



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: AP000000002174

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Dear [REDACTED],

On April 23, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 6, 2014 eligibility redetermination.

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]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Issue

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

Did the Marketplace properly determine that, effective January 1, 2015, you and your spouse are eligible to share up to \$423.07 per month in advance premium tax credits and, if you select a silver-level qualified health plan, for cost-sharing reductions?

Procedural History

During 2014, you and your spouse shared an advance premium tax credit (APTC) of \$468.00 per month.

On November 6, 2014, the Marketplace issued a renewal notice that you and your spouse were automatically re-enrolled in your current health plan for another year effective January 1, 2015 and, if the information on your application was still accurate, you didn't have to do anything more. That notice also contained an eligibility redetermination that you and your spouse were eligible to share up to \$423.07 per month in advance premium tax credits.

On December 9, 2014, the Marketplace issued an enrollment notice confirming that you and your wife were enrolled in a qualified health plan, as of January 1, 2015, with a monthly premium responsibility of \$602.92 after your APTC was applied.

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On March 24, 2015, you spoke with the Marketplace's Account Review Unit and appealed your APTC of \$423.07 per month because you want the amount of APTC increased to lower the cost of your monthly premiums.

On April 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 held open for up to fifteen days to allow you to submit your 2014 Federal income tax return.

That same day, the Marketplaces' Appeals Unit received a one page fax from you that was the first page of your 2014 Form 1040, U.S. Individual Income Tax Return. This one page fax was made part of the record as "Appellant's Exhibit A."

This being the only document you were directed to produce, the record was closed that same day.

Findings of Fact

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

- 1) According to your Marketplace account, in 2014, your advance premium tax credit (APTC) was \$468.00 per month based on a two-person tax household and an annual income of \$39,813.00.
- 2) You testified that you and your spouse plan on filing your 2015 federal tax return as Married Filing Jointly and you will not be claiming any dependents.
- 3) You testified that you expect your 2015 combined adjusted gross income to be \$33,000.00, but that you did not update this information on your Marketplace application.
- 4) You testified that you currently receive \$1,079.00 monthly in Social Security Retirement benefits, or \$12,948.00 annually.
- 5) Your 2014 Federal tax return (Form 1040), shows your and your spouse's adjusted gross income is \$20,729.00, after educator expenses of \$250 were deducted (Appellant's Exhibit A).
- 6) You testified that your household's adjusted gross income will be comparable in 2015.
- 7) You testified that your monthly premium responsibility and copayments are too expensive this year. You also testified that the cost of your prescription medicine has increased under your current plan making it too expensive. You would like to

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be considered for additional tax credits to help lower your monthly premium expenses.

8) You and your spouse reside in Queens County, New York.

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

Applicable Law and Regulations

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) social security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as educator expenses, expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

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

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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), 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$15,730.00 for a two-person household (79 Fed. Reg. 3593, 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).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

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 first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

Legal Analysis

At issue is whether the Marketplace properly determined that you were eligible to receive up to \$423.07 per month in advance premium tax credit (APTC) and ineligible for cost-sharing reductions.

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In the renewal notice dated November 6, 2014, the Marketplace said your income was over \$39,325.00, but it did not provide the income amount used to calculate your household's APTC of \$423.07 for 2015. In order to prepare an analysis, the Appeals Unit would need to know what income the Marketplace used to determine your household's eligibility for APTC. The last income figure that was listed in your application was your 2014 income of \$39,813.00. For the purposes of this decision we will assume the Marketplace relied on that information.

According to the record, there are two people in your tax household, you and your wife.

You reside in Queens County, where the second lowest cost silver plan available for a couple through the Marketplace costs \$743.50 per month.

An annual income of \$39,813.00 is 253.10% of the 2014 federal poverty level (FPL) for a two-person household. At 253.10% of the FPL, the expected contribution to the cost of the health insurance premium is 8.19% of income, or \$271.72 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 a couple in your county (\$743.50 per month) minus your expected contribution (\$271.72 per month), which equals \$471.78 per month. Therefore, rounding to the nearest dollar, the Marketplace should have determined your APTC credit to be \$472.00 per month.

Cost-sharing reductions are available to couples who have a household income no greater than 250% of the FPL. Since a household income of \$39,813.00 is 253.10% of the 2014 FPL, the Marketplace correctly found you and your spouse to be ineligible for cost-sharing reductions.

Since the eligibility determination contained in the November 6, 2014 renewal notice is not correct nor substantiated by your 2014 income, it is **RESCINDED**.

You credibly testified and provided documentary proof that your expected 2015 income is different than the 2014 income amount that was listed in your Marketplace application. According to the record, you expect your 2015 income to be \$33,677.00, which consists of \$20,729.00 in adjusted gross income and \$12,948.00 in Social Security Retirement benefits (Title II). Please note that because you intend to file a tax return, your Title II benefits are counted as modified adjusted gross income when determining eligibility for APTC.

Therefore, your case is **RETURNED** to the Marketplace to redetermine you and your spouse's eligibility for financial assistance based on a two-person household and a 2015 expected annual income of \$33,677.00.

Decision

The eligibility determination portion as contained in the November 6, 2014 renewal notice is RESCINDED.

Effective Date of this Decision: July 15, 2015

How this Decision Affects Your Eligibility

This decision returns your case to the Marketplace to redetermine you and your spouse's eligibility for financial assistance based on a two-person household and a 2015 expected annual income of \$33,677.00.

The Marketplace will issue an eligibility redetermination in your case.

If it is determined you should have been eligible for a greater amount of advance premium tax credit per month, the difference can be reconciled by the IRS when you file your 2015 taxes.

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.

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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
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Summary

The eligibility determination portion as contained in the November 6, 2014 renewal notice is RESCINDED.

This decision returns your case to the Marketplace to redetermine your and your spouse's eligibility for financial assistance based on a two-person household and a 2015 expected annual income of \$33,677.00.

The Marketplace will issue an eligibility redetermination in your case.

If it is determined you should have been eligible for a greater amount of advance premium tax credit per month, the difference can be reconciled by the IRS when you file your 2015 taxes.

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] [REDACTED]
[REDACTED]