



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: AP000000001309

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On January 26, 2015, your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's January 1, 2015 notice of 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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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001309

[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 are eligible to receive an advance premium tax credit of up to \$0.00 per month, effective February 1, 2015?

Did the Marketplace properly determine that you are not eligible for cost-sharing reductions as of February 1, 2015?

## Procedural History

The Marketplace received your modified application for health insurance on November 29, 2014.

On November 30, 2014, an eligibility determination notice was issued. The notice stated that you were eligible for \$0.00 per month in advance premium tax credit (APTC). You were not eligible for cost-sharing reductions (CSR) because your income is over the allowable limit. Your eligibility was based on an attested household income of \$69,200.01.

On December 31, 2014, your eligibility was redetermined on your November 29, 2015 application. The Marketplace made a preliminary redetermination that you were eligible for \$0.00 per month in APTC and that both of your children were eligible to enroll in Child Health Plus.

Also on December 31, 2014, you spoke with the Marketplace's Account Review Unit and appealed the preliminary redetermination insofar as it found you eligible for only \$0.00 per month in APTC.

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On January 1, 2015, the Marketplace issued an eligibility determination notice consistent with the December 31, 2014 preliminary determination; it stated that you were eligible to receive \$0.00 per month in APTC. The notice further stated that you were not eligible for cost-sharing reductions because your income is over the allowable limit and that both of your children were eligible to enroll in Child Health Plus. Your eligibility was based on an attested household income of \$69,200.01.

On January 26, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. During the hearing, your husband acted as your authorized representative and testified on your behalf. 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 uploaded an Authorized Representative Designation form on January 15, 2015. You appointed your husband as your Authorized Representative and he testified on your behalf during the hearing.
- 2) Your husband testified that you plan on filing your 2015 tax return as married filing jointly with your spouse and that you will claim two dependents on that tax return.
- 3) Your December 31, 2014 application lists an expected annual household income of \$69,200.01.
- 4) Your husband testified that during 2015 you expect to receive approximately \$12,000.00 in income; however this amount could be lower because you are self-employed.
- 5) Your husband testified during 2015 he expects to receive about \$60,000.00 in income.
- 6) Your husband testified that you plan to claim a business expenses deduction of at least \$10,700.00 on your joint 2015 tax return. This deduction is claimed on a Schedule C form.
- 7) Your husband testified that he plans to claim a business expenses deduction of at least \$8,200.00 on your joint 2015 tax return. This deduction is claimed on a Schedule C form.
- 8) You testified that you reside in Kings County, New York.

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- 9) You are the only member of your household appealing your eligibility determination at this time.

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 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 \$23,850.00 for a four - person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 250% but less than 300% of the 2014 FPL, the expected contribution is between 8.10% and 9.56% of the

household income (26 CFR § 1.36B-3T(g)(1) (good until 2017), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

“A taxpayer must reconcile the amount of credit allowed under section 36B [26 USCS § 36B] with advance credit payments on the taxpayer's income tax return for a taxable year. A taxpayer whose premium tax credit for the taxable year exceeds the taxpayer's advance credit payments may receive the excess as an income tax refund. A taxpayer whose advance credit payments for the taxable year exceed the taxpayer's premium tax credit owes the excess as an additional income tax liability” ((26 CFR § 1.36B-4(a)(1)(i)).

### 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 QHP (45 CFR § 155.305(g)(1)).

### Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR 155.300(a)). “The term ‘modified adjusted gross income’ 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)).

“Adjusted gross income” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, deductions that are attributable to a trade or business may be deductions from a taxpayers adjusted gross income (26 USC § 62 (a)(1)).

Generally, gross income does not include “amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer)” (26 USC § 104(a)(3)).

## Legal Analysis

The first issue is whether the Marketplace properly determined that, as of January 1, 2015, you were eligible for an advance premium tax credit (APTC) of up to \$0.00 per month.

In the application that was submitted on December 31, 2014, you attested to an expected yearly income of \$69,200.01, and the eligibility determination relied upon that information.

According to the record, you are in a four-person household. You plan on filing your 2015 income tax return as married filing jointly and claim two dependents on that tax return.

You reside in Kings County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month.

An annual income of \$69,200.01 is 290.15% of the 2014 federal poverty level (FPL) for a four-person household. At 290.15% of the FPL, the expected contribution to the cost of the health insurance premium is 9.27% of your household income, or \$534.57 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 an individual in your county (\$371.75 per month) minus your expected contribution (\$534.57 per month). Since your expected contribution of \$534.57 per month for the 2015 tax year exceeds the monthly premium for the second lowest cost silver plan in your county, you would be eligible for \$0.00 per month in APTC.

Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$69,200.01 is 290.15% of the 2014 FPL, the Marketplace correctly found you not eligible for cost-sharing reductions.

Since the January 1, 2015 notice of eligibility determination properly stated that, based on the information you provided on your application, you were eligible for APTC of up to \$0.00 per month and not eligible for cost-sharing reductions, effective February 1, 2015, it is AFFIRMED.

However, at the hearing your husband testified to additional income information that was not a part of your application. Your husband testified that during 2015 you plan to receive about \$12,000.00 in income and that he expects to receive about \$60,000.00 in income. Your husband further testified that you and your spouse expect to claim business expense deductions in the amount of \$10,700.00 and \$8,200.00, respectively. These amounts would result in a modified adjusted gross income (MAGI) of \$53,100.00. Therefore, your case is

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RETURNED to the Marketplace for a redetermination of your eligibility based on a household of four people in Kings County with an attested household income of \$53,100.00.

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (as attested to the Marketplace) with their actual income (stated on their income tax return). Those who take less tax credit in advance than they claim on the tax return may have their taxes reduced or get the rest of the credit as an income tax refund. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

If, as the year progresses, you find that your business expenses are not as high as expected, you can return to the Marketplace to update your income information and request redetermination of your APTC for the remainder of the year.

## **Decision**

The January 1, 2015 eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace for a redetermination of your eligibility based on a four-person household in Kings County, with a household income of \$53,100.00.

**Effective Date of this Decision:** April 22, 2015

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

This decision does not change your eligibility.

However, it returns your case to the Marketplace for redetermination of your eligibility for financial assistance based on a household of four people in Kings County, with a household income of \$53,100.00.

If, as the year progresses, you find that your business expenses are not as high as expected, you can return to the Marketplace to update your income information and request redetermination of your APTC for the remainder of the year.



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

## **Summary**

The January 1, 2015 eligibility determination is **AFFIRMED**.

This decision does not change your eligibility.

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However, it returns your case to the Marketplace for redetermination of your eligibility for financial assistance based on a household of four people in Kings County, with a household income of \$53,100.00.

If, as the year progresses, you find that your business expenses are not as high as expected, you can return to the Marketplace to update your income information and request redetermination of your APTC for the remainder of the year.

## **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]