



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

## Notice of Decision

Decision Date: August 25, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001987

[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 23, 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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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001987

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## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you were not eligible for an advance premium tax credit or for cost sharing reductions?

## Procedural History

On February 22, 2015 the Marketplace received your updated application for health insurance.

On February 23, 2015 an eligibility determination notice was issued. That notice stated that you were eligible to purchase a qualified health plan at full cost. You were not eligible to receive advance premium tax credits (APTC) because the primary tax filers in your house are married but not filing taxes jointly. Because you were not eligible for APTC, you were not eligible for cost-sharing reductions (CSR).

On March 10, 2015 you called the Marketplace's Account Review Unit and appealed that eligibility determination in so far as you are not eligible for APTC or CSR.

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 testified that you will be filing your 2015 income tax return with a tax filing status of married filing separately. You will claim no dependents on that income tax return.
- 2.) You testified that you have no children.
- 3.) You testified that you are currently married and that you do not plan to legally separate from or divorce your spouse.
- 4.) You testified that you last lived with your spouse in February 2015.
- 5.) Your application states that you reside in Monroe County, New York.
- 6.) You testified that without an advance premium tax credit you are unable to afford an insurance premium.

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)).

Additionally, a tax filer who is married must generally file a joint return with his or her spouse in order to qualify for APTC (45 CFR §§ 155.305(f), 155.310(d); 26 CFR § 1.36B-2).

However, an individual 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

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2) Meets all of the following criteria:

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

(26 USC § 7703(a); 26 USC § 7703(b)).

### 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)).

### 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**

In the eligibility determination notice issued on February 23, 2015, the Marketplace denied an advance premium tax credit (APTC) to you because you indicated that you were married but did not plan to file a joint federal income tax return.

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To qualify for APTC, a person who is married must either file taxes jointly with his or 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 the hearing, you are still married to your spouse and have not obtained a decree of divorce or of separate maintenance. Also, you confirmed that you do not plan to file a joint federal income tax return with your spouse for the 2015 tax year.

There is an exception, as noted above, that allows a tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for APTC. However, the record does not support a finding that you meet the necessary requirements for that exception.

Therefore, the Marketplace was correct when it found that you were not eligible for APTC due to your tax filing status.

Cost-sharing reductions (CSR) are available only to those who meet the requirements for APTC. Since you did not qualify for APTC, the Marketplace correctly found that you were not eligible for CSR.

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](http://www.healthcare.gov)) for an application.

## **Decision**

The February 23, 2015 eligibility determination is **AFFIRMED**.

**Effective Date of this Decision:** August 25, 2015

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

You remain eligible to purchase a qualified health plan at full cost.

## **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 23, 2015 eligibility determination is **AFFIRMED**.

You remain eligible to purchase a qualified health plan at full cost.

## **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:**

