



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

## Notice of Decision

Decision Date: May 8, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001354

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Ms. [REDACTED],

On January 30, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's January 6, 2015 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

Decision Date: May 8, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001354

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issues

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

Did the Marketplace properly determine on January 6, 2015 that you were eligible to receive an advance premium tax credit of \$0.00 per month, effective February 1, 2015?

Did the Marketplace properly determine on January 6, 2015 that you were not eligible for cost-sharing reductions effective February 1, 2015?

Did the Marketplace properly determine that your children were eligible to enroll through Child Health Plus with a \$30.00 per month premium, effective February 1, 2015?

## Procedural History

On January 5, 2015 the Marketplace received your household's application for health insurance.

On January 6, 2015 income information in your application was modified. A preliminary eligibility determination was prepared in your case that stated that you were eligible for \$0.00 in advance premium tax credits and that [REDACTED], [REDACTED], and [REDACTED] were eligible to enroll in Child Health Plus with a premium of \$30.00 per month each.

Also on January 6, 2015 you spoke with the Marketplace's Account Review Unit and appealed that preliminary eligibility determination.

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On January 7, 2015 the Marketplace issued an eligibility determination notice based on the information contained in your January 6, 2015 application. That notice stated that, based on a household income of \$65,760.00, you were eligible for \$0.00 per month in advance premium tax credits. You, [REDACTED] were not eligible for Medicaid or for cost-sharing reductions because your income was over the allowable limits for those programs. The notice further stated that [REDACTED], [REDACTED], and [REDACTED] were eligible to enroll in Child Health Plus with a premium of \$30.00 per month.

On January 30, 2015 you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. 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) In your application you attested that you are divorced, and you testified that you plan on filing your 2015 tax return as single and will claim three children as dependents on that tax return.
- 2) At the time of your application, your Marketplace account listed a gross income of \$65,760.00. This amount consisted of income of \$20,800.00 from your job, income of \$9,932.00 from [REDACTED]'s job, income of \$2,600.00 from [REDACTED]'s job, and income of \$2,548.00 from [REDACTED]'s job. The amount also included a total of \$29,880.00 from Social Security Survivor Benefits received by [REDACTED] and [REDACTED].
- 3) You testified that your expected annual income from your job is \$20,800.00
- 4) You testified that [REDACTED]'s expected annual income from her job is \$10,000.00.
- 5) You testified that [REDACTED]'s expected annual income from his job is \$2,080.00.
- 6) You testified that [REDACTED]'s expected annual income from her job is \$2,080.00.
- 7) You testified that your children's father passed away and [REDACTED] and [REDACTED] began receiving Social Security Survivor Benefits because they were under 18 years old.

- 8) You testified that [REDACTED] and [REDACTED] each expect to receive \$14,940.00 from Social Security Survivor Benefits in 2015.
- 9) You testified that you do not expect to claim any tax deductions on your 2015 tax return.
- 10) You testified that you reside in [REDACTED] County.
- 11) You testified that the Survivor Benefits are not family income and you believe the Survivor Benefits should not be used in calculating your household's eligibility for financial assistance.

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

## **Applicable Law and Regulations**

### Household 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)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI 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 had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would 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).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term MAGI 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

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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)).

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term “modified adjusted gross income” the same definition as “adjusted gross income,” without regard to certain income sources that are not relevant here (26 USC § 86(b)(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 income from Social Security benefits is included in their gross income only to the extent that the sum of the person’s IRS-defined “modified adjusted gross income” and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

#### 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 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) (good until 2017), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

### 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)).

### Child Health Plus

A child may be eligible for coverage through Child Health Plus (CHP) provided (1) he or she lives in a household having a household income at or below 400% of the FPL and (2) is not eligible for medical assistance (Medicaid), except that a child who becomes eligible for Medicaid after becoming eligible for CHP, may be eligible for a subsidy payment for a period of three months after becoming eligible for such medical assistance (NY Public Health Law § 2511(2)(b) and (3)).

A child who meets the eligibility requirements for CHP may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the FPL (New York Public Health Law (PHL) § 2511(2)(a)(iii)). The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child's family household income (PHL § 2510(9)(d)).

## Legal Analysis

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when calculating your family's eligibility for financial assistance.

The January 7, 2015 eligibility determination used a household income of \$65,760.00 to determine your household's eligibility for financial assistance. At that time, according to your application, this amount included income from your job in the amount of \$20,800.00, income from [REDACTED] job of \$9,932.00, income from [REDACTED] job of \$2,600.00, and income from [REDACTED]'s job of \$2,548.00. The amount also included a total of \$29,880.00 from Social Security Survivor benefits that [REDACTED] and [REDACTED] receive.

Household income for the purposes of calculating a person's eligibility for financial assistance to help pay for the costs of health insurance through the Marketplace, consists of the modified adjusted gross income of all tax filers in a household who are required to file a tax return.

You testified that you will be filing your tax return as single and that you will claim [REDACTED], [REDACTED], and [REDACTED] as dependents on that tax return.

A dependent is required to file a tax return for 2015 when their earned income is greater than \$6,300.00. On the date of your application, [REDACTED] had an income of \$9,932.00; at an income over \$6,300.00, she would be required to file a tax return and her income would therefore be included in the household's income. However, [REDACTED] had earned income of \$2,600.00; and [REDACTED] had income of \$2,548.00. Since these amounts are under \$6,300.00, [REDACTED] and [REDACTED] are NOT required to file a tax return on the basis of their earned income.

A dependent is also required to file a tax return when their unearned income is greater than \$1,000.00. Unearned income includes the taxable portion of Social Security benefits.

To estimate whether any portion of a person's expected Social Security benefits will be taxable, add one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, [REDACTED] received \$14,940.00 in income from Social Security Survivor benefits and \$2,600.00 in income from a job. Therefore, \$7,470.00 (one-half the amount of Social Security he receives) plus \$2,600.00 equals \$10,070.00. Since \$10,070.00 is less than \$25,000.00, [REDACTED] has no taxable income from Social Security and is not required to file a tax return on the basis of his unearned income.

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At the time of your application, [REDACTED] received \$14,940.00 in income from Social Security Survivor benefits and \$2,548.00 in income from a job. Therefore, \$7,470.00 (one-half the amount of Social Security she receives) plus \$2,548.00 equals \$10,018.00. Since \$10,018.00 is less than \$25,000.00, [REDACTED] has no taxable income from Social Security and is not required to file a tax return on the basis of her unearned income.

Since [REDACTED] and [REDACTED] are not required to file a tax return according to the information provided to the Marketplace, the Marketplace should not include their earnings or Social Security benefits when determining the household's income.

Therefore, the January 7, 2015 eligibility determination notice that lists a household income of \$65,760.00 is RESCINDED. Your case will be returned to the Marketplace for a redetermination of your household's eligibility for financial assistance based on the corrected amount of household income.

At the hearing, you testified that [REDACTED] will make \$10,000.00 this year. Since this amount is over the filing requirement threshold, it should be included in your household's income. You also testified that you will make \$20,800.00. Therefore, your household's income for the purposes of calculating eligibility for financial assistance for health insurance is \$30,800.00.

## **Decision**

The January 7, 2015 eligibility determination is RESCINDED.

Your case is REMANDED to the Marketplace for a redetermination of your household's eligibility for financial assistance based on a four-person household, with a household income of \$30,800.00, and a county of residence of [REDACTED] County.

**Effective Date of this Decision:** May 8, 2015

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

This decision is not a final determination of your eligibility.

Your case is being returned to the Marketplace for redetermination of your household's eligibility for financial assistance based on a household of four people, with a household income of \$30,800.00 and a county of residence of [REDACTED] County.

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Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

### **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

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## **Summary**

The January 7, 2015 eligibility determination is RESCINDED.

Your case is being returned to the Marketplace for redetermination of your household's eligibility for financial assistance based on a household of four people, with a household income of \$30,800.00 and a county of residence of Schenectady County.

## **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]