



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

Notice of Decision

Decision Date: July 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001725

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On March 5, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 10, 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: July 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001725

[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did the Marketplace properly determine that you are eligible for an advance premium tax credit of up to \$110.00 per month?

Procedural History

On February 9, 2015, the Marketplace received your modified application for health insurance. That day, the Marketplace prepared a preliminary eligibility determination that stated you are eligible to enroll in a qualified health plan and receive an advance premium tax credit of up to \$110.00 per month and eligible for cost-sharing reductions if you enrolled in a silver level health plan. This preliminary eligibility determination was based on an annual household income of \$49,270.01.

Also on February 9, 2015, you spoke with the Marketplace's Account Review Unit and appealed that determination insofar as it did not approve an advance premium tax credit of more than \$110.00 per month.

On February 10, 2015, the Marketplace issued an eligibility determination notice that stated you are eligible to enroll in a qualified health plan and receive an advance premium tax credit of up to \$110.00 per month and, if you enrolled in a silver level health plan, eligible for cost-sharing reductions, effective February 1, 2015.

On March 5, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Interpretation services were provided, using Spanish Interpreter # [REDACTED]. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence.

On March 10, 2015, the Marketplace's Appeals Unit received your supporting evidence via fax, which was sent on March 9, 2015. This evidence included two paystubs for your oldest son for February 20, 2015 and March 6, 2015. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on March 10, 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 reside with your four children.
- 2) You testified, and the record reflects, that you expect to file your 2015 federal income tax return as Head of Household, and claim three of your four children ([REDACTED], and [REDACTED]) as dependents on that tax return.
- 3) According to the February 9, 2015 application, you expect to earn \$43,030.01 for the 2015 tax year, before taxes are deducted. You testified that this income is an accurate representation of your expected income for the 2015 tax year.
- 4) According to the February 9, 2015 application, your oldest son [REDACTED] expects to earn approximately \$6,240.00 for the 2015 tax year. You testified that this is not an accurate representation of his expected income for the 2015 tax year as his income fluctuates. You further testified that he works approximately ten to sixteen hours per week.
- 5) According to the evidence submitted on March 9, 2015, [REDACTED] is currently employed by [REDACTED] and is paid weekly. He earns \$8.75 per hour, but his hours fluctuate. On February 20, 2015, he earned \$109.90 before taxes were deducted. On March 6, 2015, he earned \$140.26 before taxes were deducted. On March 6, 2015, his year to date income was \$1,926.06 before taxes were deducted.
- 6) You testified that [REDACTED] will not be filing federal income taxes because he is a minor and will not earn enough to file taxes.

- 7) You testified that [REDACTED] income should not be included in your household income because the money he earns is for his personal use, not the household.
- 8) You testified, and the record reflects, that you reside in Nassau County, NY.

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).

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 still 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 250% but less than 300% of the 2014 FPL, the expected contribution is between 8.10% and 9.56% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

Household Income

A tax filer's household income includes the modified adjusted gross income (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)). The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return (42 CFR § 435.603(d)(2)(i)).

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 has yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 will be required to file a tax return (see IRS Revenue Procedure 2014-61).

End of Tax Year Reconciliation

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).

Legal Analysis

The issue under review is whether the Marketplace properly determined that you are eligible for an advance premium tax credit (APTC) of up to \$110.00 per month.

Of the factors used to calculate a person's APTC amount, the only one in question is the amount of household income the Marketplace should consider.

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).

The record reflects that you expect to file your 2015 federal income tax return as head of household and that you expect to claim three of your children as dependents; therefore, you are a four-person tax household.

In the application that was submitted on February 9, 2015, you attested to an expected household income of \$49,270.01 before taxes are deducted. This income includes your earned income of \$43,030.01 and your oldest son's earned income of \$6,240.00.

A tax filer's household income includes the modified adjusted gross income of all individuals in a taxpayer's household who are required to file a federal tax return for the taxable year.

You testified that your oldest son, whom you plan to claim as a dependent, will not be filing taxes for the 2015 tax year. However, a dependent who only has earned income must file a tax return if the gross income earned is greater than \$6,300.00.

You testified that the income provided in the February 9, 2015 application was not an accurate representation of your oldest son's expected income for the year. You also provided evidence that he is paid weekly at a rate of \$8.75 per hour, and that his income fluctuates due to varied hours. However, the evidence provided contained two non-consecutive weeks of income, which included one week in February and one week in March 2015. Based on this information provided, it is not possible to determine whether his expected income for 2015 is different than the expected income attested to in the February 9, 2015 application.

Therefore, we must rely on the income information contained in your application. According to the February 9, 2015 application, your oldest son expects to earn approximately \$6,240.00 for the 2015 tax year. Since his expected earned income of \$6,240.00 is below the tax filing threshold for dependents (\$6,300.00), he will presumably not be required to file a tax return for the 2015 tax year and that income should not be included in the household's income.

Therefore, the February 10, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your eligibility based on a household of four people with a household income of \$43,030.01 residing in Nassau County.

Please note that if your son's 2015 income rises above the tax filing threshold for a dependent his income must then be included in your household's modified adjusted gross income when you file your 2015 federal income tax return. You

may receive a tax penalty if you received a greater amount of APTC than you are found eligible for by the IRS.

Decision

The February 10, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your eligibility based on a household of four people with a household income of \$43,030.01 residing in Nassau County.

Effective Date of this Decision: July 10, 2015

How this Decision Affects Your Eligibility

This decision is not a final determination of your eligibility for financial assistance.

Your case is being sent back to the Marketplace for a redetermination of your eligibility based on a household of four people with a household income of \$43,030.01 residing in Nassau County.

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.

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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 10, 2015 eligibility determination is RESCINDED.

This decision is not a final determination of your eligibility for health insurance.

Your case is being sent back to the Marketplace for a redetermination of your eligibility based on a household of four people with a household income of \$43,030.01 residing in Nassau County.

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]