



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

## Notice of Decision

Decision Date: April 14, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001187

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

Dear [REDACTED],

On January 8, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 16, 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).

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[REDACTED]  
[REDACTED]  
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[REDACTED]

## Issues

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that [REDACTED] was eligible for up to \$100.00 per month in advance premium tax credit as of December 15, 2014?

## Procedural History

The Marketplace received your initial 2015 application for health insurance on November 16, 2014.

On December 15, 2014, the Marketplace received your modified application for health insurance for yourself and [REDACTED] and prepared a preliminary determination in your case. The preliminary determination stated that you were eligible to enroll in a qualified health plan through the Marketplace and receive up to \$100.00 per month of advance premium tax credits to help pay for the cost of your insurance.

On that same day, you spoke to the Marketplace's Account Review Unit and appealed the preliminary determination.

On December 16, 2014, the Marketplace issued a notice detailing your eligibility determination. That notice stated that you were eligible to receive up to \$100.00 per month in advance premium tax credit, which can be applied all or in part to your monthly premium when you enroll in a qualified health plan. It also said that you were eligible to receive cost-sharing reductions if you select a silver level

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qualified health plan. This determination was made based on a household income of \$45,004.00.

On January 8, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was 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 expect to file your 2015 tax return as a qualifying widow and claim your two sons, [REDACTED] and [REDACTED], as dependents.
- 2) You testified that you are seeking health insurance through the Marketplace for yourself and your son [REDACTED].
- 3) According to the record and your testimony, you expect to earn about \$36,400.00 from your job for the 2015 tax year before taxes are deducted. You testified, and the record also reflects, that your son [REDACTED] is currently receiving Title II Social Security survivors benefits. The record reflects that he receives \$717.00 per month in survivors benefits.
- 4) You testified that you do not expect to take any deductions for the 2015 tax year.
- 5) You currently reside in Bronx County, New York.

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 applicable 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 annual 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 \$19,790.00 for a three-person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 200% but less than 250% of the 2014 FPL, the expected contribution is between 6.34% and 8.10% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

### Modified Adjusted Gross Income

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)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI 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 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 had yearly gross earned income greater than \$6,300.00 or gross unearned income greater

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than \$1,050.00 would 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).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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)).

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

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

## **Legal Analysis**

The only issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$100.00 per month.

In the application that was submitted on December 15, 2014, you attested to an expected yearly income of \$45,004.00, which is the sum of your expected earned income for 2015 (\$36,400.00) plus the total Title II Social Security survivors

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benefits for your son ██████ for 2015 (\$717.00 per month or \$8,604.00 for the year). The Marketplace's December 16, 2014 eligibility determination relied upon your attested household income of \$45,004.00.

However, according to the December 15, 2014 application, your son ██████, is your dependent and is receiving \$717.00 per month in Social Security survivors benefits, or an expected \$8,604.00 for the 2015 tax year.

Generally, a tax filer's household income includes the modified adjusted gross income of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year. In 2015, a dependent does not have to file a tax return unless his yearly gross unearned income is greater than \$1,050.00. Unearned income is generally all income other than what is earned, including the *taxable* part of social security and pension payments.

To determine the taxable amount of income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income."

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00.

The record reflects that ██████ only source of income is Social Security survivors benefits.

As ██████ only source of income is \$8,604.00 in Social Security survivors benefits, one half of this income is \$4,604.00. Since \$4,604.00 is less than \$25,000.00, his income from Social Security benefits should not be included in his gross income. Therefore, ██████ income from Social Security benefits is not considered taxable and, because he does not have any other sources of income, earned or unearned, he is not required to file a federal tax return.

Since ██████ is not required to file a tax return based on his income from Social Security benefits, the Marketplace improperly relied upon his income in the December 16, 2014 eligibility determination. Therefore, the December 16, 2014 eligibility determination is RESCINDED, as it should have been based upon a household income of \$36,400.00 for a household of three residing in Bronx County for the 2015 benefit year.

On January 13, 2015, subsequent to your January 8, 2015 hearing, the Marketplace redetermined your family's eligibility for financial assistance based on a household income of \$36,400.00 for a household of three residing in Bronx County for the 2015 benefit year. The Marketplace's redetermination on January

13, 2015, finding you eligible for up to \$146.00 of advance premium tax credit based on a household income of \$36,400.00 remains in effect.

## **Decision**

The December 16, 2014 eligibility determination is RESCINDED.

The Marketplace's redetermination on January 13, 2015 finding you eligible for up to \$146.00 of advance premium tax credit based on a household income of \$36,400.00 remains in effect.

**Effective Date of this Decision:** April 14, 2015

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

This decision does not change your eligibility to enroll in a qualified health plan.

The Marketplace's redetermination on January 13, 2015 finding you eligible for up to \$146.00 of advance premium tax credit based on a household income of \$36,400.00 remains in effect.

## **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.

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## **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

## **Summary**

The December 16, 2014 eligibility determination is RESCINDED.

This decision does not change your eligibility to enroll in a qualified health plan.

The Marketplace's redetermination on January 13, 2015 finding you eligible for up to \$146.00 of advance premium tax credit based on a household income of \$36,400.00 remains in effect.

## **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]