



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

Notice of Decision

Decision Date: June 8, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001345

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On May 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 24, 2014 eligibility 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:

Did the Marketplace properly determine that you, your spouse and son are eligible to receive an advance premium tax credit of up to \$766.00 per month and eligible to receive cost-sharing reductions, if you select a silver-level qualified health plan?

Did the Marketplace properly determine that your daughter is eligible for Child Health Plus with a monthly premium of \$15.00?

Did the Marketplace properly determine that you, your spouse and children are not eligible for Medicaid?

Procedural History

On December 23, 2014, you updated your Marketplace account.

On December 24, 2014, the Marketplace issued an eligibility determination notice stating that you, your spouse and son are eligible to receive up to \$766.00 monthly of advance premium tax credits and eligible to receive cost-sharing reductions, if you select a silver-level qualified health plan. Your daughter was determined eligible to enroll through Child Health Plus with a \$15.00 premium per month.

On January 5, 2015, you spoke to the Marketplace's Account Review Unit and requested an appeal insofar as the amount of financial assistance you were determined eligible to receive.

On January 28, 2015, you had a scheduled telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. On that date you failed to answer on three separate attempts.

On February 19, 2015, a notice of dismissal for failing to appear at your scheduled hearing was issued by the Marketplace Appeals Unit.

On March 9, 2015, you mailed a letter providing a valid reason for missing your scheduled telephone hearing, and a new hearing date was scheduled.

On May 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Testimony was taken during the hearing. The record was held open for you to submit additional income documentation.

On May 15, 2015, the Marketplace Appeals Unit received a four-page fax from you that consisted of a cover page; a brief statement; and 2 paystubs from your wife's employment. That fax has been marked as "Appellant's Exhibit A" and has been made part of the record. The record is now closed.

Findings of Fact

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

1. You are applying for health insurance through the Marketplace for yourself, your spouse and your two children.
2. You plan on filing a 2015 federal income tax return with the tax status of married filing jointly and will claim two dependents on that return.
3. You testified that you receive \$2,033.00 monthly in Social Security Benefits.
4. According to your December 23, 2014 application, your spouse earns \$874.00 biweekly.
5. On May 15, 2015, you faxed two biweekly paystubs for your spouse from her employer. The paystub dated December 5, 2014 shows gross earnings of \$942.18 and the paystub dated December 19, 2014, shows gross earnings of \$891.48 (Appellant's Exhibit A p. 3-4).
6. According to your December 23, 2014, application your son has an expected yearly income of \$0.00.

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7. You testified that your daughter receives \$1,016.00 a month in Social Security Benefits. However, her Social Security Benefits will discontinue in June 2015.

8. You reside in Suffolk County, New York.

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

Applicable Law and Regulations

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, 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” means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

“Gross income” is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's Social Security benefits are included in gross income only to the extent that the sum of the person's IRS-defined “modified adjusted gross income” plus one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Household Income

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A tax filer's MAGI household income includes the MAGI-based income of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who has yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 will be required to file a tax return (see IRS Revenue Procedure 2014-61).

"Unearned income" is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the *taxable* part of social security and pension payments (IRS Publication 929, p. 15).

Legal Analysis

The issues presented for review are whether the Marketplace properly determined your family's eligibility for an advanced premium tax credit, Child Health Plus and Medicaid. In order to determine your family's eligibility for these programs, the first question is whether the Marketplace properly determined your household's expected income for 2015.

In the December 23, 2014 application, you attested to a 2015 expected annual household income of \$53,216.00, which included (1) your Social Security Benefits of \$24,396.00, (2) your spouse's earnings of \$22,724.00, and (3) \$6,096.00 of Social Security benefits for your daughter. The Marketplace included your daughter's Social Security benefits in your household income when determining your eligibility for financial assistance.

An individual's Social Security benefits are counted as gross income only to the extent that the sum of the person's "modified adjusted gross income" (MAGI) plus one-half of their Social Security benefits is greater than \$25,000.00.

The credible evidence of record indicates that your daughter has no earned income. With no earned income, the sum of her MAGI-based income plus half of her Social Security benefits cannot exceed \$25,000.00, whether one expects her 2015 benefits to be \$6,096.00 (\$1,016.00 per month for 6 months, as per your testimony).

Therefore, your daughter's Social Security benefits are not counted as gross income and her expected gross income for 2015 is \$0.00.

Since your daughter expects no earned income during 2015 and her expected unearned income is less than \$1,050.00, the record as currently developed does not indicate that she will be required to file a federal tax return during 2015.

Since the record does not indicate that your daughter will be required to file a federal tax return, her income should not be included in your expected household income for 2015.

Therefore, when the Marketplace determined your eligibility on December 24, 2014, it should have counted your expected income (\$24,396.00) and your spouse's expected income (\$22,724.00), for a total of \$47,120.00.

However, the Marketplace added the \$6,096.00 you identified as your daughter's Social Security benefits, which overstated your household income as \$53,216.00, and made its December 24, 2014 determination on that basis.

Since the December 24, 2014 determination is based on a miscalculation of your expected 2015 household income, it is RESCINDED.

Your case is returned to the Marketplace for a redetermination of your eligibility based on a four-person household living in Suffolk County with a household income of \$47,120.00.

Decision

The December 24, 2014 eligibility redetermination is RESCINDED.

Your case is returned to the Marketplace for a redetermination of your eligibility based on a 2015 expected household income of \$47,120.00.

Effective Date of this Decision: June 8, 2015

How this Decision Affects Your Eligibility

This decision does not determine your final eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your eligibility on your corrected household income.

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 December 24, 2014 eligibility redetermination is **RESCINDED**.

This decision does not determine your final eligibility for financial assistance.

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It returns your case to the Marketplace for a redetermination of your eligibility on your expected 2015 household income of \$47,120.00.

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]