



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

## Notice of Decision

Decision Date: June 10, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001491

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

Dear [REDACTED],

On February 20, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's January 16, 2015 preliminary 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 letter.

### Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

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**Issue**

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

Did the Marketplace properly determine that you, your wife, and your older daughter are eligible for an advance premium tax credit of up to \$596.00 per month, as of January 17, 2015?

Did the Marketplace properly determine that your younger daughter is eligible for Child Health Plus with a \$30.00 monthly premium, as of January 17, 2015?

**Procedural History**

The Marketplace received your application for health insurance on January 16, 2015 and prepared a preliminary eligibility determination in your case. It stated that you, your spouse and your older daughter are eligible to enroll in a qualified health plan through the Marketplace and share an advance premium tax credit of up to \$596.00 per month. It further stated that, based on a household income of \$64,242.00, your younger daughter is qualified for health insurance through Child Health Plus with a \$30.00 monthly premium.

Also on January 16, 2015, you spoke with the Marketplace’s Account Review Unit and appealed that preliminary determination insofar as it did not approve an advance premium tax credit of more than \$596.00 per month.

On January 17, 2015, the Marketplace issued an eligibility determination notice that reflected the preliminary eligibility determination prepared on January 16, 2015.

On February 20, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. During the hearing, interpretation services were provided by Spanish Interpreter, Number [REDACTED]. The record was developed during the hearing and left open for up to 15 days to give you an opportunity to submit supporting income documentation. The Marketplace's Appeals Unit did not receive your supporting income documentation within the 15-day period, and the record was closed on March 7, 2015.

## **Findings of Fact**

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

- 1) You testified, and the record reflects that you currently live with your spouse and your two daughters.
- 2) You testified, and the record reflects, that you expect to file your 2015 federal income tax return as married filing jointly, and expect to claim your daughters as dependents.
- 3) You further testified that you take care of your mother and you expect to claim her as a dependent for the 2015 tax year.
- 4) You testified that the individuals seeking insurance through New York State of Health include you, your wife and your two daughters.
- 5) According to your January 16, 2015 application, you expect to earn \$53,127.00 for the 2015 tax year, before taxes are deducted. However, at the hearing, you testified that you earn \$22.75 per hour before taxes are deducted, and work 36.5 hours per week.
- 6) According to the January 16, 2015 application, your older daughter expects to earn \$11,115.00 for the 2015 tax year before taxes are deducted.
- 7) At the hearing, you testified that your older daughter is currently a full-time student. You further testified that she expects to earn approximately \$8,000.00 for the 2015 tax year before taxes are deducted.
- 8) The record reflects that you live in Kings County, New York.

- 9) You testified that you cannot afford a health insurance premium after paying all of your monthly expenses.

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).

For annual household income in the range of at least 250% but less than 300% of the 2014 FPL, the expected contribution is between 9.56% and 8.10% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), 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 still the 2014 FPL, which is \$23,850.00 for a four-person household (79 Fed. Reg. 3593, 3593).

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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 her maximum entitlement, based on gross income, may receive an income tax refund. A person who received more tax credit than her 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)).

### Household size

For purposes of APTC and CSR, household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

Typically, a taxpayer may claim as dependent a “qualifying relative” who: (1) bears a relationship to the taxpayer as provided for under 26 USC § 152(d)(2), (2) has a gross income of the less than the \$3,950.00 exemption amount, (3) receives at least one-half of his support from the taxpayer, and (4) is not a “qualifying child” of the taxpayer or of any other taxpayer, in each case during the taxable year (see 26 USC § 152(d); 26 USC § 151(d); IRS, In 2014, Various Tax Benefits Increase Due to Inflation Adjustments (IR-2013,87, Oct. 31, 2013).

### Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (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)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

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The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL (PHL § 2510(9)(d)(iv)).

For a CHP eligibility determination, the 2014 FPL for a four-person household is \$23,850.00 (79 Fed. Reg. 3593).

## **Legal Analysis**

The first issue is whether the Marketplace properly determined that you, your wife and your older daughter are eligible for an advance premium tax credit (APTC) of up to \$596.00 per month.

In the application that was submitted on January 16, 2015, you attested to an expected yearly income of \$64,242.00, which includes your earned income of \$53,127.00 and your older daughter's earned income of \$11,115.00. The eligibility determination relied upon that information.

According to the January 16, 2015 application, there are four people in your tax household, which includes yourself, your spouse and your two children, whom you expect to claim as dependents.

You reside in Kings County, where the second lowest cost silver plan available for 2015 for a couple and one dependent through the Marketplace costs \$1,059.49 per month.

An annual income of \$64,242.00 is 269.36% of the 2014 federal poverty level (FPL) for a four-person household. At 269.36% of the FPL, the expected contribution to the cost of the health insurance premium is 8.67% of income, or \$463.90 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 and one dependent in your county (\$1,059.49 per month) minus your expected contribution (\$463.90 per month), which equals \$595.59. Rounded to the nearest dollar, the Marketplace correctly computed your APTC to be \$596.00 per month based on an expected household income of \$64,242.00.

Therefore, the January 17, 2015 eligibility determination is **AFFIRMED**.

You also testified that you earn \$22.75 per hour before taxes are deducted and work 36.5 hours per week. Therefore, according to your testimony, you expect to earn approximately \$43,179.50 for the 2015 tax year. You further testified that your older daughter, who is a full time student, expects to earn \$8,000.00 for the

2015 tax year. Based on this testimony, your expected household income for 2015 is \$51,179.50 for a household of four.

In consideration of the testimony obtained at the hearing, your case is RETURNED to the Marketplace to redetermine the eligibility for an advance premium tax credit for yourself, your wife and your older daughter, using a household of four, with an expected household income of \$51,179.50, and a residence of Kings County.

The next issue under review is whether the Marketplace properly determined the amount of your younger daughter's Child Health Plus (CHP) Premium.

The amount of your younger daughter's CHP premium is calculated for a four-person household, which includes you, your wife and your two daughters.

According to the January 16, 2015 application, you attested to an expected household income of \$64,242.00.

The 2014 FPL for a four-person household is \$23,850.00; therefore, an annual income of \$64,242.00 is 269.36% of the FPL for a four-person household.

Household incomes between 251% and 300% of the FPL would result in premium payments of \$30.00 per month. Based on the household income you attested to in your January 16, 2015 application, the Marketplace properly determined that your younger daughter's CHP premium would be \$30.00 per month. Therefore, the January 17, 2015 eligibility determination is AFFIRMED.

However, at the hearing, you testified that you expect to earn approximately \$43,179.50 in 2015, and your older daughter expects to earn \$8,000.00 in 2015. Therefore your expected household income is calculated to be \$51,179.50 for the 2015 tax year.

In consideration of the testimony obtained at the hearing, your case is RETURNED to the Marketplace to redetermine your younger daughter's CHP premium amount using a household of four and an expected household income of \$51,179.50.

While you testified at the February 20, 2015 hearing that you also expect to claim your mother as a dependent for the 2015 tax year, there is currently insufficient evidence in the record to determine whether she can be counted as a member of your household as a "qualifying relative" dependent for purposes of APTC and cost sharing reductions (CSR). Therefore, at this time there is not enough information to allow the Marketplace to redetermine your eligibility based on a modified tax household size. If you believe your mother can be counted as a member of your household for purposes of APTC and CSR, you should contact the Marketplace.

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).



## **Decision**

The January 17, 2015 eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace to redetermine the eligibility for an advance premium tax credit for you, your wife and your older daughter using a household of four, an expected household income of \$51,179.50, and a residence of Kings County.

Your case is RETURNED to the Marketplace to redetermine your younger daughter's Child Health Plus (CHP) premium amount using a household of four and an expected household income of \$51,179.50.

**Effective Date of this Decision:** June 10, 2015

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

You, your wife and your older daughter remain eligible to receive an advance premium tax credit of up to \$596.00 per month.

Your case is returned to the Marketplace for a redetermination of eligibility for you, your wife and your older daughter using a 4-person household residing in Kings County with an expected household income of \$51,179.50.

Your younger daughter remains qualified to purchase a Child Health Plus (CHP) plan with a \$30.00 monthly premium.

Your case is also returned to the Marketplace for a redetermination of your younger daughter's CHP premium eligibility using a household of four and an expected household income of \$51,179.50.

### **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.

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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 17, 2015 eligibility determination is AFFIRMED.

You, your wife and your older daughter remain eligible to receive an advance premium tax credit of up to \$596.00 per month.

Your case is RETURNED to the Marketplace to redetermine the eligibility for an advance premium tax credit for you, your wife and your older daughter using a household of four, an expected household income of \$51,179.50, and a residence of Kings County.

Your younger daughter remains qualified to purchase a Child Health Plus (CHP) plan with a \$30.00 monthly premium.

Your case is RETURNED to the Marketplace to redetermine your younger daughter's CHP premium amount using a household of four and an expected household income of \$51,179.50.

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## **Legal Authority**

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**A Copy of this Decision Has Been Provided To:**

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