



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

Notice of Decision

Decision Date: July 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001992

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On April 14, 2015, you appeared by telephone at a hearing on the NY State of Health's March 11, 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:

Does your COBRA insurance plan provide affordable minimum essential coverage?

Did the Marketplace properly determine that you are not eligible for financial assistance through the Marketplace in 2015 effective April 1, 2015?

Procedural History

On March 10, 2015, the Marketplace received your initial application for health insurance coverage and prepared a preliminary eligibility determination that you are not eligible for financial assistance.

That same day, you appealed the eligibility determination insofar as you have COBRA coverage through your former employer but it is not affordable. You would like your eligibility redetermined to receive advance premium tax credits and purchase a qualified health plan or for coverage under Medicaid through the Marketplace.

On March 11, 2015, the Marketplace issued a notice of eligibility determination that was consistent with the March 10, 2015 preliminary determination. The Notice stated that you are eligible to purchase a qualified health plan at full cost through NY State of

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Health effective April 1, 2015. The notice provided the following explanation as to how the Marketplace made its determination:

You are not eligible for Medicaid because the household income you provided to us of \$23,380.00 is over the allowable income limit of \$21,708.00.

You are not eligible to receive advance premium tax credits to help pay for the cost of your insurance because

- You told us that you are already enrolled in or eligible for minimum value employer sponsored insurance (ESI). Based on what you told us, we determined that you do not qualify for an Advance Premium Tax Credit (APTC) because you are either already enrolled in ESI or you have access to affordable coverage that costs less than 9.5% of your income.

You are not eligible for cost-sharing reductions because

- You are ineligible to receive an Advance Premium Tax Credit.

On April 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and held open for up to fifteen days to allow you to submit proof of income and your COBRA monthly premium amount.

On April 15, 2015, the Marketplace received an eight page fax from you. It consisted of (1) A cover page; (2) Copies of your earning statements for four consecutive weeks; (3) A copy of your husband's pension award from the [REDACTED]; (4) A copy of your husband's 2014 Social Security Benefit Statement; (5) A copy of your online COBRA premium account ledger; (6) A copy of your banking statement; and (7) A copy of your retirement account showing a zero balance. This eight page fax was made part of the record as "Appellant's Exhibit A."

Since you provided all of the documentation as directed, the record was closed that same day.

Findings of Fact

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

- 1) You are married, expect to file your 2015 tax return as Married Filing Jointly, and will not be claiming any dependents.

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- 2) You testified that you retired on January 9, 2015 and received your last pay check on January 16, 2015.
- 3) You testified and provided documentary proof that your income for 2015 consisted of two pay checks: one dated January 2, 2015 in the amount of \$883.44; and the second check dated January 16, 2015 for \$1,204.56 (Appellant's Exhibit A, pp. 2 and 3).
- 4) You testified that you also received a longevity bonus of \$1,000.00 from your former employer.
- 5) You testified and provided documentary proof that your husband receives a monthly pension of \$758.00 and received \$12,178.80 in Social Security Benefits in 2014, and expects to receive a comparable amount in 2015 (Appellant's Exhibit A, pp. 4 and 5).
- 6) You testified and provided documentary proof that you have COBRA insurance through your former employer, which has been extended for 18 months due to your retirement. Your current monthly premium is \$487.53 for coverage for yourself, which you pay and feel is not affordable (see Appellant's Exhibit A, pp. 6 and 7).
- 7) You testified that you have been paying for your COBRA insurance from your retirement account and that you cashed in the balance to pay bills including your monthly COBRA premiums. Your retirement account now has a zero balance (Appellant's Exhibit A, p. 8).
- 8) You testified that you applied for Medicaid through your local Department of Social Services but were found ineligible.
- 9) You would like to be eligible to purchase a health plan for yourself with subsidies or for coverage under Medicaid through the Marketplace.
- 10) You reside in Herkimer County, New York.

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

Applicable Law and Regulations

Minimum Essential Coverage

Generally, an individual who may enroll in an eligible employer-sponsored plan and an individual who may enroll in the plan because of a relationship to the employee are eligible for what is considered minimum essential coverage under the plan only if the plan is affordable and provides minimum value (see 26 CFR § 1.36B-2(c)(3)(i)).

“Minimum essential coverage” is defined in section 5000A(f) of the Internal Revenue Code and the regulations issued under that section. As described in that section, eligible employer-sponsored plans, like COBRA continuation coverage, are considered minimum essential coverage (26 CFR § 1.36B-2(c)(1) and (3)).

An eligible employer-sponsored plan is “affordable” if the portion of the annual premium that the employee pays for his or her own insurance does not exceed 9.56% of the employee’s household income (26 USC § 36B(b)(3)(A), 26 CFR 1.36B-2T(c)(3)(v)(C), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37). The plan provides “minimum value” if its “share of the total allowed costs of benefits provided to the employee under the plan ... is at least 60 percent” (26 CFR 1.36B-2(c)(3)(vi)).

Legal Analysis

At issue is whether your COBRA coverage is affordable and whether or not you qualify for tax credits or Medicaid through the Marketplace.

The record reflects that you remained enrolled in COBRA after you retired on January 16, 2015. Generally, employer-sponsored plans provide minimum essential coverage and an employee who is enrolled in such a plan is not eligible for an advance premium tax credit (APTC) through the Marketplace.

You contend on appeal that your COBRA insurance is not affordable. Under Marketplace regulations, a plan is affordable if it costs no more than 9.56% of the household income to cover the employee alone.

In your application, you attested to an expected yearly income of \$23,380.00 and stated that you have COBRA insurance coverage through your former employer. Generally, COBRA insurance is considered minimum essential coverage. However, the plan must be affordable and provide minimum value. A COBRA plan would be affordable if your premium costs no more than 9.56% of \$23,380.00, which is \$2,235.13 per year, or \$186.26 per month.

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In your case, you credibly testified and provided documentary proof that your monthly premium costs \$487.53, which is \$5,850.36 per year and approximately 25% of your household income. Since the cost of your COBRA plan is greater than 9.56% of your household income, it is not affordable. Therefore, your COBRA plan cannot be considered minimum essential coverage.

Therefore, the Marketplace's March 11, 2015 eligibility determination is RESCINDED.

This outcome is also true using an expected household income of \$24,362.80, as evidenced by your testimony and from your Exhibit A documents. This household income consists of your earnings and a bonus totaling \$3,088.00 (\$883.44, \$1,204.56, and \$1,000.00); your husband's veteran benefits of \$9,096.00 (\$758 x 12 months), and his Social Security benefits of \$12,178.80.

At an expected annual household income of \$24,362.80, a plan would be affordable if your premium cost did not exceed \$2,329.08 per year, or \$194.09 per month. Since your monthly premium cost of \$487.53 exceeds this amount, your COBRA plan is not affordable at the attested household income obtained at the hearing and, again, cannot be considered minimum essential coverage.

Your case is returned to the Marketplace to redetermine your eligibility using a two-person household and an annual income of \$24,362.80 for an individual in Herkimer County, New York. The Marketplace will issue an eligibility redetermination based on its recalculation.

If, however, your circumstances have changed and your income is lesser in any given month after April 2015, you can update your Marketplace account to reflect your current monthly income.

Decision

The March 11, 2015 eligibility determination is RESCINDED.

Effective Date of this Decision: July 15, 2015

How this Decision Affects Your Eligibility

Your case is returned to the Marketplace to redetermine your eligibility using a two-person household and an annual income of \$24,362.80 for an individual in Herkimer County, New York.

The Marketplace will issue an eligibility redetermination based on its recalculation.

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 March 11, 2015 eligibility determination is RESCINDED.

Your case is returned to the Marketplace to redetermine your eligibility using a two-person household and an annual income of \$25,584.80 for an individual in Herkimer County, New York.

The Marketplace will issue an eligibility redetermination based on its recalculation.

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]