



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

## Notice of Decision

Decision Date: September 14, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002121

[REDACTED]

Dear [REDACTED],

On April 27, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 20, 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).

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## Decision

Decision Date: September 14, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002121

[REDACTED]

## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that, as of March 19, 2015, you were eligible to receive up to \$120.00 per month in advance premium tax credit (APTC)?

Did the Marketplace properly determine that, as of March 19, 2015, you were eligible for cost-sharing reductions?

Did the Marketplace properly determine that, as of March 19, 2015, you were not eligible for a special enrollment period?

## Procedural History

On December 10, 2014 the Marketplace issued a notice of eligibility determination for you and your son, effective as of January 1, 2015. It stated, in relevant part, that you were eligible to enroll in a qualified health plan with an advance premium tax credit (ATPC) of \$0.00 per month.

Your application was updated and resubmitted on December 13, 2014; December 22, 2014; January 15, 2015; February 23, 2015; and February 24, 2015.

On December 14, 2015; December 23, 2014; and January 16, 2015, the Marketplace responded with notices stating, in relevant part, that you were conditionally eligible for an advance premium tax credit and directed you to submit documentation of your income.

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On February 24, 2015 and February 25, 2015, the Marketplace issued eligibility determination notices that stated you were eligible to receive APTC of up to \$120.00 per month and eligible to receive cost sharing reductions if you enrolled in a silver level health plan.

On March 19, 2015, Marketplace reviewed your eligibility determined, as before, that you were eligible to enroll in a qualified health plan with APTC of up to \$120.00 per month and eligible for cost-sharing reductions but did not qualify to select a health plan outside of the open enrollment period. The determination appears in a notice dated March 20, 2015.

On March 19, 2015, you spoke with the Marketplace's Account Review Unit and appealed that eligibility determination.

On April 27, 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 filed an appeal because you could not afford the premiums of the insurance plans that were offered to you.
- 2) You testified that you expect to file your 2015 taxes with your spouse with a tax filing status of married filing jointly and you will claim one child as a dependent on that tax return.
- 3) Your application lists an expected household income of \$43,890.00. This income consists of \$42,700.00 your husband expects to receive and \$1,190.00 in income you expect to receive.
- 4) You testified that in 2015 your husband expects to receive \$42,700.00 in income.
- 5) You testified that you expect to receive \$321.00 in income during 2015. You stated that you job in November to take care of your newborn child and you do not intend to return to work during 2015.
- 6) The record contains a letter from your former employer that you faxed to the Marketplace on February 12, 2015. The letter states that for 2015 your gross pay was \$321.00.

- 7) December 8, 2014 correspondence from your employer informs you that you are eligible for the FMLA leave that you requested on November 26, 2014.
- 8) February 5, 2015 correspondence from your employer states that you have been on disability leave since November 26, 2014 and will not be returning to work. It further states that your “gross pay for the year 2015 is \$321.00.”
- 9) Your application states that you reside in Suffolk County.
- 10) You testified that you were enrolled in a health insurance plan through your employer but stopped paying the premiums. You further testified that you were officially disenrolled from the plan in March 2015 but that the disenrollment was backdated to December 2014 for nonpayment.
- 11) The record shows that you submitted income documentation for yourself and your spouse via fax on February 3, 2015 and on February 12, 2015. The income documentation was verified on February 24, 2015.
- 12) You testified that you did not enroll into a health plan because they were unaffordable to you and you were waiting to hear back from the Marketplace in regards to whether or not you could get an increase in APTC based on the income documentation you submitted to the Marketplace.
- 13) You testified that you did not get confirmation of your APTC amount until March 19, 2015 at which time you requested the appeal. You were not aware that you were no longer able to enroll into a plan.

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 poverty line (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)).

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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 the 2015 tax year is set by Federal law at 2.01% to 9.56% of annual household income (26 USC § 36B(b)(3)(A)).

For annual household income in the range of at least 200% but less than 250% of the 2015 FPL, the expected contribution for the 2015 tax year is between 6.34% and 8.10% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)).

In an analysis of APTC eligibility, the determination is based on the FPL "for the benefit year for which coverage is requested (45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$19,790.00 for a three-person household (78 Fed. Reg. 5182, 5183).

### 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)).

### Open Enrollment Period

The Marketplace must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR §155.410(a)). For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR §155.410(e)). However, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process due to "an

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extenuating circumstance” (NY State of Health Implements ‘Waiting in Line’ Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%98waiting-line%E2%80%99-provision-ahead-february-15-open>). In granting the extension, the Marketplace stated: “All applications and enrollments in health plan must be completed by the end of the day on February 28” (*sic*).

### Special Enrollment Period

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a qualified health plan and an enrollee may change to another plan. This is permitted when one of the following triggering events occurs:

(1) The qualified individual or his or her dependent loses certain health insurance coverage:

(a) Health insurance considered to be minimum essential coverage; or

(b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or

(c) Pregnancy-related coverage; or

(d) Medically needy coverage.

(2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or

(3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or

(5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions; or

(7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or

(8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or

(9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or

(10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

For purposes of determining eligibility for a special enrollment period, loss of health insurance considered to be minimum essential coverage "does not include voluntary termination of coverage or other loss due to [f]ailure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage" (45 CFR § 155.420(e)(1)).

## **Legal Analysis**

The first issue is whether the Marketplace properly determined that, effective March 19, 2015, you were eligible for an advance premium tax credit (APTC) of up to \$120.00 per month.

Your application that was submitted on March 19, 2015 indicates a household income of \$43,890.00, and the eligibility determination relied upon that information.

You are in a three-person household. You expect to file you 2015 income taxes as married filing jointly with your spouse and will claim one child as a dependent on that tax return.

You reside in Suffolk County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$379.93 per month.

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An annual income of \$43,890.00 is 221.78% of the 2014 FPL for a three-person household. At 221.78% of the FPL, the expected contribution to the cost of the health insurance premium is 7.11% of income, or \$260.05 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual in your county (\$379.93 per month) minus your expected contribution (\$260.05 per month), which equals \$119.88 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined your APTC to be up to \$120.00 per month.

However, the record as currently developed indicates that your expected household income for 2015 is \$43,021.00, not \$43,890.00. While this would yield a difference in the amount of your household's advance tax credit, that amount would be appropriately reconciled when you file your household's federal income tax return for 2015.

The second issue is whether you were properly found eligible for cost sharing reductions. Cost sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$43,890.00 is 221.78% of the 2014 FPL, the Marketplace correctly found you to be eligible for cost sharing reductions.

The third issue is whether or not the Marketplace properly denied you a special enrollment period.

The Marketplace provided an open enrollment from November 15, 2015 until February 15, 2015; later extended to February 28, 2015 for people who began, but could not complete, an application and plan selection by the February 15, 2015 deadline.

You testified that you did not select a health plan during open enrollment because the plans were unaffordable to you and you were waiting to hear back from the Marketplace about whether you could get an increase in APTC based on the income documentation you submitted during February.

According to the record, the Marketplace verified your income documentation on February 24, 2015. On February 24, 2015 and February 25, 2015, it issued eligibility determination notices stating that you were eligible for APTC of up to \$120.00 per month. Since you did not attempt to enroll in a plan on or before February 28, 2015, the Appeals Unit need not consider whether the extension of the 2015 open enrollment period applied in your case.

Once open enrollment ends, an applicant must qualify for a special enrollment period in order to enroll in a health plan through the Marketplace. On March 20,

2015 the Marketplace issued an eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment in order to change to another health plan offered in the Marketplace. Here, you requested a special enrollment period on March 19, 2015.

A special enrollment period can be granted when one of the qualifying events occurs, such as marriage or domestic partnership, a permanent move, gaining a dependent due to birth, adoption, placement for adoption, or placement in foster care, becoming a citizen, national or lawfully present, loss of health coverage other than by nonpayment of premiums, and/or no longer being incarcerated (45 CFR §155.420(d)). You testified that the available plans were unaffordable to you and you were waiting to hear from the Marketplace whether you could get an increase in APTC. While this appears to be true based on your testimony, it is not one of the qualifying events. Therefore, the special enrollment period cannot be granted under 45 CFR §155.420(d) generally.

Additionally, a special enrollment period can be granted on the basis of “error, misrepresentation, or inaction of an officer, employee, or agent of the [Marketplace] or [the U.S. Department of Health and Human Services], or its instrumentalities as evaluated and determined by the [Marketplace]” (45 CFR §155.420(d)(4)). Here, the record does not indicate that the Marketplace, by action or inaction, made an error or misrepresented information regarding the plan that you selected. Therefore, the special enrollment period cannot be granted under 45 CFR §155.420(d)-(e).

The facts as set out in the record do not suggest that any other triggering event described in 45 CFR §155.420 has occurred. Therefore, the March 20, 2015 notice was correct in denying your request for a special enrollment period.

Since the Marketplace properly determined that, as of March 19, 2015, you were eligible to receive up to \$120.00 in APTC, eligible for cost-sharing reductions, and not eligible for a special enrollment period, the March 20, 2015 notice of eligibility determination is correct and is AFFIRMED.

## **Decision**

The March 20, 2015 notice of eligibility determination is AFFIRMED.

**Effective Date of this Decision:** September 14, 2015

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

This decision does not change your eligibility.

You are eligible for an advance premium tax credit and cost-sharing reductions, but you cannot enroll in a qualified health plan through the Marketplace until the next open enrollment period opens or you experience an event that qualifies you for a special enrollment period.

## **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:  
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## **Summary**

The March 20, 2015 notice of eligibility determination is AFFIRMED.

This decision does not change your eligibility.

You are eligible for an advance premium tax credit and cost-sharing reductions, but you cannot enroll in a qualified health plan through the Marketplace until the next open enrollment period opens or you experience an event that qualifies you for a special enrollment period.

## **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:**

