



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

Notice of Decision

Decision Date: August 18, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001933

[REDACTED]

Dear [REDACTED],

On April 8, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 5, 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 you were eligible to receive up to \$12.00 per month in advance premium tax credit?

Did the Marketplace properly determine that you were not eligible for cost sharing reductions?

Procedural History

On March 4, 2015 the Marketplace received your modified application for health insurance. That day, the Marketplace made a preliminary eligibility determination that stated you were eligible to receive up to \$12.00 per month in advance premium tax credit (APTC).

Also on March 4, 2015 you spoke with the Marketplace's Account Review unit and appealed that preliminary eligibility determination as it related to the amount of APTC and cost sharing reductions (CSR) you were eligible for.

On March 5, 2015 the Marketplace issued an eligibility determination notice that stated you were eligible to receive an APTC amount of up to \$12.00 per month. The notice further stated that you were not eligible for CSR because your income was over the allowable limit for that program.

On April 8, 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 testified that you plan on filing your 2015 tax return as single. You will claim no dependents on that tax return.
- 2) On March 4, 2015 your application listed an annual household income of \$45,200.00. This amount consisted of \$50,000.00 in income from a job and a \$4,800.00 student loan interest deduction.
- 3) You testified that you anticipate receiving \$50,000.00 in income for 2015.
- 4) You testified that you will take a student loan interest deduction in excess of \$2,500.00 on your 2015 tax return.
- 5) You testified that you reside in Kings County, New York.
- 6) You testified that because of where you live your daily expenses are higher than the average person's and that should be taken into consideration when determining the amount of subsidy you are eligible for.
- 7) You testified that the health plans through the Marketplace are unaffordable to you without greater financial assistance.

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), 45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 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).

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 plan year coverage is requested and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)(1)).

Modified Adjusted Gross Income

Marketplace eligibility is determined using modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable social security income, non-taxable interest income and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1-36B-1(e)(2)).

“Adjusted gross income” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Living expenses, such as rent and utilities

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are not an allowable deductions in computing adjusted gross income. Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)).

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a QHP. Such an exemption may be granted if that person can show that she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$12.00 per month.

In the application that was submitted on March 4, 2015, you attested to an expected yearly income of \$50,000.00. The application also listed a student loan interest deduction of \$4,800.00. Using this information, the Marketplace determined your annual household income to be \$45,200.00. However, the IRS only deducts interest on a qualified student loan from a person's adjusted gross income in an amount of up to \$2,500.00. Since the IRS does not allow for a student loan interest deduction in excess of \$2,500.00, neither can the Marketplace when calculating your modified adjusted gross income (MAGI) for the purposes of determining your eligibility for APTC.

Therefore, the Marketplace's March 5, 2015 eligibility determination notice must be RESCINDED because the amount of household income used to calculate your eligibility was incorrect.

In addition to the student loan interest deduction, you asked that your current living expenses be considered when calculating your annual household income. Since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable and phone to be deducted from the calculation of your

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adjusted gross income, they cannot be deducted when the Marketplace computes your MAGI for APTC purposes.

Therefore, your case is being RETURNED to the Marketplace for a redetermination of your eligibility based on a household of one person, and an individual residing in Kings County with an annual household income of \$47,500.00.

You testified that you cannot afford to pay the monthly insurance premium. If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2015, you can check the federal marketplace website (www.healthcare.gov) for an application.

Decision

The March 5, 2015 eligibility determination is RESCINDED.

Your case is being RETURNED to the Marketplace for a redetermination of your eligibility based on a household of one person, and an individual residing in Kings County with an annual household income of \$47,500.00.

Effective Date of this Decision: August 18, 2015

How this Decision Affects Your Eligibility

This is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your eligibility based on a household of one person, and an individual residing in Kings County with an annual household income of \$47,500.00.

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.

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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
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- By fax: 1-855-900-5557

Summary

The March 5, 2015 eligibility determination is RESCINDED.

This is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your eligibility based on a household of one person, and an individual residing in Kings County with an annual household income of \$47,500.00.

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:

