



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

Notice of Decision

Decision Date: August 7, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001806

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On March 23, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 4, 2014 and January 13, 2015 eligibility determination notices.

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 you would be eligible for an advance premium tax credit of up to \$13.69 per month for 2015?

Did the Marketplace properly determine on January 13, 2015 that your eligibility to receive up to \$299.00 in advance premium tax credits and cost-sharing reductions was effective February 1, 2015?

Procedural History

On November 4, 2014, the Marketplace issued a notice that stated it was time to renew your health insurance coverage for 2015. The notice stated you were re-enrolled in your current health plan with Excellus BlueCross BlueShield for another year and no further action was required. It also stated that you qualified for an advance premium tax credit of up to \$13.69 per month. If there was a mistake on the notice you were instructed to make changes to your account between November 16, 2014 and December 15, 2014 for the changes to be effective January 1, 2015.

On December 12, 2014, the Marketplace issued an enrollment confirmation notice stating that as of November 18, 2014, you were enrolled in Silver Standard Silver with a premium responsibility of \$514.51. The notice further stated that if you have a premium responsibility, you must pay the monthly premium before your coverage can begin. If you pay your premium your insurance could begin as early as January 1, 2015.

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On January 12, 2015, the Marketplace received your updated application for health insurance.

On January 13, 2015, the Marketplace issued an eligibility determination notice that stated you were conditionally eligible to receive up to \$299.00 in advance premium tax credit (APTC) per month, and if you enrolled in a silver level health plan, newly conditionally eligible to receive cost-sharing reductions. This eligibility was effective February 1, 2015. The notice directed you to provide income documentation to confirm your eligibility before April 14, 2015.

Also on January 13, 2015, the Marketplace issued an enrollment confirmation notice stating that as of January 12, 2015, you were enrolled in Silver Standard Silver with a premium responsibility of \$229.20.

On February 17, 2015, you spoke to the Marketplace's Account Review Unit and appealed the eligibility determination insofar as it began your financial assistance eligibility on February 1, 2015, and not January 1, 2015.

On March 23, 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.

Findings of Fact

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

- 1) You testified that you enrolled with Excellus BlueCross BlueShield in April 2014.
- 2) You testified that you receive notices in the regular mail from the Marketplace.
- 3) You testified that you received the November 4, 2014 renewal notice from the Marketplace. However, you only read the front page that said "Congratulations" and assumed that everything had remained the same with your account. You testified that you did not read the back page that said your tax credit amount was only \$13.69.
- 4) You testified that you also received the enrollment confirmation notice from the Marketplace in December but did not read the back because you thought that everything had remained the same.
- 5) You testified that you did not know you had to pay the full premium for the month of January 2015 until you received a bill from Excellus.

- 6) You testified that your fiancée called in January to update your Marketplace account.
- 7) You testified that you paid Excellus the lesser premium amount of \$229.20 for the month of January. You did not pay the full premium amount of \$528.20.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the projected eligibility determination for the following year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

Redetermination During a Benefit Year

When an eligibility redetermination results in a change in the amount of advance premium tax credit (APTC) for the benefit year, the Marketplace must recalculate the amount of APTC in such a manner as to account for any advance payments already made (or not made) on behalf of the tax filer, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the benefit year (45 CFR § 155.330(g)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit 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, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for no more than \$13.69 per month in advance premium tax credits (APTC) effective January 1, 2015.

The Marketplace must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. The Marketplace must issue a renewal notice that contains the projected eligibility determination for the following year.

On November 4, 2014, the Marketplace issued an annual eligibility redetermination notice in your case. That notice stated that you were re-enrolled in your current health plan with Excellus BlueCross BlueShield and that you qualified for an APTC of up to \$13.69 per month; this eligibility was effective January 1, 2015.

You testified that you had received via the regular mail the November 4, 2015 renewal notice, however you only read the first page and did not read the page that stated the amount of APTC you were eligible for. Furthermore, you received the Marketplace's enrollment confirmation notice dated December 12, 2014 but again did not read the back of the notice that listed the APTC amount you were eligible for.

You did not timely respond to the November 4, 2014 notice, and you did not provide sufficient explanation as to your failure to update your account in a timely manner to justify changing the APTC amount to which you were entitled effective January 1, 2015. The Marketplace was obligated to proceed with the projected eligibility determination for 2015; therefore, the APTC amount of \$13.69 effective January 1, 2015 is AFFIRMED.

The second issue under review is whether the Marketplace properly determined that your eligibility for up to \$299.00 per month in APTC and cost-sharing reductions became effective no earlier than February 1, 2015.

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 shows that your application was updated on January 12, 2015. This resulted in the January 13, 2015 eligibility determination notice that stated you were eligible to receive up to \$299.00 per month in APTC, and, if you enrolled in a silver level health plan, eligible for cost-sharing reductions. This eligibility was effective February 1, 2015.

When an individual changes information in their application after the 15th of any month, the Marketplace must make the redetermination that results from the change effective the first day of the following month.

Because you testified that you received two notices that outlined the amount of APTC you were eligible for prior to the December 15, 2014 deadline and by your own admission did not read those notices fully, you received sufficient notice of what your eligibility would be effective January 1, 2015 and had the opportunity to make changes to your account if you were not satisfied with that eligibility. The Marketplace properly found that the \$299.00 APTC amount was not effective until February 1, 2015.

Therefore, the Marketplace's January 13, 2015 eligibility determination is **AFFIRMED**.

However, when APTC is recalculated mid-year, the Marketplace is required to prorate monthly amounts to reflect the amount of APTC that has already been received, to ensure that the total APTC you receive during the year is as close as possible to the overall tax credit you will be entitled to when you file your taxes for the 2015 tax year. It appears that the Marketplace did not do this. Instead, it simply found you eligible for the monthly amount to which you would have been entitled had you received the higher APTC amount for the entire 12 months of the year.

Therefore, the matter is returned to the Marketplace to calculate the amount of APTC to which you should have received for the remaining months of 2015, taking your correct income and the APTC already received into account.

Decision

The November 4, 2014 annual eligibility redetermination notice is **AFFIRMED**.

The January 13, 2015 eligibility determination is **MODIFIED** to reflect that you are only tentatively and conditionally eligible to receive up to \$299.00 per month in advance premium tax credit (APTC), and **AFFIRMED** in all other respects. Your case is returned to the Marketplace to determine the prorated amount of annual premium tax credit you are currently expected to be entitled to when you file your tax return for 2015, and then to recalculate the monthly APTC based on how

many months you will be receiving APTC and how much APTC you have already received.

The matter is returned to the Marketplace to calculate the amount of APTC to which you should have been found eligible for, for the last 11 months of 2015.

Effective Date of this Decision: August 7, 2015

How this Decision Affects Your Eligibility

This is not a final determination as to the amount of advance premium tax credit you were entitled to as of February 1, 2015; this issue will be addressed in a future notice.

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 November 4, 2014 annual eligibility redetermination notice is AFFIRMED.

The January 13, 2015 eligibility determination is MODIFIED to reflect that you are only tentatively and conditionally eligible to receive up to \$299.00 per month in advance premium tax credit (APTC), and AFFIRMED in all other respects. Your case is returned to the Marketplace to determine the prorated amount of annual premium tax credit you are currently expected to be entitled to when you file your tax return for 2015, and then to recalculate the monthly APTC based on how many months you will be receiving APTC and how much APTC you have already received.

The matter is returned to the Marketplace to calculate the amount of APTC to which you should have been found eligible for, for the last 11 months of 2015.

This is not a final determination as to the amount of APTC you were entitled to as of February 1, 2015; this issue will be addressed in a future notice.

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]