



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: AP000000001221

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On January 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace’s December 18, 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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[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 not eligible for an advance premium tax credit as of December 17, 2014?

Did the Marketplace properly determine that you are not eligible for cost-sharing reductions as of December 17, 2014?

Procedural History

You submitted an updated application on December 17, 2014 for health coverage for yourself and your minor child in 2015.

That same day, the Marketplace made a preliminary redetermination and found you eligible to purchase a qualified health plan at full cost and your child eligible for Child Health Plus (CHP), both beginning January 1, 2015.

That same day, you appealed the Marketplace’s preliminary redetermination insofar as it found you eligible to purchase a qualified health plan at full cost.

On December 18, 2014, the Marketplace issued a notice of eligibility redetermination that was consistent with its preliminary eligibility redetermination. It advised you to select a health plan and stated that, with a household income of \$29,016.00, you were not eligible for Medicaid because your household income exceed the limit for that program, not eligible for advance premium tax credit (APTC) because you are married

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but not filing taxes jointly, and not eligible for cost-sharing reductions because you are ineligible for APTC.

On January 12, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to 15 days to allow you the opportunity to submit evidence in support of your testimony.

On January 20, 2015, the Marketplace's Appeal Unit received an eight-page fax from you. It consisted of (1) a cover page; (2) a copy of an Order of Protection issued by District Court, County of Nassau; (3) a copy of Nassau County Police Department Victim's Crime Report; (4) a copy of Final Order of Custody and Visitation from Family Court of the State of New York, County of Nassau; (5) a copy of an Order of Support issued by Family Court of the State of New York, County of Nassau; and (6) a copy of Child Support Payments and Disbursements online report of New York State Division of Child Support Enforcement. This fax has been made part of the record as "Appellant's Exhibit A."

Since these were the documents you were directed to provide and nothing else was expected, the record was closed that same day.

Findings of Fact

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

- 1) You testified that you are legally married and have one child from your marriage. You further testified that you have not lived with your estranged spouse since early 2014 and do not intend to live with him in the future.
- 2) You testified that you expect to file a U.S. Income Tax return for 2014, file as "Married Filing Separately," and claim your minor child as your sole dependent.
- 3) According to your Marketplace application, you reported a 2014 annual income of \$29,016.00. You testified that your expected 2015 annual income will be comparable.
- 4) You testified that you are satisfied with your child's eligibility for and enrollment in Child Health Plus (CHP) for 2015, and are only seeking review of your 2015 eligibility.
- 5) You and your child reside in Nassau County, New York.
- 6) You testified that your estranged spouse abandoned you early 2014 and has not provided any support for you or your child since then.

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- 7) A one-year Order of Protection was issued on November 14, 2014 by Nassau County District Court. The Order directed your estranged spouse to have no direct or indirect contact or communication with you (Appellant's Exhibit A, p.2).
- 8) You have residential custody of your child (July 10, 2014 Final Order of Custody [Appellant's Exhibit A, pp. 4-5]).
- 9) Nassau County Family Court ordered your estranged spouse to pay \$126.29 per week, his pro rata share of your child's support and health insurance premium, effective May 7, 2014, with payment to the Support Collection Unit commencing on November 10, 2014 (Appellant's Exhibit A, pp.6-7).
- 10) You testified that you solely provide for your child and have not received any child support from your estranged spouse.
- 11) As of January 16, 2015, no payments have been applied to your account, no disbursements have been made from your account, and the total arrears owed by your estranged spouse is \$4,672.73 (January 19, 2015 New York State Division of Child Support Enforcement Payments and Disbursements online report [Appellant's Exhibit A, p.8]).

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 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 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), 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:

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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:

- a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child; and
- b. pays more than one half of the cost of keeping up his/her home for the tax year; and
- c. his/her spouse is not a member of the household during the last 6 months of the taxable year

(26 USC § 7703(a); 26 USC § 7703(b)).

In other words, if you meet the above criteria for either (1) or (2), you may qualify to file as “Head of Household” and may be treated as “not married” for purposes of this Decision (26 USC § 2(b)).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a qualified health plan 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)).

Special Enrollment

An individual or enrollee is eligible to enroll in or change enrollment in a qualified health plan during a special enrollment period when an individual or enrollee experiences a triggering event. Triggering events include a change in a person’s eligibility for APTC or CSR (45 CFR § 155.420(d)(6)).

Legal Analysis

The issue under review is whether the Marketplace properly determined that you are not eligible for APTC because of your tax filing status.

As noted above, in order for a married person to qualify for APTC, she must file taxes jointly with 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 to your spouse and have not obtained a decree of divorce or of separate

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maintenance. You also confirmed that you do not plan to file a joint tax return with your spouse for the 2014 tax year and possibly for the 2015 tax year.

However, you credibly testified during the hearing and provided supporting documentary evidence, that: (1) you expect to claim your daughter as your sole dependent, (2) you will pay more than one-half of the cost of keeping up your home for 2015, and (3) your estranged spouse has not been a member of your household since the early part of 2014 and you do not plan to reside with him in 2015.

Therefore, the record supports a finding that you qualify to be treated as “not married” by the Marketplace for purposes of determining financial eligibility.

Accordingly the December 18, 2014 eligibility determination is MODIFIED to rescind the finding that you are not eligible for an advance premium tax credit due to your tax-filing status.

Your case will be returned to the Marketplace for redetermination of your eligibility based on your corrected tax-filing status.

Decision

The December 18, 2014 eligibility determination MODIFIED to rescind the finding that you are not eligible for an advance premium tax credit due to your tax-filing status.

Your case is returned to the Marketplace for redetermination of your eligibility based on your corrected tax-filing status.

Effective Date of this Decision: December 18, 2014

How this Decision Affects Your Eligibility

Your child’s enrollment through Child Health Plus continues and the premium remains at \$9.00 a month.

This decision does not make a final determination on your eligibility. It does return your case to the Marketplace for redetermination of your eligibility with a household income of \$29,016.00 and a tax-filing status of Head of Household.

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

Summary

The December 18, 2014 eligibility determination MODIFIED to rescind the finding that you are not eligible for an advance premium tax credit due to your tax-filing status.

Your child's enrollment through Child Health Plus continues and the premium remains at \$9.00 a month.

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This decision does not make a final determination on your eligibility. It does return your case to the Marketplace for redetermination of your eligibility with a household income of \$29,016.00 and a tax-filing status of Head of Household.

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]