



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: AP000000001540

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

Dear Ms. [REDACTED]

On February 23, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's January 21, 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

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Appeal Identification Number: AP000000001540

[REDACTED]  
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## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that as of January 21, 2015 you were not eligible for financial assistance?

## Procedural History

On January 20, 2015, the Marketplace received your updated application for health insurance.

On January 21, 2015, an eligibility determination notice was issued. That notice stated that you were eligible to purchase a qualified health plan at full cost. The notice further stated that you did not qualify for Medicaid because your income was over the allowable limit for that program. You also were not eligible to receive advance premium tax credits because the primary tax filer in your house was married but not filing taxes jointly, and because you were not eligible for advance premium tax credits, you are also not eligible for cost-sharing reductions.

On January 22, 2015, you called the Marketplace's Account Review Unit and appealed that eligibility determination in so far as you were not eligible for any form of financial assistance.

On February 23, 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.) You testified that you will be filing your 2015 tax return as married filing separately. You will claim no dependents on that income tax return.
- 2.) You testified that you are currently married and that you do not plan to legally separate from or divorce your spouse.
- 3.) You testified that you are filing separately because your spouse is not living in the United States of America. Your spouse works overseas and because of this you cannot file a joint return with him.
- 4.) You testified that you have not lived with your spouse since 2013.
- 5.) You testified that you have never filed a joint tax return with your spouse.
- 6.) Your application currently lists an annual household income of \$23,296.00. You testified that this income amount is correct and consists solely of income you receive from a job.
- 7.) Based on your application, the Marketplace calculated that your monthly average household income is \$1,941.33. You testified that whatever your application states is correct.
- 8.) You testified that you do not plan on taking any deductions on your 2015 income tax return.
- 9.) Your application states 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

### Advance Premium Tax Credit

Generally, the advance premium tax credit (APTC) is available to a person who is married only if that person is filing a joint return with his or her spouse (26 CFR § 1.36B-2(b)(2)). However, an individual will be treated as not married at the close of the taxable year, and therefore potentially eligible for APTC, if the individual:

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
  - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
  - b. pays more than one half of the cost of keeping up his/her home for the tax year; and
  - c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703(a); 26 USC § 7703(b)).

In other words, if you meet the above criteria for either (1) or (2), you will be treated as not married for purposes of APTC eligibility (26 USC § 2).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a qualified health plan (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 federal poverty level (FPL) for the plan year coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)(1)).

### Medicaid

Medicaid can be provided through the Marketplace to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

Family size means the number of persons counted as a member of an individual's household. In the case of an individual who expects to file a tax return and does not expect to be claimed by another taxpayer, the household consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1)). In the case of a married couple living together, each spouse will be included in the household of the other

spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

## **Legal Analysis**

The first issue is whether the Marketplace properly determined that you were not eligible for advance premium tax credits (APTC).

As noted above, in order for a married person to qualify for APTC, she must either file taxes jointly with her spouse or qualify as “not married” at the close of the tax year.

According to your application and your testimony at the hearing, you

- 1) are still married to your spouse,
- 2) are not divorced or legally separated from your spouse, and
- 3) do not plan to file a joint tax return with your spouse for the 2015 tax year.

There are certain factors that would permit the Marketplace to treat you as “not married” for purposes of making an APTC eligibility determination. One of the factors is to currently be living apart from your spouse and maintain your household as the primary home for a qualifying child. You testified that you do not have any dependents. Therefore, you do not have a qualifying child and the record does not support a finding that you are “not married” for purposes of being eligible for APTC.

The second issue is whether the Marketplace properly determined that you are not eligible for cost-sharing reductions. One of the criteria for being eligible for cost-sharing reductions, is to be eligible for APTC. Since you are not eligible for APTC, the Marketplace properly found that you are not eligible for cost-sharing reductions.

The third issue is whether the Marketplace properly determined that you are not eligible for Medicaid.

You testified that you do not currently live with your spouse and that you will claim no dependents on your tax return. Therefore, for the purposes of calculating your household size for Medicaid, you are in a one-person household.

Your application currently lists a household income of \$23,296.00. Medicaid can be provided through the Marketplace to a person who meets the non-financial requirements and has a household modified adjusted gross income that is at or below 138% of the Federal Poverty Level (FPL) for the applicable family size. On the date of your application, the relevant FPL was \$11,670.00 for a one-person household. Since \$23,296.00 is 199.62% of the 2014 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the January 22, 2015 eligibility determination properly stated that, based on the information you provided, you were not eligible for APTC, cost-sharing reductions, or Medicaid, it is correct and is AFFIRMED

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Your application currently lists your monthly average income as \$1,941.33.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,343.00 per month. Since your income was \$1,941.33 for the month of January, you did not qualify for Medicaid on the basis of monthly income when you submitted your application.

## **Decision**

The January 21, 2015 eligibility determination is AFFIRMED.

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

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

You remain eligible to purchase a qualified health plan at full cost.

Based on the information you testified to and is currently in your application, you are not eligible for Medicaid, advance premium tax credits or cost-sharing reductions.

## **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:  
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P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The January 21, 2015 eligibility determination is **AFFIRMED**.

You remain eligible to purchase a qualified health plan at full cost.



Based on the information you testified to and is currently in your application, you are not eligible for Medicaid, advance premium tax credits or cost-sharing reductions.

## **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]