



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

## Notice of Decision

Decision Date: August 28, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002233

[REDACTED]

Dear [REDACTED],

On May 4, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 14, 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]  
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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 and your son were eligible to receive an advance premium tax credit of \$0.00 per month, effective April 1, 2015?

Did the Marketplace properly determine that you and your son were not eligible for cost-sharing reductions effective April 1, 2015?

## Procedural History

On March 13, 2015 the Marketplace received several modifications to your household's application for health insurance.

On March 14, 2015 the Marketplace issued an eligibility determination notice based on the information contained in the last March 13, 2015 application. That notice stated in pertinent part that, based on a household income of \$81,166.92, you and your son were eligible for \$0.00 per month in advance premium tax credits (APTC). You and your son were not eligible for Medicaid or for cost-sharing reductions because your income was over the allowable limits for those programs.

On March 30, 2015 you spoke with the Marketplace's Account Review Unit and appealed that eligibility determination as it related to the amount of APTC you and your son were eligible for.

On May 4, 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) In your application you attested that you are married, and you testified that you plan on filing your 2015 tax return as married filing jointly and will claim two of your three children as dependents on that tax return. You will claim your son and your youngest daughter.
- 2) At the time of your application, your Marketplace account listed a gross income of \$81,166.92. This amount consisted of income of \$46,056.00 from your spouse's job. The amount also consisted of \$28,090.92 that your spouse receives in Social Security benefits, and \$7,020.00 that your youngest daughter receives in Social Security benefits. It did not include your son's \$5,200.00 earned income.
- 3) You testified that the amounts of income listed on your application for your family members were correct.
- 4) You testified that you are currently unemployed and do not expect to make any income for 2015.
- 5) You testified that you expect to claim at least a \$17,500.00 medical and dental deduction on your 2015 tax return.
- 6) You testified that your mortgage payments and other bills should be taken into consideration when determining what your household's annual income is.
- 7) You testified that you reside in Monroe County, New York.
- 8) You testified that you are only appealing your and your son's eligibility.

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 (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 435.603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

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(a)(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)).

### 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*

- 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 \$23,850.00 for a four-person household (79 Fed. Reg. 3593, 3593).

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For annual household income in the range of at least 300% but less than 400% of the 2014 FPL, the expected contribution is 9.56% of the household income (26 CFR § 1.36B-3T(g)(1) (good until 2017), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

### 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)).

## **Legal Analysis**

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when calculating your family's eligibility for financial assistance.

On the March 13, 2015, your Marketplace account listed a gross income of \$81,166.92. This amount consisted of income of \$46,056.00 from your spouse's job. The amount also consisted of \$28,090.92 that your spouse receives in Social Security benefits, and \$7,020.00 that your youngest daughter receives in social security benefits.

Household income for the purposes of calculating a person's eligibility for financial assistance to help pay for the costs of health insurance through the Marketplace, consists of the modified adjusted gross income of all tax filers in a household who are required to file a tax return.

Since you plan on filing your taxes as married filing jointly and will claim two dependents on your 2015 tax return, you are in a four-person household. You and your spouse are required to file a federal income tax return for 2015. You attested to your intent to file a 2015 return when you requested financial support on the Marketplace application therefore, your spouse's income from both her job and from her social security benefits are included in the household's income.

A dependent is required to file a tax return when their unearned income is greater than \$1,000.00. Unearned income includes the taxable portion of Social Security benefits.

To estimate whether any portion of a person's expected Social Security benefits will be taxable, add one-half of a person's income from Social Security to any

other income that person receives and then subtract that amount from \$25,000.00. Any excess amount is considered taxable income.

At the time of your application, your youngest daughter received \$7,020.00 in income from Social Security benefits and \$0.00 in income from other sources. Since \$3,510.00 (one-half the amount of Social Security she receives) does not exceed the \$25,000.00 threshold, your youngest daughter has no unearned income and is not required to file a tax return. Therefore, her Social Security benefits should not have been included in the household's income.

At the time of your application, the Marketplace should have determined eligibility for you and your son based on only the income you and your wife contribute to the household, which is \$74,146.92 (\$46,056.00 from your spouse's job and \$28,090.92 from your spouse's social security).

You reside in Monroe County, where the second lowest cost silver plan available for a primary subscriber and one dependent through the Marketplace costs \$518.55 per month.

An annual income of \$74,146.92 is 310.89% of the 2014 FPL for a four-person household. At 310.89% of the FPL, the expected contribution to the cost of the health insurance premium is 9.56% of income, or \$590.70 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 primary subscriber and one dependent in your county (\$518.55 per month) minus your expected contribution (\$590.70 per month). Since the amount of your expected contribution is in excess of the cost of the second lowest cost silver plan, you and your son are eligible for \$0.00 in APTC.

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 \$74,146.92 is 310.89% of the 2014 FPL for a four-person household, the Marketplace correctly found you and your son to be not eligible for cost-sharing reductions.

You testified that your mortgage payments and other bills should be taken into consideration when determining what your household's annual income is.

The Internal Revenue Service rules do not allow living expenses such as mortgage payment, utilities, cable, and other bills to be deducted from the calculation of your adjusted gross income, so they cannot be deducted when the Marketplace computes your modified adjusted gross income for APTC purposes.

Furthermore, you testified that you expect to claim at least a \$17,500.00 medical and dental deduction on your 2015 tax return. The Internal Revenue Service also



does not include this deduction when computing your adjusted gross income, so neither can the Marketplace.

Since the deduction of your youngest daughter's Social Security benefits from your household's income does not change the overall eligibility for APTC you and your son, there is no need to return your case to the Marketplace for a redetermination of your and your son's eligibility.

Therefore, the Marketplace's March 14, 2015 eligibility determination notice is MODIFIED to state that based on a household income of \$74,146.92, you and your son are eligible for \$0.00 per month in APTC. You and your son are not eligible for Medicaid or for cost-sharing reductions because your income was over the allowable limits for those programs.

## **Decision**

The March 14, 2015 eligibility determination notice is MODIFIED to state that based on a household income of \$74,146.92, you and your son were eligible for \$0.00 per month in APTC. You and your son were not eligible for Medicaid or for cost-sharing reductions because your income was over the allowable limits for those programs.

**Effective Date of this Decision:** August 28, 2015

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

You and your son remain eligible for \$0.00 in advance premium tax credit.

## **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

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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 14, 2015 eligibility determination notice is MODIFIED to state that based on a household income of \$74,146.92, you and your son were eligible for \$0.00 per month in advance premium tax credit. You and your son, were not eligible for Medicaid or for cost-sharing reductions because your income was over the allowable limits for those programs.

You and your son remain eligible for \$0.00 in APTC.

## **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:**

