



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

Notice of Decision

Decision Date: April 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001203

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On January 7, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 17, 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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Issue

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

Did the Marketplace properly determine that you and your son were ineligible for an advance premium tax credit, effective January 1, 2015?

Procedural History

The Marketplace received multiple applications on December 16, 2014. In each of these applications, you attested to a marital status of "separated," a tax filing status of "head of household," and an expected yearly income of \$41,080.00.

That same day, the Marketplace made preliminary eligibility determinations for each of the December 16, 2014 applications. In each case, you and your son were found not eligible for financial assistance through the Marketplace. The preliminary determinations also stated that in order for your eligibility to be finalized, you would need to submit additional documentation to confirm that the information you provided in the applications was accurate.

That same day, you spoke with the Marketplace's Account Review Unit and appealed the December 16, 2014 preliminary determinations.

On December 17, 2014, the Marketplace issued a notice of eligibility determination that stated you were eligible to enroll in a qualified health plan through the Marketplace at full cost effective January 1, 2015. It stated that you were not eligible for an advance premium tax credit (APTC) because, "your application states that the primary tax filers in your house are married but not filing taxes jointly. To be eligible for the Advanced Premium Tax Credit, married

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couples must file taxes jointly.” The notice added that you had requested the Marketplace to review your application to see if your household would be eligible for Medicaid reimbursement for medical bills from the three months preceding your application, and that in order for the Marketplace to do so, you would have to submit income documentation for your household for the period from September 1, 2014 to December 31, 2014.

On January 7, 2015, you appeared for 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 live with your two children, your 22-year-old son and your 15-year-old daughter.
- 2) You testified that you expect to file a U.S. Income Tax return for 2015, file as “Head of Household,” and claim your two children as dependents.
- 3) Your application reflects that you reside in Bronx County, New York.
- 4) You testified that you are married and have not obtained a divorce decree or a legal separation order from your spouse.
- 5) You testified that you have not resided with your spouse since at least 1998 and that you do not expect him to rejoin your household at any time.
- 6) You testified that since your daughter was determined eligible for Child Health Plus (CHP) coverage, you are seeking health insurance only for yourself and your son.
- 7) You testified that you pay for more than one-half of the cost of keeping up your home for your children.
- 8) On each of your December 16, 2014 applications, you attested to an expected annual income of \$41,080.00, which was based on an expected receipt of approximately \$790.00 per week. You testified that this figure was accurate when you submitted your application and remains an accurate reflection of your income going forward.

- 9) Each of your December 16, 2014 applications stated that you and your son were enrolled in an employer-sponsored plan from January 1, 2014 to December 31, 2014.
- 10) You testified this was accurate and that you have since reenrolled in this employer-sponsored plan for coverage beginning on January 1, 2015.
- 11) You testified that approximately \$128.00 per week is deducted from your gross income for the cost of your portion of the premium payment to cover both yourself and your son under your employer's insurance plan.

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)).

In general, a tax filer who is married is eligible for APTC only if he or she files a joint return with his or her spouse (45 CFR § 155.305(f), 45 CFR § 155.310(d), 26 CFR § 1.36B-2).

However, a tax filer will be treated as not married at the close of the taxable year if the individual:

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following requirements:
 - files a separate return from his or her spouse and maintains his or her household as the primary home for a qualifying child; and

- pays more than one half of the cost of keeping up his or her home for the tax year; and
- his or her spouse is not a member of the household during the last 6 months of the taxable year

(26 USC § 7703(a), (b)).

Minimum Essential Coverage

Generally, an individual who may enroll in an eligible employer-sponsored plan and an individual who may enroll in the plan because of a relationship to the employee are eligible for what is considered minimum essential coverage under the plan only if the plan is affordable and provides minimum value (see 26 CFR § 1.36B-2(c)(3)(i)).

“Minimum essential coverage” is defined in section 5000A(f) of the Internal Revenue Code and the regulations issued under that section. As described in that section, eligible employer-sponsored plans are considered minimum essential coverage (26 CFR § 1.36B-2(c)(1)).

An eligible employer-sponsored plan is “affordable” if the portion of the annual premium that the employee pays for his or her own insurance does not exceed 9.56% of the employee’s household income (26 USC § 36B(b)(3)(A), 26 CFR 1.36B-2T(c)(3)(v)(C), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37). The plan provides “minimum value” if its “share of the total allowed costs of benefits provided to the employee under the plan ... is at least 60 percent” (26 CFR 1.36B-2(c)(3)(vi)).

Cost-Sharing Reductions

Cost-sharing reductions 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 qualified health plan (45 CFR § 155.305(g)(1)).

Legal Analysis

The issue is whether the Marketplace properly determined that you and your son were not eligible for an advance premium tax credit (APTC).

The record shows that in each of your December 16, 2014 applications you identified yourself as “separated,” attested that your tax filing status was “head of

household,” and attested that you would be claiming your two children as dependents.

In general, to qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

According to the documents in the record and your testimony at the hearing, you are still married, are not legally separated from your spouse, and do not plan to file a joint tax return with your spouse for the 2015 tax year.

However, you credibly testified during the hearing that: (1) you expect to claim your two children as dependents, (2) you will pay more than one-half of the cost of keeping your home for 2015, and (3) your spouse has not been a member of the household since 1998 and you expect that to remain the case for 2015.

Therefore, the record supports a finding that you are a head of household with a qualifying dependents and so qualify to be treated as “not married” for purposes of this decision.

The record reflects that you and your son were enrolled in an employer-sponsored health insurance plan from January 1, 2014 to December 31, 2014, and that your coverage has been renewed for 2015. Generally, employer-sponsored plans provide minimum essential coverage and an employee who is enrolled in such a plan is not eligible for an APTC through the Marketplace.

You contend on appeal that your employer-sponsored health insurance is not affordable. Under Marketplace regulations, a plan is affordable if it costs no more than 9.56% of the household income to cover the employee alone. The cost of coverage for both you and your son is \$128.00 per week, but the record does not reveal how much this same coverage would cost for you alone.

You do not contend, and the record does not indicate, that your employer-sponsored health insurance does not provide minimum value.

Upon review, the record does not contain evidence that your employer-sponsored insurance is unaffordable or does not provide minimum value. Since the available evidence indicates that you have employer-sponsored health insurance that provides minimum essential coverage, you are not eligible for an advance premium tax credit.

Since the December 17, 2014 notice of eligibility determination correctly stated that you are not eligible for APTC or cost-sharing reductions, it is MODIFIED only to state that you are not eligible because you are currently enrolled in an employer-sponsored health insurance plan.

Decision

The December 17, 2014 notice of eligibility redetermination is MODIFIED to state that you are ineligible for an advance premium tax credit through the Marketplace because you are currently enrolled in an employer-sponsored health insurance plan.

Effective Date of this Decision: April 21, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

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:

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Summary

The December 17, 2014 notice of eligibility redetermination is MODIFIED to state that you are ineligible for an advance premium tax credit through the Marketplace because you are currently enrolled in an employer-sponsored health insurance plan.

This decision does not change your eligibility.

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]