



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

## Notice of Decision

Decision Date: April 8, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001166

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

Dear [REDACTED],

On January 16, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 10, 2014 notice of eligibility redetermination.

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

## Issues

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

Did the Marketplace properly determine that [REDACTED] is eligible to receive up to \$0.00 per month of advance premium tax credit and ineligible to receive cost-sharing reductions as of December 9, 2014?

Did the Marketplace properly determine that [REDACTED] is ineligible for Medicaid as of December 9, 2014?

## Procedural History

The Marketplace received your revised application for health insurance on December 9, 2014.

On December 10, 2014, the Marketplace issued a notice of eligibility redetermination based on your December 9, 2014 application. It said that, with a household income of \$72,520.00, you are eligible to receive \$0.00 per month in advance premium tax credit (APTC), not eligible to receive cost-sharing reductions, and not eligible for Medicaid.

That same day, you spoke with the Marketplace's Account Review unit to appeal the December 10, 2014 eligibility redetermination insofar as you were found eligible for only \$0 in advance premium tax credit.

On January 16, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit.

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Since you indicated that your preferred language was Spanish, a Spanish-language interpreter from the NYS Department of Health Language Line Services attended the hearing. The interpreter's identification number was [REDACTED]

The record was developed during the hearing and remained open as the Hearing Officer directed you to submit additional evidence to corroborate your testimony: (1) a letter from your employer, [REDACTED], indicating your earnings as an independent contractor during December 2014; (2) your spouse's paystubs reflecting income earned by her from [REDACTED] during December 2014; and (3) reasonably acceptable documentation reflecting the amount of the Social Security survivors benefits that your younger son received during December 2014. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

The above-referenced documents, except for your spouse's earning statement for the period from December 15, 2014 to December 21, 2014, were received by the Appeals Unit via facsimile on January 23, 2015.

Since earning statements that were received by the Appeals Unit were found to be sufficient to issue a decision in your case, the record was closed on January 23, 2015.

## **Findings of Fact**

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

- 1) You testified that you are married and have three children: an 11-year-old stepson, a 10-year-old stepson, and a 2-year-old biological son.
- 2) You testified that you are seeking health insurance coverage only for yourself, because your spouse and children are covered under health insurance policies outside of the Marketplace.
- 3) You testified that you expect to file jointly with your spouse on your 2015 U.S. Income Tax return and claim your three children as dependents.
- 4) You testified that you live in Queens County, New York.
- 5) You testified that you and your spouse have both worked at [REDACTED] since 2005 and expect to remain employed through the end of 2015.

- 6) Your application reflects that you expect to earn approximately \$45,000.00 from [REDACTED] as an independent contractor. You testified that figure was an accurate reflection of your expected yearly income for 2015 at the time you submitted your application, and remains an accurate estimate of your expected earnings for 2015.
- 7) You further testified, however, that you are paid solely by commission and that you received no income during December 2014 due to lack of sales.
- 8) You provided a January 20, 2015 letter on [REDACTED] letterhead stating that your earnings consist entirely of commissions earned on closed transactions, and that you had neither closed transactions nor earned income during the month of December 2014.
- 9) Your application reflects that your spouse expects to earn approximately \$22,000.00 from [REDACTED] as an employee. You further testified this was an accurate reflection of your spouse's expected yearly income for 2015 at the time you submitted your application, and this figure remains an accurate estimate of your spouse's expected earnings for 2015.
- 10) You provided earnings statements showing that your spouse was paid gross earnings of (1) \$480.00 on December 4, 2014; (2) \$480.00 on December 11, 2014, and (3) \$480.00 on December 18, 2014. These pay stubs reflect that your spouse worked a 40 hour work week at a flat rate of \$12.00 per hour and was eligible for paid leave. You stated in your January 23, 2015 fax that you could not produce a pay stub for the pay period that ended immediately after December 18, 2014.
- 11) Your December 9, 2014 application states that your 10-year-old stepson receives approximately \$460.00 per month in Title II Social Security survivors benefits.
- 12) Your 10-year-old stepson's 2015 Social Security benefit award letter indicates that his survivors benefits during 2015 are \$1,403.00 per month.

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

## **Applicable Law and Regulations**

### Modified Adjusted Gross Income

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).

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term modified adjusted gross income means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

"Adjusted gross income" means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's Social Security benefits are included in gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" plus one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

### Household Income

A tax filer's MAGI household income includes the MAGI-based income of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who has yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 will be required to file a tax return (see IRS Revenue Procedure 2014-61).

"Unearned income" is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the *taxable* part of social security and pension payments (IRS Publication 929, p. 15).

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## Legal Analysis

The first question is whether the Marketplace properly determined your household's expected income for 2015.

In the December 9, 2014 application, you attested to a 2015 expected annual household income of \$72,520.00, which included (1) your earnings of \$45,000.00, (2) your spouse's earnings of \$22,000.00, and (3) \$5,520.00 of Social Security survivors benefits for your 10-year-old stepson. The Marketplace included your stepson's Social Security survivors benefits in your household income when determining your eligibility for financial assistance.

An individual's Social Security benefits are counted as gross income only to the extent that the sum of the person's "modified adjusted gross income" plus one-half of their Social Security benefits is greater than \$25,000.00.

The credible evidence of record indicates that your 10-year-old stepson has no earned income. With no earned income, the sum of his MAGI-based income plus half of his Social Security benefits cannot exceed \$25,000.00, whether one expects his 2015 benefits to be \$16,836.00 (\$1,403.00 per month for 12 months, as per the Social Security award letter) or \$5,520.00 (the number given in your application). Therefore, his benefits are not counted as gross income and his expected gross income for 2015 is \$0.00.

Since your stepson expects no earned income during 2015 and his expected unearned income is less than \$1,050.00, the record as currently developed does not indicate that he will be required to file a federal tax return during 2015.

Since the record does not indicate that your stepson will be required to file a federal tax return, his income should not be included in your expected household income for 2015.

Therefore, when the Marketplace determined your eligibility on December 9, 2014, it should have counted your expected income (\$45,000.00) and your spouse's expected income (\$22,000.00), for a total of \$67,000.00.

However, the Marketplace added the \$5,520.00 you identified as your son's Social Security benefits, which overstated your household income as \$72,520.00, and made its December 9, 2014 determination on that basis.

Since the December 9, 2014 determination is based on a miscalculation of your expected 2015 household income, it is RESCINDED.

Your case is returned to the Marketplace for redetermination of your eligibility based on a five-person household living in Queens County with a household income of \$67,000.00.

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).

## **Decision**

The December 10, 2014 eligibility redetermination is RESCINDED.

Your case is returned to the Marketplace for a redetermination of your eligibility based on a 2015 expected household income of \$67,000.00.

**Effective Date of this Decision:** April 8, 2015

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

This decision does not determine your final eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your eligibility on your corrected household income.

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

## **Summary**

The December 10, 2014 eligibility redetermination is RESCINDED.

This decision does not determine your final eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your eligibility on your expected 2015 household income of \$67,000.00.

## **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]