



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

Notice of Decision

Decision Date: July 3, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001730

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On March 4, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 3, 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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Issues

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

Did the Marketplace properly determine that you and two of your children are not eligible for an advance premium tax credit as of February 3, 2015, and as of February 24, 2015?

Did the Marketplace properly determine that you and two of your children are not eligible for cost-sharing reductions as of February 3, 2015, and as of February 24, 2015?

Procedural History

The Marketplace received your initial 2015 application for health insurance on January 10, 2015, which you modified three times including on February 2, 2015 and February 23, 2015.

On February 3, 2015, the Marketplace issued a notice of eligibility determination based on your February 2, 2015 modified application. The notice stated, in relevant part, that you and your twenty-year-old daughter were eligible to purchase a qualified health plan at full cost through the Marketplace effective March 1, 2015; and your youngest child is eligible to enroll in Child Health Plus at full price effective March 1, 2015. It also stated that your household does not qualify for Medicaid, Child Health Plus, or to receive tax credits because your reported income of \$80,000.00 is over the allowable income limits for these programs

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On February 9, 2015, you spoke with the Marketplace's Account Review Unit and appealed the eligibility determination insofar as a qualified health plan at full cost was not affordable.

On February 24, 2015, the Marketplace issued a notice of eligibility redetermination based on your February 23, 2015 modified application. The notice stated that you and your twenty-year-old daughter and nineteen-year old son are eligible to purchase a qualified health plan at full cost through the Marketplace effective April 1, 2015. The notice also stated that your household is not eligible for financial assistance under Medicaid or Child Health Plus because your household income of \$80,000.00 is over the allowable income limit. It also said that you are not eligible for advance premium tax credits because your application says the primary tax filers in your house are married but not filing taxes jointly as is required to be eligible for APTC and, because you are not eligible for APTC, you are not eligible for cost-sharing reductions.

On March 4, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was 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 expect to file your 2015 tax return as Head of Household with Qualifying Individuals and plan on claiming your three children as dependents on your tax return.
- 2) You testified you were originally told by the Marketplace to put down that you were Married Filing Separately.
- 3) You testified that you are legally married and have not obtained a divorce or legal separation.
- 4) You are the sole supporter of your three children.
- 5) You maintain the household and pay the mortgage.
- 6) Your estranged husband has not lived with you since 2013 and is not expected to live in your house in 2015.
- 7) Your youngest child is twelve-years old.

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- 8) You testified that you are currently unemployed and received a severance package from your employer of \$80,000.00 for 2015, and have been or will be paid every two weeks after your last day of work, which was January 16, 2015.
- 9) You are appealing the eligibility determination as it relates to you and two of your children, but not for your twelve-year-old child who has been determined eligible for Child Health Plus.
- 10) You and your children currently reside in Nassau County, New York.
- 11) You testified that it is difficult for you to afford your monthly premiums based on your current income, monthly mortgage payments, and essential living needs.

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 2014 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)).

In general, a tax filer who is married is eligible for APTC only if he or she files a joint return with his or her spouse (45 CFR § 155.305(f), 45 CFR § 155.310(d), 26 CFR § 1.36B-2).

However, a tax filer will be treated as not married at the close of the taxable year 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 requirements:

- files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child; and
- pays more than one half of the cost of keeping up his/her home for the tax year; and
- his/her spouse is not a member of the household during the last 6 months of the taxable year

(26 USC § 7703(a); 26 USC § 7703(b)).

In other words, if you meet the above criteria for either (1) or (2), you may qualify to file as “Head of Household” and may 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 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)).

Special Enrollment

An individual or enrollee is eligible to enroll in or change enrollment in a qualified health plan during a special enrollment period when an individual or enrollee experiences a triggering event. Triggering events include a change in a person’s eligibility for APTC or CSR (45 CFR § 155.420(d)(6)).

Legal Analysis

The main issue under review is whether the Marketplace properly determined that you and your two children are not eligible for an advance premium tax credit (APTC) because of your tax filing status.

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

According to the documents in the record and your testimony at hearing, you are still married to your spouse and have not obtained a decree of divorce or of separate

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maintenance. You also confirmed that you do not plan to file a joint tax return with your spouse for the 2014 or 2015 tax years.

However, you credibly testified during the hearing that: (1) you expect to claim your twelve-year-old child as your sole dependent in 2014 and 2015, (2) you will pay the full amount of the cost of keeping up your home for 2015, and (3) your estranged spouse has not been a member of your household since 2013 and you do not plan to reside with him in 2015.

Therefore, the record supports a finding that you qualify to be treated as “not married” by the Marketplace for purposes of determining financial eligibility.

Accordingly, the February 24, 2015 eligibility determination is MODIFIED to rescind the finding that you and your two children are not eligible for APTC due to your tax filing status.

Your case is being returned to the Marketplace for a redetermination of your and your two children’s eligibility based on your corrected tax-filing status; a redetermination will also address the underlying issue of whether you are over-income to qualify for APTC and cost-sharing reductions (CSR) based on a four-person tax household and an expected 2015 income of \$80,000.00.

In the interim, the February 3, 2015 eligibility determination remains in effect.

If the Marketplace determines that you and your two children qualify for APTC or APTC and CSR, you will be granted a special enrollment period and have 60 days from the date of the Marketplace’s redetermination to select a health plan, if you so desire.

Decision

The February 24, 2015 eligibility determination is MODIFIED to rescind the finding that you and your two children are not eligible for an advance premium tax credit (APTC) due to your tax filing status.

Your case is being returned to the Marketplace for a redetermination of your and your two children’s eligibility based on your corrected tax-filing status of “not married;” a redetermination will also address the underlying issue of whether your household is over-income to qualify for APTC and cost-sharing reductions (CSR) based on a four-person tax household and an expected 2015 income of \$80,000.00.

In the interim, the February 3, 2015 eligibility determination remains in effect.

Effective Date of this Decision: July 3, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility. You and your two children remain ineligible for financial assistance at present.

It does return your case to the Marketplace for a redetermination of your and your two children's eligibility based on your corrected tax-filing status; a redetermination will address the underlying issue of whether your household is over-income to qualify for an advance premium tax credit (APTC) and cost-sharing reductions (CSR) based on a four-person tax household and an expected 2015 income of \$80,000.00.

If the Marketplace determines that you and your two children qualify for APTC or APTC and CSR, you will be granted a special enrollment period and have 60 days from the date of the Marketplace's redetermination to select a health plan, if you so desire.

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
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- By fax: 1-855-900-5557

Summary

The February 24, 2015 eligibility determination is MODIFIED to rescind the finding that you and your two children are not eligible for an advance premium tax credit (APTC) due to your tax filing status.

Your case is being returned to the Marketplace for a redetermination of your and your two children's eligibility based on your corrected tax-filing status of "not married;" a redetermination will also address the underlying issue of whether your household is over-income to qualify for APTC and cost-sharing reductions (CSR) based on a four-person tax household and an expected 2015 income of \$80,000.00.

In the interim, the February 3, 2015 eligibility determination remains in effect such that this decision does not change your eligibility. You and your two children remain ineligible for financial assistance at present.

If the Marketplace determines that you and your two children qualify for APTC or APTC and CSR, you will be granted a special enrollment period and have 60 days from the date of the Marketplace's redetermination to select a health plan, if you so desire.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]