



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

Notice of Decision

Decision Date: April 22, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001243

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

Dear [REDACTED],

On January 20, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 20, 2013 preliminary determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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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Issues

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

Was your December 18, 2014 appeal request timely with regard to the Marketplace’s December 20, 2013 determination?

If the appeal was timely and the substantive issue can be addressed, did the Marketplace properly determine that you and your family were eligible for up to \$439.00 per month in advance premium tax credit and for cost-sharing reductions?

Procedural History

The Marketplace received your initial application for health insurance for yourself, your spouse, and your son on December 20, 2013.

On that same day, the Marketplace made a preliminary determination that you and your spouse were eligible to receive up to \$439.00 per month in advance premium tax credit (APTC) and receive cost-sharing reductions (CSR). It also stated that your son was eligible to enroll in Child Health Plus with a \$15.00 premium amount. This determination relied upon an attested expected household income of \$46,200.00.

On November 5, 2014, the Marketplace issued a notice of eligibility determination based on information from state and federal data sources obtained as of November 4, 2014. It stated that your household qualified for Medicaid effective January 1, 2015.

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On December 17, 2014, the Marketplace received your 2015 application and made a preliminary determination that you, your spouse, and your two sons were eligible for Medicaid effective January 1, 2015.

On December 18, 2014, you spoke to the Marketplace's Account Review Unit and appealed the December 20, 2013 preliminary determination insofar as it found your family eligible for APTC and CSR rather than Medicaid.

On December 19, 2014, the Marketplace issued an eligibility determination that reflected the December 17, 2014 preliminary determination.

On January 20, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to allow you the opportunity to submit supporting income documentation for the 2014 tax year. The record was to be closed on February 4, 2015, or upon receipt of those documents, whichever occurred earlier.

Also on January 20, 2015, the Marketplace issued your form 1095-A (health Insurance Marketplace Statement) for advance payments of the premium tax credit that you received during 2014.

On January 26, 2015, the Marketplace's Appeals Unit received a seven-page fax from you, which included a written statement and pay stubs for the 2014 tax year. It was marked into evidence as "Appellant's Exhibit 1" and incorporated into the record. The record was closed that same day.

Findings of Fact

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

- 1) You are married and have two children.
- 2) When you submitted your initial health insurance application on December 20, 2013, you were married and had one child. Your second child was born on [REDACTED].
- 3) You expect to file your 2015 federal income tax return as married filing jointly, and claim two dependents.
- 4) According to your December 20, 2013 application, you expected to file your 2014 income tax return as married filing jointly, and claim one dependent.

- 5) On your December 20, 2013 application for health insurance, you attested to an expected income of \$46,200.00. During your hearing you testified that in December 2013 you believed that to be an accurate estimate of your income for 2014.
- 6) The Marketplace made a preliminary determination on your initial application on December 20, 2013, but the record does not contain a notice of eligibility determination on that application.
- 7) At the January 20, 2015 hearing, you testified that between October and December 2014 you realized that your estimate of 2014 income had been inaccurate. You further testified that your income fluctuates and is dependent upon the jobs that are available.
- 8) You testified that you did not modify your account when your expected income changed because you did not realize that you could make changes to your account throughout the year.
- 9) You testified that you received approximately \$300.00 to \$500.00 in interest income from an IRA during the 2014 tax year.
- 10) On January 26, 2015, the Marketplace's Appeals Unit received your supporting income documentation. You indicated that between January 1, 2014 and April 15, 2014, you earned self-employed business income of approximately \$20,000.00 after business expense deductions. According to your August 6, 2014 paystub, you earned \$1,960.75 before taxes were deducted. According to your August 20, 2014 paystub, you earned \$3,754.75 before taxes were deducted. According to your October 24, 2014 paystub, you earned \$1,462.50 before taxes were deducted. According to your October 31, 2014 paystub, you earned \$821.25 before taxes were deducted. According to your December 10, 2014 paystub, you earned \$2,857.50 before taxes were deducted. According to your December 24, 2014 paystub, you earned \$1,170.00 before taxes were deducted. In your written statement, you indicated that these were your earnings for the entire 2014 tax year (Appellant's Exhibit 1).
- 11) You testified you expect to take deductions for business expenses.
- 12) You testified that you want your premiums reimbursed for the entire 2014 health insurance coverage year because you should have been Medicaid eligible based on the actual income you earned for the entire year.
- 13) You testified, and the record reflects, that you reside in New York County.

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

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Applicable Law and Regulations

Appeal Requests

“The [Marketplace] and the appeals entity must allow an applicant or enrollee to request an appeal within (1) 90 days of the date of the notice of eligibility determination; or (2) A timeframe consistent with the state Medicaid agency’s requirement for submitting fair hearing requests, provided that timeframe is no less than 30 days, measured from the date of the notice of eligibility determination” (45 CFR § 155.520(b)).

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 2014 is set by federal law at 2% to 9.5% of annual household income (26 USC § 36B(b)(3)(A)).

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 initial application, that was the 2013 FPL, which is \$19,530.00 for a three-person household (78 Fed. Reg. 5182, 5183).

For annual household income in the range of at least 200% but less than 250% of the 2013 FPL, the expected contribution is between 6.30% and 8.05% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and their actual gross income for that year. A person who received less tax credit than his maximum entitlement, based on gross income, may receive an income tax refund. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

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)).

Legal Analysis

Here, there is a threshold issue on whether your December 18, 2014 appeal request was timely with regard to the Marketplace's December 20, 2013 determination. On December 20, 2013, the Marketplace made a preliminary determination that you were eligible for up to \$439.00 per month in advance premium tax credit and cost-sharing reductions, but it did not issue a notice of eligibility determination.

The timeliness of an appeal request is calculated from the date on which the notice of eligibility determination is issued. Here, the Marketplace promptly made and implemented a determination on the December 20, 2013 application, but the record does not contain a written, dated notice of eligibility determination. Since there is no date from which a timeliness determination may be made pursuant to 45 CFR § 155.520(b), the Marketplace is deemed to have waived any timeliness objection to the instant appeal.

The next issue is whether the Marketplace properly determined that you and your family were eligible for an advance premium tax credit (APTC) of up to \$439.00 per month.

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In the application that was submitted on December 20, 2013, you attested to an expected yearly income of \$46,200.00. The eligibility determination relied upon that information.

According to the record, at the time of your December 20, 2013 application you and your spouse expected to file jointly and claim your one child as a dependent. Therefore, you were in a three-person tax household.

You reside in New York County, where the second lowest cost silver plan available for 2014 for a couple through the Marketplace cost \$730.57 per month.

An expected annual income of \$46,200.00 is 236.56% of the 2013 federal poverty level (FPL) for a three-person household. At 236.56% of the FPL, the expected contribution to the cost of the health insurance premium is 7.58% of income, or \$291.81 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 a couple in your county (\$730.57 per month) minus your expected contribution (\$291.81 per month), which equals \$438.76. Therefore, the Marketplace correctly computed your APTC amount, rounded to the nearest dollar, to be \$439.00 per month.

The December 20, 2013 preliminary eligibility determination was correct and is **AFFIRMED**.

However, during your January 20, 2015 hearing, you credibly testified that you miscalculated your expected 2014 income. You contend that your family should have been Medicaid eligible throughout 2014 and ask that the health insurance premium payments you made during 2014 be reimbursed.

Although the actual 2014 income you testified to at your hearing is lower than expected income indicated on your December 20, 2013 application, any difference in your financial assistance is most properly resolved on your federal tax return, using the information provided in the form 1095-A issued by the Marketplace on January 20, 2015.

Decision

The Marketplace is deemed to have waived any timeliness objection to your December 18, 2014 appeal of the December 20, 2013 determination.

The December 20, 2013 preliminary determination is **AFFIRMED**.

Effective Date of this Decision: April 22, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You and your family remain eligible for Medicaid effective January 1, 2015.

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
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- By fax: 1-855-900-5557

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Summary

The Marketplace is deemed to have waived any timeliness objection to your December 18, 2014 appeal of the December 20, 2013 determination.

The December 20, 2013 preliminary determination is AFFIRMED.

This decision does not change your eligibility.

You and your family remain eligible for Medicaid effective January 1, 2015.

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]
[REDACTED]

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