



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: AP000000001560

[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 22, 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).

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: AP000000001560

[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did the Marketplace properly determine that you are eligible for an advance premium tax credit of up to \$67.00 per month, as of January 23, 2015?

Did the Marketplace properly determine that your husband, is eligible to purchase a qualified health plan at full cost, as of January 23, 2015?

Procedural History

The Marketplace received your application for health insurance on January 22, 2015 and prepared a preliminary eligibility determination in your case. It stated that you are eligible to enroll in a qualified health plan through the Marketplace and receive an advance premium tax credit of up to \$67.00 per month and cost-sharing reductions. It further stated that your husband, is not eligible for financial assistance to help pay for his health insurance coverage, but can purchase a qualified health plan through the Marketplace at full cost.

Also on January 22, 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 \$67.00 per month toward your health insurance premium, and did not approve any financial assistance for your husband.

On January 23, 2015, the Marketplace issued an eligibility determination notice that reflected the preliminary eligibility determination prepared on January 16, 2015. The notice further stated that your spouse is not eligible to receive advance premium tax credits to help pay for the cost of insurance because he has access to affordable coverage through an employer. It stated that he is not eligible for cost-sharing reductions because he is ineligible to receive an advance premium tax credit.

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 left open for up to 15 days to give you an opportunity to submit supporting income documentation.

On March 5, 2015, the Marketplace's Appeals Unit received your supporting documentation uploaded to your Marketplace account. The evidence included a written explanation of your monthly expenses, a copy of your current lease, a copy of your utility bills from September 30, 2014 to February 2, 2015, a copy of your student loan balances, a receipt of your childcare expenses, a copy of your spouse's Health Plan Comparison Report indicating the health insurance plan rates offered by his employer, and a copy of your spouse's student loan statements. On March 6, 2015, the Marketplace's Appeals Unit received additional evidence you uploaded to your Marketplace account, which included a written statement further explaining your monthly expenses, and a copy of your spouse's telephone bill. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record.

The record was then closed on March 6, 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 child.
- 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 child as a dependent.
- 3) You testified that the individuals seeking insurance through New York State of Health include yourself, your spouse, and your child, but you are only appealing the eligibility determination for yourself and your spouse.
- 4) According to your January 22, 2015 application, you expect to have a household income of \$47,424.31 for the 2015 tax year, which includes

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your spouse's earned income of \$48,200.00 before taxes are deducted, and \$775.69 in student loan interest deductions. You testified that this income is still an accurate reflection of your expected household income for 2015.

- 5) According to your January 22, 2015 application, you reside in ██████████ County. However, at the hearing, you testified that your family has moved and now resides in ██████████ County. You provided evidence that your family resides at ██████████ ██████████ ██████████ ██████████ ██████████ and have renewed your lease for one year effective January 1, 2015 (Appellant's Exhibit 1, March 6, 2015).
- 6) You testified that you cannot afford a health insurance premium after paying all of your monthly expenses, including rent, utilities, student loans, child care, and other bills, and that you would like these expenses taken into account for purposes of determining your eligibility for subsidies.
- 7) You testified, and provided evidence, that your spouse has access to health insurance through his employer. You testified that the current cost for him to obtain an individual plan through his employer would be approximately \$500.00 per month. In addition, you provided a Health Plan Comparison Report, dated 11/11/14, from his employer which indicates an individual coverage cost of \$538.69 per month (Appellant's Exhibit 1, March 6, 2015).

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 200% but less than 250% of the 2014 FPL, the expected contribution is between 6.34% 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 \$19,790.00 for a three-person household (79 Fed. Reg. 3593, 3593).

Eligibility for the advance premium tax credit (APTC) is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable social security income, non-taxable interest income and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1-36B-1(e)(2)). "Adjusted gross income" is the gross income of the taxpayer minus the deductions permitted (26 USC § 62).

Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)). There is no provision in the law for deducting living expenses, such as rent, utilities and commuting expenses.

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,

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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)).

Employer-Sponsored Coverage

Generally, an individual who may enroll in an eligible employer-sponsored plan and an individual who may enroll in the plan because of a relationship to the employee are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value (see 26 CFR § 1.36B-2(c)(3)(i)).

A person who has an employer-sponsored health insurance plan that provides minimum essential coverage is not entitled to APTC (26 CFR § 1.36B-2(c)(1)). “Minimum essential coverage” is defined in IRC § 5000A(f) and the regulations issued under that section. As described in that section, eligible employer-sponsored plans are considered minimum essential coverage (26 CFR § 1.36B-2(c)(1)).

Employer sponsored coverage is considered “affordable” if the premium amount an employee must pay for self-only coverage is less than the required contribution percentage the employer must pay for that coverage based on that employee’s household income for the year (26 CFR § 1.36B-2(c)(3)(v)(A)). The current required contribution percentage is 9.56% (26 CFR § 1.36B-2(c)(3)(v)(C); IRS Rev. Proc. 2014-37).

Legal Analysis

The first issue is whether the Marketplace properly determined that you are eligible for an advance premium tax credit (APTC) of up to \$67.00 per month.

In the application that was submitted on January 22, 2015, you attested to an expected yearly income of \$47,424.31, which includes your spouse’s earned income of \$48,200.00 before taxes are deducted, and \$775.69 in student loan deductions. The eligibility determination relied upon that information.

During the hearing you testified that the cost of your rent, phones, utilities, child care costs and commuting expenses makes health insurance unaffordable. The Internal Revenue Service does not allow those expenses to be deducted from modified adjusted gross income, which is the number used to calculate the amount of APTC. Therefore, the Marketplace was correct when it did not subtract these expenses from your expected income.

The record reflects that there are three people in your tax household, which includes yourself, your spouse, and your child, whom you expect to claim as a dependent.

According to the January 16, 2015 application you attested that you reside in Rockland County, where the second lowest cost silver plan available in 2015 for an individual through the Marketplace costs \$372.40 per month.

An annual income of \$47,424.31 is 239.64% of the 2014 federal poverty level (FPL) for a three-person household. At 239.64% of the FPL, the expected contribution to the cost of the health insurance premium is 7.69% of income, or \$303.79 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 an individual in your county (\$372.40 per month) minus your expected contribution (\$303.79 per month), which equals \$68.61. Rounded to the nearest dollar, the Marketplace correctly computed your APTC to be \$67.00 per month based on the information provided in the January 22, 2015 application.

Therefore, the January 23, 2015 eligibility determination is AFFIRMED insofar as it correctly computed the maximum amount of APTC you are eligible for based on the information provided.

The next issue is whether your husband is not eligible to receive financial assistance to help pay for the cost of insurance because he has access to affordable coverage through an employer.

According to your testimony and supporting evidence, your spouse is currently employed and is offered health insurance through his employer.

Generally, to be eligible for financial assistance such as APTC and cost-sharing reductions, an individual must not be eligible for minimum essential coverage except through the Marketplace. An individual who may enroll in an eligible employer-sponsored plan is eligible for minimum essential coverage under the plan only if the plan is affordable and provides minimum value.

Employer sponsored coverage is considered “affordable” if the premium amount an employee must pay for individual coverage is less than the required

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contribution percentage the employer must pay for that coverage based on that employee's household income for the year. For 2015, that contribution percentage is 9.56% of household income.

The record reflects that your spouse earns \$48,200.00 per year through his employment as a [REDACTED], and expects to claim \$775.69 in deductions for the 2015 tax year. This is the household's only source of income. Therefore, he expects to have a household income of \$47,424.31.

The evidence reflects that the health plan offered by his employer (Aetna NYC Community PlanSM) costs \$538.69 per month for an individual, or \$6,464.28 per year.

At an expected household income of \$47,424.31, his employer sponsored plan is 13.6% of the household income.

Since his actual contribution percentage for the employer sponsored plan (13.6%) is greater than the required contribution percentage (9.56%), the plan is unaffordable and not considered minimum essential coverage. Therefore, he is only eligible for minimum essential coverage through the Marketplace.

In consideration of your testimony and supporting evidence, your case is RETURNED to the Marketplace to redetermine you and your spouse's eligibility for APTC and Cost-Sharing Reductions using a household of three, an expected household income of \$47,424.31, a New York County residence, and a determination that your husband only has access to minimum essential coverage through the Marketplace due to unaffordable employer-sponsored coverage.

Decision

The January 23, 2015 eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace to redetermine you and your spouse's eligibility for an advance premium tax credit (APTC) and cost-sharing reductions using a household of three, an expected household income of \$47,424.31, a New York County residence, and a determination that your husband only has access to minimum essential coverage through the Marketplace due to unaffordable employer-sponsored coverage.

Effective Date of this Decision: June 12, 2015

How this Decision Affects Your Eligibility

You remain eligible to receive an advance premium tax credit of up to \$67.00 per month.

Your husband may be eligible for financial assistance, including an advance premium tax credit and cost-sharing reductions because the employer-sponsored coverage available to him does not offer minimum essential coverage.

This case is returned to the Marketplace for a redetermination for an advance premium tax credit and cost-sharing reductions using a household of three, an expected household income of \$47,424.31, a New York County residence, and a determination that your husband only has access to minimum essential coverage through the Marketplace due to unaffordable employer-sponsored coverage.

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 23, 2015 eligibility determination is AFFIRMED.

You remain eligible to receive an advance premium tax credit (APTC) of up to \$67.00 per month.

Your husband may be eligible for financial assistance, including APTC and cost-sharing reductions because the employer-sponsored coverage available to him does not offer minimum essential coverage.

Your case is RETURNED to the Marketplace to redetermine you and your spouse's eligibility for APTC and cost-sharing reductions using a household of three, an expected household income of \$47,424.31, a New York County residence, and a determination that your husband only has access to minimum essential coverage through the Marketplace due to unaffordable employer-sponsored coverage.

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]