



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

## Notice of Decision

Decision Date: June 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001735

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On April 10, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 6, 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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[REDACTED]  
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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 were not eligible for Medicaid as of February 6, 2015?

Did the Marketplace properly determine that you are eligible to receive an advance premium tax credit of up to \$110.00 per month and cost-sharing reductions as of February 6, 2015?

## **Procedural History**

On February 5, 2015, the Marketplace received your application for health insurance.

On February 6, 2015, the Marketplace issued an eligibility determination notice stating that you are eligible for up to \$110.00 of advance premium tax credits per month and cost-sharing reductions. The notice also states that you are not eligible for Medicaid because your household income is over the allowable income limit.

On February 10, 2015, you spoke with the Marketplace's Account Review Unit and appealed the amount of financial assistance you were determined eligible to receive.

On April 10, 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.

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## Findings of Fact

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

1. You are applying for health insurance through the Marketplace for yourself only.
2. Your marital status is widowed, and you currently reside with your [REDACTED] children (2/5/2015 Marketplace application).
3. You plan on filing your 2015 federal income tax return with the tax status of Head of Household (with qualifying individual) and will claim your two children as dependents on that return.
4. You reside in [REDACTED] County, New York.
5. According to your February 5, 2015 Marketplace application, your annual household income is \$44,676.00. This amount included: (1) \$14,892.00 in Social Security Benefits you expected to receive in 2015, and (2) \$29,784.00 (14,892.00 X 2) in Social Security Benefits your dependents expected to receive in 2015.
6. You began receiving \$1,241.00 monthly in Social Security Benefits in January 2015 (Testimony; Appellant's Exhibit A pg. 1).
7. Your [REDACTED] began receiving \$1,241.00 monthly in Social Security Benefits in January 2015 (Testimony; Appellant's Exhibit A pg. 5).
8. Your [REDACTED] child began receiving \$1,241.00 monthly in Social Security Benefits in January 2015 (Testimony; Appellant's Exhibit A pg. 7).

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## Applicable Law and Regulations

### Household Income for Medicaid:

For the purposes of determining a person's eligibility for financial assistance for health insurance, the term 'modified adjusted gross income' means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) social security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

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Generally, the household income is the sum of the MAGI-based income of every individual included in the individual's household. However, the MAGI-based income of an individual who is included in the household of their natural, adopted or step parent and is not expected to be required to file a tax return 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 return (42 CFR § 435.603(d)(1), 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(a)(1)(A)(i). A dependent who has a yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 must file a tax return (see IRS Rev. Proc. 2014-61). Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the *taxable* part of social security and pension payments (IRS publication IR 2014-929, pg 15).

For the purposes of determining the amount of taxable income a person receives from Social Security Benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income" (26 USC § 86(b)(2)). Please note that this definition is different than the definition the Marketplace uses.

"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)).

"Gross income" is defined as all income from whatever source it is derived from. (26 USC § 61(a)). For the purposes of determining when a person's income from Social Security is included in their gross income, a person's IRS defined 'modified adjusted gross income' is added to one-half of their social security benefit and if it is greater than \$25,000.00, any amount in excess of \$25,000.00 is considered taxable gross income for purposes of filing a tax return (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

#### 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 that is at or below 138% of the

federal poverty level (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)).

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 2015 FPL, which is \$20,090.00 for a three-person household (80 Fed. Reg. 3236, 3237).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

#### Advance Premium Tax Credit:

The advance premium tax credit is available to a person who is eligible to enroll in a qualified health plan and (1) expects to have a household income between 138% and 400% of the 2014 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 qualified health plan; 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)).

#### Minimum Essential Coverage

Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f); 45 CFR § 155.305(f)(1)(B)).

According to 26 USC § 5000A, which is part of the Internal Revenue Code, these government-sponsored plans provide minimum essential coverage:

- 1) the Medicare program under part A of title XVIII of the Social Security Act [26 USCS §§ 1395c et seq.]
- 2) the Medicaid program under title XIX of the Social Security Act [26 USCS §§ 1396 et seq.]
- 3) the CHIP program under title XXI of the Social Security Act [26 USCS §§ 1397aa et seq.]

4) medical coverage under chapter 55 of title 10, United States Code [10 USCS §§ 1071 et seq.], including coverage under the TRICARE program

5) a health care program under chapter 17 or 18 of title 38, United States Code [38 USCS §§ 1701 et seq. or 1801 et seq.], as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary

6) a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers)

7) the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 1587 note)

(26 USC § 5000A(F)(1)(A)).

## **Legal Analysis**

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when calculating your family's eligibility for financial assistance.

The February 6, 2015 eligibility determination used a household income of \$44,676.00 to determine your household's eligibility for financial assistance. According to your application, this amount included the \$14,892.00 in Social Security Benefits you expected to receive in 2015, and the \$29,784.00 (14,892.00 X 2) in Social Security Benefits your dependents expected to receive in 2015.

Generally, the household income for the purposes of calculating a person's eligibility for financial assistance through the Marketplace consists of the sum of income of every individual included in the individual's household. However, the income of an individual who is included in the household of their natural, adopted or step parent and is not expected to be required to file a tax return 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 return.

You testified that you will be filing your 2015 tax return with the tax status Head of Household (with qualifying individual) and will claim two dependents on that return.

A dependent is required to file a tax return when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

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To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives and then subtracts that amount from \$25,000.00. Any excess amount is considered taxable income.

At the time of your application, your fourteen-year-old child expected to receive \$14,892.00 (1,241.00 X 12) in income from Social Security benefits. One-half the amount of Social Security he receives (\$7,446.00) is less than \$25,000.00. Therefore, your [REDACTED] child has no taxable income from Social Security and is not required to file a tax return on the basis of his unearned income.

At the time of your application, your [REDACTED] child expected to receive \$14,892.00 (1,241.00 X 12) in income from Social Security benefits. One-half the amount of Social Security he receives (\$7,446.00) is less than \$25,000.00. Therefore, your [REDACTED] child has no taxable income from Social Security and is not required to file a tax return on the basis of his unearned income.

Since your children are not required to file a tax returned based on their incomes, the amount of income they receive from Social Security benefits should not have been added back into the household's income for the purposes of determining the household's eligibility for financial assistance to help pay for the costs of health insurance.

Therefore, the February 6, 2015 eligibility determination notice that lists a household income of \$44,676.00 is RESCINDED.

Based on the credible evidence in the record, you expect to receive \$1,241.00 per month in Social Security Benefits. Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the federal poverty level, which is \$2,311.00 per month for a three-person household.

Therefore, your case is RETURNED to the Marketplace of your household's eligibility for financial assistance based on a three-person household with a February 2015 household income of \$1,241.00.

## **Decision**

The February 6, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your household's eligibility for financial assistance based on a three-person household with a February 2015 household income of \$1,241.00.

**Effective Date of this Decision:** June 18, 2015

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

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your household's eligibility for financial assistance based on a three-person household with a February 2015 household income of \$1,241.00.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

## **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 6, 2015 eligibility determination is **RESCINDED**.

Your case is **RETURNED** to the Marketplace for a redetermination of your household's eligibility for financial assistance based on a three-person household with a February 2015 household income of \$1,241.00.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

## **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]