



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

## Notice of Decision

Decision Date: March 4, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001110

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

Dear [REDACTED]. [REDACTED],

On January 7, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 21, 2014 preliminary 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 letter.

### 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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Appeal Identification Number: AP000000001110

[REDACTED]  
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## Issue

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

Did the Marketplace properly determine that you are eligible to enroll in a qualified health plan without subsidy as of November 21, 2014?

Did the Marketplace properly determine thereafter that you are eligible to receive an advance premium tax credit of up to \$133.00 monthly as of November 26, 2014?

## Procedural History

The Marketplace first received your application for health coverage in 2015 on November 21, 2014.

That same day, the Marketplace issued a preliminary eligibility determination that you are eligible to enroll in a qualified health plan without subsidy through the Marketplace.

Also on that same day, you appealed the Marketplace's preliminary eligibility determination.

On November 26, 2014, with the assistance of a representative with the Marketplace's Account Review Unit, your marital status on your application was corrected and the Marketplace prepared a preliminary determination that found you eligible for an advance premium tax credit (APTC) of up to \$133.00 per month.

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On November 27, 2014, the Marketplace issued a notice of eligibility determination that was consistent with the November 26, 2014 preliminary eligibility determination. It also said you are not eligible for cost-sharing reductions or Medicaid because the income you provided of \$32,868.69 is over the allowable income limits for each of these programs.

The Marketplace sent you a Notice of Telephone Hearing on December 15, 2014, for a scheduled telephone hearing on January 7, 2015.

On January 7, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. 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) You testified that you have been legally divorced for four years.
- 2) You reside in Suffolk County, New York, with your five children.
- 3) Your five children are claimed as dependents by your ex-spouse on his income tax returns.
- 4) You are the only person in your household seeking health insurance for 2015 through the Marketplace.
- 5) You expect to file your 2014 and 2015 income tax returns as Single.
- 6) You testified that your 2014 income is \$32,868.69, as reported on your Marketplace account, and you expect your 2015 income to be comparable.
- 7) On November 21, 2014, your marital status on your Marketplace application was listed as "Separated," which you testified is incorrect. This status was corrected with the assistance of a Marketplace representative on November 26, 2014, to "Single."
- 8) You testified that, once your application was corrected and you were found eligible for an advance premium tax credit, you planned on withdrawing your appeal.
- 9) You further testified that, upon receiving notice from the Marketplace that you would have a monthly premium responsibility of \$172.13 for the bronze plan that

you selected, you decided not to withdraw your appeal because that monthly premium amount is unaffordable.

10) You testified that you have received paperwork from your qualified health plan, Fidelis Care Bronze, but have not committed to enrolling.

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 (QHP) 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 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), 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 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 for 2015 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

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 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 250% but less than 300% of the 2014 FPL, the expected contribution is between 8.10% and 9.56% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP 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 QHP (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 (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 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 \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

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 March 19, 2014).

### Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a QHP. Such an exemption may be granted if that person can show that she experienced a financial hardship or has 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 (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

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## Legal Analysis

The first issue is whether the Marketplace properly determined that you were not eligible for subsidies but were eligible to enroll in a qualified health plan at full cost through the Marketplace. The record reflects that this determination was based on your marital status being incorrectly stated, which has since been corrected. Therefore, this issue is now moot and has been superseded (replaced) by the Marketplace's November 26, 2014 preliminary eligibility determination, as issued in a notice on November 27, 2014.

The second issue, while not under appeal, is whether the Marketplace properly determined that you are eligible for an advance premium tax credit (APTC) up to \$133.00 monthly. This legal analysis is being provided in the interest of justice and to clarify how the level of APTC to which you are entitled was computed.

In the corrected application, you maintained that you attested to an expected yearly income of \$32,868.69, and the eligibility determination relied upon that information.

According to the record you are the only person in your tax household.

You reside in Suffolk County, where the second lowest cost silver plan available for individual coverage through the Marketplace costs \$379.93 per month.

An annual income of \$32,868.69 is 281.65% of the 2014 Federal Poverty Level (FPL) for a one-person household. At 281.65% of the FPL, the expected contribution to the cost of the health insurance premium is 9.02% of income, or \$247.15 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for individual coverage in your county (\$379.93 per month) minus your expected contribution (\$247.15 per month), which equals \$132.78 per month. Therefore, computing to the nearest dollar, the Marketplace correctly determined your APTC to be \$133.00 per month.

You selected a bronze level qualified health plan with a monthly premium of \$305.13. After the APTC of \$133.00 is deducted, your monthly premium responsibility for the plan is \$172.13.

Cost-sharing reductions (CSR) are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$32,868.69 is 281.65% of the 2014 FPL, the Marketplace correctly found you to be ineligible for cost-sharing reductions.

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 (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your corrected application, the relevant FPL was \$11,670.00 for a one-person household. Since \$32,868.69 is 281.65% of the 2014 FPL, the

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Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the November 27, 2014 eligibility determination properly stated that, based on the information you provided, you were eligible for APTC of up to \$133.00 per month and not eligible for CSR or Medicaid, it is correct and remains in effect.

However, you testified that even with the APTC of \$133.00 monthly, you cannot afford to pay a monthly premium of \$172.13. This may qualify as a hardship exemption from having to pay a penalty to the IRS for not having health insurance in 2015. If you wish to be considered for a hardship exemption, you can contact HHS at its Federal website ([www.healthcare.gov](http://www.healthcare.gov)) for direction.

## **Decision**

The Marketplace's November 21, 2014 preliminary eligibility determination has been superseded (replaced) by a subsequent determination and, therefore, is rendered moot.

The Marketplace's November 27, 2014 eligibility determination, as made on November 26, 2014, remains in effect.

**Effective Date of this Decision:** March 4, 2015

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

You remain eligible to receive an advance premium tax credit of up to \$133.00 monthly.

You remain ineligible for cost-sharing reductions and 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

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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 for assistance.

## **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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The Marketplace's November 21, 2014 preliminary eligibility determination has been superseded (replaced) by a subsequent determination and, therefore, is rendered moot.

The Marketplace's November 27, 2014 eligibility determination, as made on November 26, 2014, remains in effect.

You remain eligible to receive an advance premium tax credit of up to \$133.00 monthly.

You remain ineligible for cost-sharing reductions and Medicaid.

If you wish to be considered for a hardship exemption, you can contact HHS at its Federal website ([www.healthcare.gov](http://www.healthcare.gov)) for direction.

## **Legal Authority**

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

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**A Copy of this Decision Has Been Provided To:**

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