



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

Notice of Decision

Decision Date: August 27, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002196

[REDACTED]

Dear [REDACTED],

On April 23, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 26, 2015 notice of 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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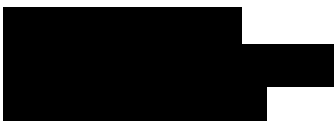


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Issues

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

Did the Marketplace properly determine that you were eligible to enroll in a qualified health plan through the Marketplace, but not eligible for financial assistance to help pay for the cost of your insurance, effective May 1, 2015?

Did the Marketplace properly calculate the amount of Modified Adjusted Gross Income used when determining your eligibility for financial assistance?

Procedural History

On March 26, 2015, the Marketplace issued a notice of eligibility determination, stating that you are eligible to purchase a qualified health plan at full cost through New York State of Health, effective May 1, 2015. The notice further stated that you are not eligible to receive advance premium tax credits to help pay for the cost of your insurance because "You said you will not be filing a federal tax return in the upcoming tax year. You must file a federal tax return to be determined eligible for the tax credit." You were also not eligible for cost-sharing reductions because you were not eligible for advance premium tax credits. This determination was based on a household income of \$31,100.00

Also on March 26, 2015, you spoke with the Marketplace's Account Review Unit and appealed that determination insofar as it did not approve any financial assistance to help pay for the cost of your insurance.

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).

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 left open for up to 15 days to provide you an opportunity to submit evidence supporting your position.

On April 28, 2015, the Marketplace's Appeals Unit received your supporting evidence via fax, which included a copy of your Social Security benefit award letter, and a copy of your daughter's Social Security benefit award letter. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record.

The record was closed on April 28, 2015.

Findings of Fact

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

- 1) According to the March 25, 2015 application and your testimony, you are currently widowed and have one child, but do not plan to file a tax return for the 2015 tax year and, therefore, will not claim your child as a dependent.
- 2) According to the March 25, 2015 application, you expect to receive \$15,550.00 in Social Security benefits, and your daughter expects to receive \$15,550.00 in Social Security benefits for the 2015 tax year. The eligibility determination was based on a household income of \$31,100.00.
- 3) You provided evidence that you and your daughter are each receiving \$1,555.00 per month in Social Security survivor benefits as of February 2015 (Appellant's Exhibit 1).
- 4) You testified, and the record reflects, that you and your daughter's only source of income is Social Security survivor benefits. You further testified that, because you do not have to pay taxes on the income received in survivor benefits, you do not need to file a tax return for the 2015 tax year.
- 5) You testified that you cannot afford a health insurance plan without financial assistance.
- 6) You currently reside in Madison County, New York.

- 7) You are the only person in your household seeking insurance through the Marketplace.

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 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)).

Eligibility for APTC is based on the taxpayer's 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)).

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)).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return in the year in which eligibility for Medicaid is being determined, is not included in household income (42 CFR § 435.603(d)(2)(ii)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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)).

Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

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

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Legal Analysis

The first issue under review is whether the Marketplace properly found that you were eligible to enroll in a qualified health plan through the Marketplace, but were not eligible for financial assistance to help pay for the cost of your insurance.

To be eligible for an advance premium tax credit to help pay for the cost of health insurance, a person must attest to plan on filing a tax return for the benefit year.

You testified, and the record reflects, that you do not plan to file a tax return for the 2015 tax year. You further testified that you do not plan to file a tax return for the 2015 tax year because your only income is Social Security survivor benefits, for which taxes are not required to be paid.

Since you testified that you do not expect to file a tax return for the 2015 tax year, the Marketplace cannot approve an advance premium tax credit.

To be eligible for cost-sharing reductions, a person must be found eligible for an advance premium tax credit. Since you are not eligible for an advance premium tax credit, you are also not eligible for cost-sharing reductions.

Therefore, the March 26, 2015 notice of eligibility determination properly stated that you are not eligible to receive an advance premium tax credit, or cost-sharing reductions.

The second issue is whether the Marketplace properly determined the amount of household income the Marketplace should consider when determining your eligibility for financial assistance.

The March 25, 2015 application listed an annual household income of \$31,100.00. This amount consists of \$15,550.00 in income that you expect to receive in Social Security benefits, and \$15,550.00 your child expects to receive from Social Security benefits

A child's Social Security benefits are counted in a household's gross income only to the extent that the child would be required to file a federal income tax return if the sum of the child's "modified adjusted gross income" plus one-half of their Social Security benefits is greater than \$25,000.00.

A dependent will also be required to file a tax return in 2015 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income

that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, your child received \$15,550.00 in income from Social Security benefits and there is nothing in the record that indicates she received income from any other source. Since \$7,750.00 (one-half of \$15,550.00) is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

Since the record does not indicate that your daughter will be required to file a federal tax return, her income should not be included in your expected household income for 2015.

You testified that you do not intend to file an income tax return for the 2015 tax year. However, you are not a child or a tax dependent so your income, regardless of the fact that you may not be required to file taxes on it, is still included in the household's income for the purposes of determining your eligibility for health insurance through the Marketplace.

Therefore, when the Marketplace determined your eligibility on March 26, 2015, it should have counted only your income from social security benefits of \$15,550.00.

Since the March 26, 2015 determination is based on a miscalculation of your expected 2015 household income, it is **RESCINDED**.

Your case is returned to the Marketplace for redetermination of your eligibility for financial assistance based on a two-person household living in Madison County with a household income of \$15,550.00 as of March 2015.

Decision

The March 26, 2015 notice of eligibility determination is **RESCINDED**.

Your case is returned to the Marketplace for a redetermination of your eligibility for financial assistance based on a two-person household living in Madison County with a household income of \$15,550.00 as of March 2015.

Effective Date of this Decision: August 27, 2015

How this Decision Affects Your Eligibility

This decision does not determine your final eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your eligibility on your corrected household income.

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

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Summary

The March 26, 2015 notice of eligibility determination is RESCINDED.

Your case is returned to the Marketplace for a redetermination of your eligibility for financial assistance based on a two-person household living in Madison County with a household income of \$15,550.00 as of March 2015.

This decision does not determine your final eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your eligibility on your corrected household income.

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:

