibit A).
- 8) You testified that all five of your children are enrolled in Medicaid or Child Health Plus through the Marketplace.
- 9) You reside in Ulster County, New York.

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

## **Applicable Law and Regulations**

### Household Income

A taxpayer's family includes all people for whom the taxpayer can properly claim a deduction for a personal exemption (26 CFR § 1.36B-1(d)). In general, household income includes the modified adjusted gross income of every person who is in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)). According to the Internal Revenue Service's Form 1040 instructions for 2014, a single dependent who is not blind or more than 65 years old must file a return if his or her earned income was over \$6,200.00 (26 USC § 6012(a)(1)).

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## 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 federal poverty level (FPL); (2) expects to file a tax return and claim a personal exemption deduction for a person who is eligible to enroll in a qualified health plan; and (3) is not 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 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. This amount 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 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 \$35,610.00 for a seven-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 is no more than 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), 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 \$36,030.00 for a seven-person household (79 Fed. Reg. 3593, 3593).

## APTC Premium Assistance

Advance premium tax credit (APTC) Premium Assistance is available in New York State to a person who:

- 1) is a parent of a child under 21 years old;
- 2) has a household income greater than 138% of the FPL but less than or equal to 150% of the FPL for the applicable family size;
- 3) is not eligible for Medicaid;
- 4) is enrolled in a silver-level qualified health plan; and
- 5) is applying the full amount of the APTC to the cost of the plan

(N.Y. Soc. Serv. Law § 367-a(3)(e)).

## **Legal Analysis**

The matters at issue are whether, as of October 1, 2014, (1) you were eligible for more than \$431.00 per month of advance premium tax credit (APTC), (2) you were eligible for cost-sharing reductions, and (3) you were eligible for the APTC Premium Assistance Program.

According to your September 30, 2014, Marketplace application and your testimony, you are in a seven-person tax household. You expect to file your 2014 federal income tax return with the tax status “married filing jointly” with your

spouse and claim five dependents on that tax return. You have asked the Marketplace to reconsider eligibility for yourself and your spouse.

You reside in Ulster County, where the second lowest cost silver plan that is available through the Marketplace for a couple costs \$660.82 per month.

In your September 30, 2014 application, you attested to an expected yearly income of \$58,780.01. The October 1, 2014 preliminary determination and the November 27, 2014 notice of eligibility determination relied upon that information.

A household income of \$58,780.01 equals 165.07% of the 2013 Federal Poverty Level (FPL) for a seven-person household. At 165.07% of the FPL, the expected contribution to the cost of the health insurance premium is 4.69% of income, or \$229.73 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$660.82 per month) minus your expected contribution (\$229.73 per month), which equals \$431.09 per month. Therefore, to the nearest dollar, the Marketplace correctly computed your APTC to be \$431.00 per month, using the information that was available at that time.

Cost-sharing reductions are available to a person who has an annual household income no greater than 250% of the FPL. Since an annual household income of \$58,780.01 is 165.07% of the 2013 FPL, you were correctly found eligible for cost-sharing reductions as of October 1, 2014.

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 138.0% of the FPL for the applicable family size. On the date of your application, the relevant FPL was the 2014 FPL of \$36,030.00 for a seven-person household. Since \$58,780.01 is 163.14% of the 2014 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

APTC Premium Assistance is available to a person who has an annual household income that is no more than 150% of the FPL. Since an annual household income of \$58,780.01 is 165.07% of the 2013 FPL, you were not eligible for APTC Premium Assistance as of October 1, 2014, based on the information provided.

The October 1, 2014 preliminary determination and the November 27, 2014 notice that is based on it properly indicate that, using the information you provided, you were eligible for APTC of up to \$431.00 per month and cost-sharing reductions but not for Medicaid or APTC Premium Assistance. Therefore, they are correct and are AFFIRMED.

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However, at the hearing you testified that a 2014 expected annual household income of \$58,780.01 no longer reflects your current income situation and that you would like your financial eligibility to be reconsidered.

You testified that the October 1, 2014, preliminary eligibility determination accurately reflects your and your spouse's expected 2014 income. However, you testified that \$7,430.00 does not accurately reflect your daughter's 2014 expected income.

On November 23, 2014, you provided your daughter's most recent Earnings Statement from [REDACTED] and a statement explaining her 2014 income. The Earnings Statement is for the pay period from November 5, 2014 to November 11, 2014. The gross pay for the period is \$63.00 and for the year to date is \$1,654.63. The statement explaining your daughter's 2014 income asserts that, between her jobs at [REDACTED], [REDACTED], and [REDACTED], she expects "to earn about \$4000 for the tax year of 2014" (Appellant Exhibit A).

According to your September 30, 2014 Marketplace application, your eldest daughter is single, is your dependent, and is not blind or more than 65 years old. Since your daughter has submitted a statement asserting that she expects to earn less than \$6,200.00 during 2014, her income is not included in your household income when determining your eligibility for APTC, cost-sharing reductions, or APTC premium assistance. This brings your household income for these programs back to \$51,350.01.

People who use the APTC to help pay health insurance premiums must file a federal income 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 have their tax reduced or get the rest of the credit 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).

You provided corrected information on your household income during your hearing and on November 23, 2014, when you faxed additional documents to the Appeals Unit. A redetermination of your eligibility for APTC, cost-sharing reductions, or APTC Premium Assistance made on November 23, 2014 could not take effect prior to January 1, 2015.

No appeal has been filed regarding your 2015 eligibility, and the record has not been developed on that issue. Therefore, the Appeals Unit cannot reach any questions on the amount or type of financial assistance you may qualify for during 2015.

To receive a determination of your eligibility for financial assistance during 2015, provide your updated household income information to the Marketplace by calling Customer Service or entering it in your Marketplace account.

## **Decision**

The October 1, 2014 preliminary eligibility determination is **AFFIRMED**.

**Effective Date of this Decision:** February 20, 2015

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

This Decision does not change your eligibility.

For 2014, you are eligible for an advance premium tax credit of up to \$431.00 per month, eligible for cost-sharing reductions provided you are enrolled in a silver level qualified health plan through the Marketplace, and ineligible for APTC Premium Assistance.

To receive a determination of your eligibility for financial assistance during 2015, provide your updated household income information to the Marketplace by calling Customer Service or entering it in your Marketplace account.

## **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))

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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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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The October 1, 2014 preliminary eligibility determination is AFFIRMED.

This Decision does not change your eligibility.

For 2014, you are eligible for an advance premium tax credit of up to \$431.00 per month, eligible for cost-sharing reductions provided you are enrolled in a silver level qualified health plan through the Marketplace, and ineligible for APTC Premium Assistance.

To receive a determination of your eligibility for financial assistance during 2015, provide your updated household income information to the Marketplace by calling Customer Service or entering it in your Marketplace account.

## **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]