



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

Notice of Decision

Decision Date: August 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001718



Dear [REDACTED],

On April 8, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 7, 2015 and February 25, 2015 eligibility determinations.

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 Code of Federal Regulation (CFR) 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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Issues

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

Did the Marketplace properly determine that your oldest daughter was eligible to receive an advance premium tax credit of \$0.00 per month, effective March 1, 2015?

Did the Marketplace properly determine that your oldest daughter was eligible for cost-sharing reductions, effective March 1, 2015?

Did the Marketplace properly determine that your youngest daughter was not eligible for financial assistance, effective April 1, 2015?

Procedural History

The Marketplace received two applications for health insurance on February 6, 2015. The first application indicated that you were seeking insurance for yourself and your two daughters.

In response, the Marketplace prepared a preliminary eligibility determination that same day stating that your oldest daughter, [REDACTED], was eligible for an advance premium tax credit (APTC) of \$0.00 per month and cost-sharing reductions (CSR). Both you and your youngest daughter, [REDACTED], were found not eligible for financial assistance.

The second application indicated that you were seeking insurance for your oldest daughter, [REDACTED], only. The Marketplace prepared a preliminary eligibility

determination that again stated she was eligible for an advance premium tax credit (APTC) of \$0.00 per month and cost-sharing reductions (CSR).

Also on February 6, 2015, you spoke with the Marketplace's Account Review Unit to appeal the February 6, 2015 preliminary eligibility determinations insofar as (1) your oldest daughter was eligible for an APTC no greater than \$0.00 per month and (2) your youngest daughter was not eligible for financial assistance.

On February 7, 2015, the Marketplace issued a notice of eligibility determination stating that your oldest daughter was eligible for an APTC of \$0.00 per month and, if she enrolled in a silver level health plan, eligible for CSR.

On February 24, 2015, the Marketplace received several additional applications in which you indicated that both of your daughters were seeking health insurance through the Marketplace.

On February 25, 2015, the Marketplace issued a notice of eligibility determination stating that your youngest daughter, [REDACTED], was eligible to purchase a plan at full cost through the Marketplace, effective April 1, 2015. The notice further stated that she did not qualify for Child Health Plus (CHP) or Medicaid since information obtained by the Marketplace showed she was already enrolled in Medicaid, CHP, or another program.

On that same day, the Marketplace issued a notice stating that your oldest daughter might be eligible for health insurance, but that more information was needed to make a determination. It requested that you provide income documentation by March 14, 2015.

On April 8, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open to provide you with an opportunity to submit as additional evidence: (1) your 2014 tax return, (2) your last earning statement received, and (3) your oldest daughter's 2014 tax return. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On April 10, 2015, you provided the above referenced documents to the Appeals Unit through via facsimile.

Accordingly, the record was closed on April 10, 2015.

Findings of Fact

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

- 1) You testified, and your application indicates, that you are divorced and you live with your two daughters.
- 2) You testified that your daughters are now both full-time students at [REDACTED].
- 3) Your application indicates that both of your daughters are under the age of 21.
- 4) At the hearing you testified that in addition to seeking health insurance coverage for your oldest daughter you were also seeking insurance for your youngest daughter. You further testified that although your youngest daughter is currently receiving coverage through Medicaid through her local Department of Social Services (LDSS), that coverage is set to end in May 2015.
- 5) You testified that your oldest daughter is currently enrolled in a preventative health plan that only covers the costs associated with birth control.
- 6) You testified that you are currently covered under your employer's plan.
- 7) You testified, and your application indicates, that you expected to file your 2015 taxes as "head of household" and that you anticipated claiming both your daughters as dependents; however, your oldest daughter will also be filing her own tax return in order to receive any return due to her in connection with her employment. You also testified during the hearing that it is possible that your youngest daughter would be filing her own taxes as well for the 2015 tax year.
- 8) You live in Steuben County, New York.
- 9) In your February 6, 2015 application you attested to a household income of \$40,352.00. This amount consisted of \$24,752.00 you expect to earn from a job, \$7,800.00 your oldest daughter, [REDACTED], expects to earn from a job, and \$7,800.00 your youngest daughter, [REDACTED], expects to earn from a job.
- 10) You testified that the amount you receive from your job is accurate.

- 11) In your application, you attested that your oldest daughter earns approximately \$150.00 weekly from her employer. You testified that this figure is no longer accurate as she receives \$127.50 per week as her earning rate is \$8.50 per hour and typically works 15 hours per week.
- 12) In your application, you attested that your youngest daughter also earns approximately \$150.00 per week from her employer. However, you testified that this figure is no longer accurate as she receives \$190.00 per week as her earning rate is \$9.50 per hour and typically works 20 hours per week.
- 13) You testified that the premium amount for plans available to provide your oldest daughter health insurance through the Marketplace are unaffordable without receiving a tax credit to offset at least a portion of the cost.
- 14) You also testified that you did not believe your children's income should be included in household income, because that income went towards their own expenses.

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).

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“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)).

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 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).

If a qualified health plan is offered through the Marketplace in any level of coverage, the Marketplace must also offer a qualified health plan in which the only enrollees are individuals who, as of the beginning of a plan year, have not attained the age of 21 (42 U.S. Code (USC) § 18022(f)).

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 \$19,790 for a three-person household (79 Fed. Reg. 3593, 3593).

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).

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)).

Minimum Essential Coverage

Minimum essential coverage includes, but is not limited to, coverage under:

- 1) Government sponsored programs, such as Medicare, Medicaid, CHIP, and TRICARE;
- 2) Employer-sponsored plans; and
- 3) Plans in the individual market

(26 USC § 5000A(f)).

Legal Analysis

The first issue is whether the Marketplace properly determined that your oldest daughter, [REDACTED], was eligible to receive an advance premium tax credit (APTC) of \$0.00 per month.

The February 7, 2015 eligibility determination used a household income of \$40,352.00 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 \$24,752.00, \$7,800.00 in income from your oldest daughter, and \$7,800.00 in income from your youngest daughter. You testified at the hearing that you believed your daughters' incomes should not count towards the household's income because that income goes towards your daughters' own expenses.

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 (MAGI) of all tax filers in a household who are required to file a tax return.

You testified, and your application reflects, that you will be filing your tax return as “head of household” and that you will claim both of your daughters 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, both of your daughters had an anticipated income \$7,800.00; at an income over \$6,300.00, they would each be required to file a tax return and their income would therefore be included in the household’s income.

According to the record, you are in a three-person tax household since you expect to file a 2015 U.S. Income Tax return and will claim both of your daughters as dependents.

You reside in Steuben County and at the time of your application, your oldest daughter was under the age of 21 and thus a child-only plan was used to calculate her eligibility. The second lowest cost silver plan available for a child through the Marketplace in Steuben County costs \$196.11 per month.

An annual household income of \$40,352.00 is 203.90% of the 2014 Federal Poverty Line (FPL) for a three-person household. At 203.90% of the FPL, the expected contribution to the cost of the health insurance premium is 6.48% of income, or \$217.90 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$196.11 per month) minus your expected contribution (\$217.81 per month). Since your expected contribution exceeds the amount of the second lowest cost silver plan in your county, the Marketplace correctly determined that your oldest daughter is eligible for up to \$0.00 per month in APTC.

The second issue under appeal is whether the Marketplace properly determined that your oldest daughter is eligible for cost-sharing reductions (CSR).

CSR are available to a person who has a household income no greater than 250% of the 2014 FPL. Since your household income is 203.90% of the 2014 FPL, your oldest daughter was correctly found to be eligible for CSR.

Since the February 7, 2015 eligibility determination properly stated that, based on the information you provided, your oldest daughter, [REDACTED], was eligible for up to \$0.00 per month in APTC, and eligible for cost-sharing reductions, it is correct and is AFFIRMED.

The next issue under appeal is whether the Marketplace properly determined that your youngest daughter, [REDACTED], was not eligible for financial assistance.

According to your application and your testimony, your youngest daughter was receiving Medicaid at the time of the February 6, 2015 preliminary eligibility determination and the February 25, 2015 eligibility determination.

Since, your youngest daughter's Medicaid was in effect during those determinations, she was deemed to have minimum essential coverage through a government-sponsored program outside of the individual Marketplace. Since the Marketplace properly determined that she was not eligible for financial assistance through the Marketplace the February 25, 2015 eligibility determination is **AFFIRMED**.

However, at the hearing you testified to slightly different income amounts than what was in your Marketplace application. You credibly testified that while your expected yearly income continues to be \$24,752.00, your oldest daughter now expects to earn \$6,630.00 during 2015, which is based on updated earnings of \$127.50 per week and your youngest daughter expects to earn \$9,980.00 during 2015, which is based on her updated earnings of \$190.00 per week. You also credibly testified that your youngest daughter's Medicaid coverage through the Steuben County LDSS was due to terminate as of May 31, 2015.

Accordingly, your case is **RETURNED** to the Marketplace to redetermine [REDACTED] and [REDACTED] eligibility based on an annual household income of \$41,362.00 for a three-person household in Steuben County.

Decision

The February 7, 2015 eligibility determination and the February 25, 2015 eligibility determination are **AFFIRMED**.

The case is **RETURNED** to the Marketplace to redetermine [REDACTED] and [REDACTED] eligibility based on an annual household income of \$41,362.00 for a three-person household in Steuben County.

Effective Date of this Decision: August 14, 2015

How this Decision Affects Your Eligibility

This is not your final determination. You will receive a further notice of redetermination from the Marketplace detailing your household's eligibility based on the now developed record.

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).

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 February 7, 2015 eligibility determination and the February 25, 2015 eligibility determination are **AFFIRMED**.

The case is RETURNED to the Marketplace to redetermine [REDACTED] and [REDACTED] eligibility based on an annual household income of \$41,362.00 for a three-person household in Steuben County.

This is not your final determination. You will receive a further notice of redetermination from the Marketplace detailing your household's eligibility based on the now developed record.

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:

