



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

Notice of Decision

Decision Date: July 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001798

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On March 17, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 18, 2015 eligibility determination.

The attached 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

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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001798

[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 your modified adjusted gross income?

Procedural History

The Marketplace received your application for health insurance on February 17, 2015, in which you attested to an expected yearly income of \$20,076.00, and that you would not be filing taxes.

That same day, the Marketplace prepared a preliminary eligibility determination based on your February 17, 2015 application. It said that you were not eligible for financial assistance.

Also on February 17, 2015, you spoke with the Marketplace's Account Review Unit and appealed that preliminary determination insofar as you were not eligible for financial assistance.

On February 18, 2015, the Marketplace issued a notice of eligibility determination that stated you were not eligible to receive an advance premium tax credit (APTC) because "you said you will not be filing a federal tax return." It also stated that you were not eligible for cost-sharing reductions (CSR) because you were not eligible to receive an APTC. Finally, it stated that you were "not eligible for Medicaid because the household income you provided to us of \$20,076.00 is over the allowable income limit of \$16,105.00."

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On March 17, 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 as the Hearing Officer directed you to provide additional evidence to corroborate your testimony. The Hearing Officer asked you to provide: (1) your Social Security Administration (SSA) benefit award letter for 2015, and (2) reasonable documentation reflecting the monthly annuity you received during February 2015. 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 March 18, 2015, you provided to the Appeals Unit via facsimile: (1) a copy of your [REDACTED] statement indicating your receipt of \$573.00 from the SSA and (2) a copy of your [REDACTED] statement indicating your receipt of \$1,100.00 on March 1, 2015. No further documents were provided that were consistent with the Hearing Officer's instructions, and the record was closed on April 1, 2015.

Findings of Fact

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

- 1) You testified that you have been divorced since 1977 and live alone, as your two children are grown and no longer reside with you.
- 2) You testified that you are seeking health insurance coverage only for yourself under your Marketplace account.
- 3) Your application indicates that you do not expect to file taxes. You testified that this was accurately entered since the income you received from your annuity is non-taxable, and any remaining income you receive is low enough to not warrant filing taxes.
- 4) You live in Otsego County, New York.
- 5) In your application, you attested to receiving \$573.00 per month in SSA benefits, and \$1,100.00 per month in pension/annuity benefits.
- 6) You testified that your income was accurately entered and remained accurate as of the date of the hearing.
- 7) On March 18, 2015, you provided (1) a copy of your [REDACTED] statement indicating your receipt of \$573.00 from the SSA on February 11, 2015, and (2) a copy of your [REDACTED] statement indicating your receipt of \$1,100.00 on March 1, 2015.

- 8) You testified that you receive the \$1,100.00 per month annuity from [REDACTED] as the result of the settlement of a 3rd party lawsuit in connection with your worker's compensation claim. You further testified that this amount is non-taxable.

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)).

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)).

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 (MAGI) that is at or below 138% of the 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 \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

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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 March 19, 2014).

Modified Adjusted Gross Income

Eligibility for APTC is based on the taxpayer's modified adjusted gross income as defined in the federal tax code (45 CFR 155.300(a)). Generally, modified adjusted gross income is your adjusted gross income plus any nontaxable social security income, nontaxable interest income, and nontaxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

The amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) that are received as compensation for personal injuries or sickness are not included in modified adjusted gross income (see NY Soc. Serv. Law § 366(1)(a)(7); 26 USC §§ 36B(d)(2)(B), 62(a), 104(a)(2)).

Legal Analysis

The only issue is whether the Marketplace properly determined your Modified Adjusted Gross Income (MAGI).

On your February 17, 2015 application for health insurance, you stated that you were the sole person in your household. You also said that your expected household income for 2015 would be \$20,076.00.

The credible evidence of record, as confirmed by your testimony, reflects that in addition to the monthly SSA benefits you had been receiving in the amount of \$573.00, you also had been receiving \$1,100.00 per month in annuity payments from a settlement of a 3rd-party lawsuit in connection with your worker's compensation claim.

Since amounts received on account of person physical injuries or sickness should not be included in the Marketplace's calculation of MAGI, your eligibility was determined using an incorrect household income. As an incorrect household income was used to determine your eligibility, the February 18, 2015 eligibility determination is not supported by the record and is RESCINDED.

You provided sufficient documentation to reflect that you have been receiving \$573.00 per month in SSA benefits, specifically for the month of February 2015.

As this was the sole income you have received during the month of your application which is properly included in your MAGI, we find there is enough evidence that your case should be REMANDED to the Marketplace for redetermination of your eligibility based on an income of \$573.00 for the month of February 2015 for a one-person household in Otsego County.

Decision

The February 18, 2015 eligibility determination is not supported by the record and is RESCINDED

Your case is REMANDED to the Marketplace for a redetermination of your eligibility based on an income of \$573.00 for the month of February 2015 for a one-person household in Otsego County.

Effective Date of this Decision: July 28, 2015

How this Decision Affects Your Eligibility

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

You will receive a new eligibility determination from the Marketplace based on your corrected income.

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 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 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 18, 2015 eligibility determination, is not supported by the record and is RESCINDED

Your case is REMANDED to the Marketplace for a redetermination of your eligibility based on an income of \$573.00 for the month of February 2015 for a one-person household in Otsego County.

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

You will receive a new eligibility determination from the Marketplace based on your corrected income.

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]