



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: AP000000001262

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On January 26, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 23, 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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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001262

[REDACTED]
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Issues

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

Did the Marketplace properly determine that you were eligible to receive up to \$124.00 per month in advance premium tax credit, effective February 1, 2015?

Did the Marketplace properly determine that you were not eligible for Medicaid, effective February 1, 2015?

Did the Marketplace properly determine that you were not eligible for additional assistance under the APTC Premium Assistance Program under Social Services Law § 367-a(3)(e)?

Procedural History

The Marketplace received your updated application for health insurance on December 22, 2014.

That same day, the Marketplace made a preliminary determination based on your December 22, 2014 application. It found you eligible to receive an advance premium tax credit (APTC) of up to \$124.00 per month, eligible for cost-sharing reductions (CSR), and ineligible for Medicaid and the APTC Premium Assistance Program. This determination was based, in part, on an expected yearly income of \$48,048.00, as you attested in your application.

That same day, you spoke with the Marketplace's Account Review Unit to appeal the December 22, 2014 preliminary determination.

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On December 23, 2014, the Marketplace issued a notice of eligibility redetermination in response to your December 22, 2014 application. It stated that you were eligible to receive up to \$124.00 per month in APTC and, if you selected a silver-level plan, CSR. It also stated that you were ineligible for Medicaid but it did not provide information on your APTC Premium Assistance Program eligibility.

On January 26, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open because the Hearing Officer directed you to provide additional evidence to corroborate your testimony: (1) earnings statements issued to your spouse, reflecting earned income received during the month of December 2014, and (2) your 2013 U.S. Income Tax Return or reasonably acceptable documentation reflecting the ability to claim approximately \$2,000.00 in "educator expense" deductions. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On January 30, 2015, the Marketplace's Appeals Unit received (1) your 2013 tax return, (2) an earnings statement issued to your spouse on December 26, 2014, and (3) an earnings statement issued to your spouse on January 9, 2015.

Accordingly, the record was closed on February 10, 2015.

Findings of Fact

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

- 1) You testified, and your application indicates, that you and your spouse live with your mother and your three children: a 12-year-old son, an 11-year-old daughter, and a 5-year-old son.
- 2) You testified that you are seeking health insurance coverage only for yourself, because your spouse, children, and mother have health insurance outside of the Marketplace.
- 3) You testified, and your application indicates, that you expect to file your 2015 federal income tax return jointly with your spouse and claim your three children and your mother as dependents.
- 4) You testified, and your application indicates, that you live in Onondaga County, New York.

- 5) The December 22, 2014 application states that your spouse's expected income for 2015 is the same as last year, \$48,048.00. You testified that this was entered in error, and that you must have accidentally selected the "same income as last year" option.
- 6) The December 22, 2014 application also states that your spouse will have earned income of \$47,796.97 and will claim educator expense deductions of \$2,000.00. You testified that you were unsure on what basis he intends to claim the \$2,000.00 in deductions.
- 7) Your 2013 1040 U.S. Individual Income Tax Return, filed on March 14, 2014, reports an adjusted gross income of \$46,920.00 (Line 37) and claims no educator expense deductions (Line 23).
- 8) According to your application, your spouse is employed by [REDACTED].
- 9) You provided earnings statements issued to your spouse by [REDACTED] for work performed from December 7, 2014 to December 20, 2014, resulting in income of \$1,869.50 he received on December 26, 2014, and for work performed from December 21, 2014 to January 3, 2015, resulting in income of \$1,386.00 he received on January 9, 2015.

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

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minus

2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which was \$31,970.00 for a six-person household (79 Fed. Reg. 3593, 3593).

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 household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3(g)(1), IRS Rev. Proc. 2014-37).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

Medicaid

Medicaid can be provided through the Marketplace to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a state's Medicaid State Plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL "for the applicable budget period used to determine an individual's eligibility" (42 CFR § 435.4). On the date of your application, that was the 2014 FPL, which is \$31,970.00 for a six-person household (79 Fed. Reg. 3593, 3593).

APTC Premium Assistance

Advance premium tax credit (APTC) Premium Assistance is available in New York State to a person who:

1) is a parent of a child under 21 years old;

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- 2) has a household income greater than 138% of the FPL but less than or equal to 150% of the FPL for the applicable family size;
- 3) is not eligible for Medicaid;
- 4) is enrolled in a silver-level QHP; and
- 5) is applying the full amount of the APTC to the cost of the plan

(N.Y. Soc. Serv. Law § 367-a(3)(e)).

Tax Deductions for Eligible Educators

“In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, or 2014 the deductions allowed by section 162 [26 USC § 162] which consist of expenses, not in excess of \$250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom” (26 USC §62(a)(2)(D)).

“For purposes of subsection (a)(2)(D), the term ‘eligible educator’ means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year” (26 USC § 62(b)(1)(A)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that you were eligible to receive up to \$124.00 per month in advance premium tax credit (APTC).

In the application that was submitted on December 22, 2014, you attested to an expected yearly income of \$48,048.00. The preliminary determination prepared on December 22, 2014 and the notice of eligibility determination issued on December 23, 2014 relied upon that information.

According to the record, you are in a six-person tax household, since you expect to file a joint 2015 U.S. Income Tax return with your spouse and claim your three children and mother as dependents.

You reside in Onondaga County, where the second lowest cost silver plan that is available through the Marketplace for an individual costs \$285.13 per month.

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An annual household income of \$48,048.00 is 150.29% of the 2014 federal poverty level (FPL) for a six-person household. At 150.29% of the FPL, the expected contribution to the cost of the health insurance premium is 4.03% of income, or \$161.36 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$285.13 per month) minus your expected contribution (\$161.36 per month), which equals \$123.77 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you eligible for an APTC of up to \$124.00 per month.

The second issue under appeal is whether the Marketplace properly determined that you were not eligible for Medicaid.

Medicaid can be provided through the Marketplace to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$31,970.00 for a six-person household. Since \$48,048.00 is 150.29% of the 2014 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using information provided in your application.

The final issue under review is whether you were eligible for the APTC Premium Assistance Program as of December 22, 2014.

You submitted an application on December 22, 2014 and the Marketplace made a preliminary determination that same day. According to the Overview screen of your Marketplace account, you were ineligible for the APTC Premium Assistance Program because you were "Over Income." This information does not appear on the December 23, 2014 notice of eligibility determination.

APTC Premium Assistance is available to a person who has an annual household income that is between 138% and 150% of the FPL. Since an annual household income of \$48,048.00 is 150.29% of the 2014 FPL, you were not eligible for APTC Premium Assistance as of December 22, 2014, based on the information provided.

Since the December 23, 2014 eligibility determination, relying on information in your December 22, 2014 application, did not find you eligible for APTC Premium Assistance and properly stated that you were eligible for APTC up to \$124.00 per month, eligible for cost sharing reductions (CSR), and ineligible for Medicaid, it is correct and is AFFIRMED.

However, at the hearing you credibly testified that, of the two 2015 annual incomes given on your decision (\$48,048.00 and \$47,796.97), the one that is more accurate is \$47,796.97.

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The December 22, 2014 application also indicates that your spouse expects to claim a \$2,000.00 “educator expense” deduction for 2015.

According to your application, your spouse is employed by [REDACTED]. There is no indication in the record that he will be employed by a school as a teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during the 2015 school year. The 2013 federal tax return that was provided after your hearing does not confirm that your spouse worked as a qualifying educator during 2013 or took an educator expense tax deduction that year. Therefore, the record does not suggest that your spouse can expect to claim an educator expense deduction for 2015.

Since the credible evidence supports a finding that your expected household income is \$47,796.97, without deductions, your eligibility for financial assistance should be redetermined on that information.

If your spouse does expect to claim deductions on your 2015 joint federal tax return, you can modify your Marketplace account to include the corrected information.

Accordingly, your case is RETURNED to the Marketplace to redetermine your eligibility based on a six-person household in Onondaga County, New York, with an expected household income of \$47,796.97.

Decision

The December 22, 2014 preliminary eligibility determination is AFFIRMED.

Your case is returned to the Marketplace to redetermine your eligibility based on a six-person household in Onondaga County, New York, with an expected household income of \$47,796.97.

Effective Date of this Decision: April 21, 2015

How this Decision Affects Your Eligibility

On the attested income of \$48,048.00, you remain eligible for an advance premium tax credit (APTC) of up to \$124.00 per month and, while you are enrolled in a silver-level qualified health plan, for cost-sharing reductions.

On the attested income of \$48,048.00, you are not eligible for Medicaid or the APTC Premium Assistance Program.

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However, this is not your final determination. You will receive a new determination based on a six-person household in Onondaga County, New York, with an expected household income of \$47,796.97.

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
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Albany, NY 12211
- By fax: 1-855-900-5557

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Summary

The December 22, 2014 preliminary eligibility determination is **AFFIRMED**.

On the attested income of \$48,048.00, you remain eligible for an advance premium tax credit (APTC) of up to \$124.00 per month and, while you are enrolled in a silver-level qualified health plan, for cost-sharing reductions.

On the attested income of \$48,048.00, you are not eligible for Medicaid or the APTC Premium Assistance Program.

However, this is not your final determination. You will receive a new determination based on a six-person household in Onondaga County, New York, with an expected household income of \$47,796.97.

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]