



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

Notice of Decision

Decision Date: January 27, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001074

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On November 20, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 4, 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]
Appeal Identification Number: AP000000001074

[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 are eligible to receive an advance premium tax credit of up to \$204.00 per month as of November 4, 2014?

Procedural History

The Marketplace received your application on November 4, 2014, and prepared a preliminary eligibility determination. The Marketplace found that, based on an annual income of \$30,914.00, you are eligible for an advance premium tax credit of up to \$204.00 per month and cost-sharing reductions, but ineligible for Medicaid. It also found your daughter eligible for Child Health Plus at a monthly premium of \$9.00.

A written notice of the Marketplace’s eligibility determination was ultimately issued on December 4, 2014 with regard to the November 4, 2014 preliminary determination. It states that, with an annual income of \$30,914.00, you are eligible for an advance premium tax credit of up to \$204.00 per month and, provided you are enrolled in a silver-level plan, for cost-sharing reductions, but not eligible for Medicaid. It also states that your daughter is eligible for Child Health plus at a monthly premium of \$9.00.

On November 4, 2014, you called the Marketplace's Account Review Unit and appealed the November 4, 2014 preliminary determination insofar as it did not set your advance premium tax credit higher than \$204.00 per month.

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).

On November 20, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. A Spanish interpreter [REDACTED] assisted at the hearing. The record was developed and held open for up to fifteen days to allow you the opportunity to submit income documents. The record was to be closed on December 5, 2014, or upon receipt of those documents, whichever occurred earlier.

On November 26, 2014, the Marketplace's Appeals Unit received a one-page fax from you. That faxed page consisted of copies of two paystubs for a four-week period. It was marked into evidence as "Appellant's Exhibit A" and made part of the record. The record was closed that same day.

Findings of Fact

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

- 1) You and your daughter live in Bronx County, New York.
- 2) You plan on filing your 2014 tax return using the tax filing status of Head of Household with a Qualifying Individual.
- 3) Both you and your daughter need health insurance.
- 4) Your daughter was determined eligible for and enrolled in Child Health Plus beginning December 1, 2014. You are not appealing this determination.
- 5) Your Marketplace account shows an expected annual income of \$30,914.00.
- 6) You testified that you were earning \$11.00 an hour for a 40-hour work week until you received a substantial raise in July 2014. You also testified that the Marketplace's calculation of your annual income overstates your income for the year.
- 7) You testified and provided documentary proof that your gross earnings for a two-week pay period as of July 2014 were \$1,189.00 and as of November 21, 2014 your 2014 earnings were \$25,427.12 (Appellant's Exhibit A).
- 8) You testified that you cannot afford to pay \$161.00 per month toward your health insurance premium but can contribute a lesser amount.

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

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Applicable Law and Regulations

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 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 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 150% but less than 200% of the 2013 FPL, the expected contribution is between 4.0% and 6.3% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)).

For a two-person household, the 2013 FPL is \$15,510.00 (78 Fed Reg 5182, 5183 (2013)).

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 her maximum entitlement, based on gross income, may receive an income tax refund. A person who received more tax credit than her maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

At issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$204.00 per month.

According to the record, your tax household consists of you and your daughter. You plan on filing your 2014 tax return as head of household with a qualifying individual, that is, your dependent daughter. Therefore, you have a two-person household for purposes of this analysis.

You reside in Bronx County, where the second lowest cost silver plan that is available through the Marketplace for an individual costs \$365.28 per month.

According to your Marketplace application, your projected 2014 annual income is \$30,914.00, which is the household income used for the November 4, 2014 determination.

An annual household income of \$30,914.00 equals 199.32% of the 2013 FPL for a two-person household. At 199.32% of the FPL, the expected contribution to the cost of the health insurance premium is 6.72% of income, or \$161.49 per month.

The maximum amount of APTC that can be authorized equals the cost of the second lowest cost silver plan in your county (\$365.28 per month) minus your expected contribution (\$161.49 per month), which equals \$203.79 per month. Therefore, the Marketplace correctly computed your APTC, as rounded to the nearest dollar, to be \$204.00 per month on an expected-income basis. Therefore, the Marketplace's preliminary determination was correct when made and is affirmed.

However, you testified that your current pay does not accurately reflect your annual pay because you made less money during the first half of 2014, which you did not report to the Marketplace. This information was not available when your yearly income was calculated. You credibly testified that you made \$11.00 an hour for a 40 hour work week from January through June 2014, which equals \$880.00 per pay period. This supports a finding that your gross earnings for the first six months of the year were \$11,440.00 (13 pay periods x \$880.00).

You also credibly testified and provided documentary proof that your gross earnings per pay period are now \$1,189.00, and that you earned \$25,427.12 year-to-date as of the end of the last period on November 21, 2014. This supports a finding that your projected 2014 annual income is \$28,994.12 when considering that you will receive three more paychecks this year at \$1,189.00 each (\$3,567.00 total).

Since the premium tax credit that can be authorized on an expected income of \$28,994.00 is not materially different than the credit that can be authorized on

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\$30,914.00, that difference is properly reconciled on a federal individual income tax return. No other portion of the November 4, 2014 preliminary determination or the December 4, 2014 notice of eligibility determination was appealed.

Accordingly, the December 4, 2014 notice of eligibility determination and the November 4, 2014 determination on which it is based are AFFIRMED.

Decision

The November 4, 2014 preliminary determination and the December 4, 2014 notice of eligibility determination are AFFIRMED.

Effective Date of this Decision: January 27, 2015

How this Decision Affects Your Eligibility

You remain eligible to receive an advance premium tax credit of up to \$204.00 per month.

Any difference between the advance premium tax credit (based on your expected 2014 income) and the premium tax credit you can claim on your 2014 federal tax return (based on your actual 2014 income) should be reconciled on your 2014 federal tax return.

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

Summary

The Marketplace's November 4, 2014 determination is **AFFIRMED**.

You remain eligible to receive an advance premium tax credit of up to \$204.00 per month.

Any difference between the advance premium tax credit (based on your expected 2014 income) and the premium tax credit you can claim on your 2014 federal tax return (based on your actual 2014 income) should be reconciled on your 2014 federal tax return.

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]