



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

## Notice of Decision

Decision Date: June 12, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001508

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

On February 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's January 14, 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: June 12, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001508

[REDACTED]  
[REDACTED]  
[REDACTED]

## 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 an advance premium tax credit of \$0.00 per month as of January 14, 2015?

Did the Marketplace properly determine that you were not eligible for cost-sharing reductions as of January 14, 2015?

## Procedural History

On January 13, 2015, the Marketplace received your application for health insurance.

On January 14, 2015, the Marketplace issued an eligibility determination notice that stated you were eligible to receive \$0.00 per month in advance premium tax credits. You were not eligible for cost-sharing reductions or for Medicaid because your household income of \$76,672.00 was over the allowable limits for those programs.

On January 20, 2015 you spoke with the Marketplace's Account Review Unit and appealed that preliminary eligibility determination.

On February 19, 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) Your application states 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 the January 14, 2015 eligibility determination, your Marketplace account listed a gross income of \$76,672.00. This amount consisted of income from your job in the amount of \$52,000.00, and income from Social Security benefits in the amount of \$12,336.00, each for your two youngest sons.
- 3) You testified that you expect to receive approximately \$52,000.00 in income from your job in 2015.
- 4) You testified that your three sons do not expect to receive any income from jobs in 2015.
- 5) You testified that your children's father passed away and that your two youngest sons began receiving Social Security Survivor benefits because they were and are under 18 years old.
- 6) You testified that your two youngest sons each expect to receive \$12,336.00 from Social Security Survivor Benefits in 2015.
- 7) You testified that you do not know if you will claim any tax deductions on your 2015 tax return.
- 8) You testified that you reside in ██████ County, New York.

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 § 435.603(e), see 26 USC § 36B(d)(2)(B)).

With regards 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

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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(a)(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, pg 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 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 that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

"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, 26 USC § 101, *et seq.*). However, none of these exclusions are relevant here.

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)).

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

For annual household income in the range of at least 300% but less than 400% of the 2014 FPL, the expected contribution is 9.56% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their income tax form). Those who take less tax credit in advance than they claim on the tax return may get the rest of it 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).

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## 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 first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

## **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 14, 2015 eligibility determination used a household income of \$76,672.00 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 \$52,000.00 and a total of \$24,672.00 from Social Security Survivor benefits that [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.

Your application states that you will be filing your tax return as single and that you will claim your three sons as dependents.

A dependent is required to file a tax return when their earned income is greater than \$6,300.00. According to your testimony, your sons will not receive any income from a job. Since your dependents have no earned income, they 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 \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. To the extent that this income is in excess of \$25,000.00, that is considered taxable income.

At the time of your application, each of your two younger sons received \$12,336.00 in income from Social Security Survivor benefits, half of which is

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\$6,168.00. Since neither son has any earned income and \$6,168.00 is less than \$25,000.00, neither of your two youngest sons has taxable income from Social Security and neither is required to file a tax return on the basis of his unearned income.

Since your two youngest sons are not required to file a tax return based on their incomes, the amount of income they receive from Social Security Survivor benefits should not have been added back into the household's income for the purposes of determining your eligibility for financial assistance to help pay for the costs of health insurance.

Therefore, the January 14, 2015 eligibility determination notice that lists a household income of \$76,672.00 is RESCINDED. Your case should be returned to the Marketplace for a redetermination based on a corrected amount of household income.

## **Decision**

The January 14, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your eligibility for financial assistance based on a household income of \$52,000.00, a four-person household, and a county of residence of ██████ County.

**Effective Date of this Decision:** June 12, 2015

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

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your household's eligibility for financial assistance based on a household income of \$52,000.00, a four-person household, and a county of residence of Sullivan County.

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

## **Summary**

The January 14, 2015 eligibility determination is RESCINDED.

Your case is being sent back to the Marketplace for a redetermination of your household's eligibility for financial assistance based on a household income of \$52,000.00, a four-person household, and a county of residence of Sullivan County.

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

## **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]