



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

## Notice of Decision

Decision Date: August 14, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002303

[REDACTED]

Dear [REDACTED],

On May 11, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 7, 2015 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 letter.

### 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

Decision Date: August 14, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002303

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## Issue

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

Did the Marketplace properly determine that, effective May 1, 2015, you were eligible for \$0.00 of advance premium tax credit as of April 6, 2015?

## Procedural History

On April 3, 2015, the Marketplace received your initial application for health insurance.

On April 6, 2015, the Marketplace prepared a preliminary eligibility determination that, in part, found you are eligible for \$0.00 of advance premium tax credits effective May 1, 2015 based on an expected annual income of \$52,000.00.

That same day, you appealed the eligibility redetermination insofar as it related to your level of financial assistance.

On April 7, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with the April 6, 2015 preliminary determination. The notice further stated that you are not eligible for cost-sharing reductions or Medicaid because the household income you provided is over the allowable income limits for these programs.

On April 11, 2015 and April 25, 2015, the Marketplace issued notices of eligibility redetermination that were consistent with the April 7, 2015 notice as it related to your eligibility.

On May 11, 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 expect to file your 2015 tax return as Head of Household with Qualifying Individuals.
- 2) You have two children and are expecting a third child in November 2015.
- 3) At present, you claim one child as a dependent and, after your third child is born, expect to claim two children as dependents for the 2015 tax year.
- 4) According to your Marketplace application and your testimony at hearing, you attested to earnings in 2015 of \$52,000.00, before taxes are deducted.
- 5) You are seeking review of only your eligibility.
- 6) You testified that you cannot afford to pay any monthly premium because your take-home pay is used to cover your and your children's essential living needs.
- 7) You and your children currently reside in Orange County, New York.

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

Eligibility for the advance premium tax credit (APTC) is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR 155.300(a)). As used in an APTC analysis, 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)).

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A taxpayer's adjusted gross income is gross income reduced by pre-tax (above-the-line) deductions. "Gross income" means all income from whatever source it is derived; this includes but is not limited to income derived from business, interest received, rent, royalties, compensation for services, etc. (26 USC § 61).

The 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 2013 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 the 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).

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)).

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).

### 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)).

## Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

## **Legal Analysis**

At issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of \$0.00 per month and ineligible for cost sharing reductions.

In the application dated April 3, 2015, you attested to an expected yearly gross income of \$52,000.00 and the eligibility determination relied upon that information.

According to the record, your household currently consists of three people, but you only claim one of your two children. Therefore, for APTC purposes you have a two-person tax household.

You reside in Orange County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$362.46 per month.

An annual income of \$52,000.00 is 330.58% of the 2014 federal poverty level (FPL) for a two-person household. At 330.58% of the FPL, the expected contribution to the cost of the health insurance premium is 9.56% of income, or \$414.27 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 (\$362.46 per month) minus your expected contribution (\$414.27 per month), which equals a negative amount of \$51.81 per month. Since the amount of your expected monthly contribution is greater than the amount of the monthly cost of the second lowest cost silver plan, the Marketplace correctly determined your APTC to be \$0.00 per month.

Cost-sharing reductions (CSR) are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$52,000.00 is 330.58% of the 2014 FPL, the Marketplace correctly found you to be eligible for CSR.

However, you testified that, because of your monthly expenses and amount of take-home pay, you cannot afford to pay a monthly premium. This may qualify as a hardship exemption from having to pay a penalty to the IRS for not having health insurance in 2015. If you wish to be considered for a hardship exemption, you can contact the U.S. Department of Health and Human Services at its federal website ([www.healthcare.gov](http://www.healthcare.gov)) for direction.

Please note that once your third child is born, he or she will change the size of your tax household if you still expect to claim the infant child on your 2015 tax return as a dependent. If so, you can update your Marketplace application to reflect that you have a new dependent and the Marketplace will redetermine your eligibility based on your new household size.

## **Decision**

The April 7, 2015 eligibility redetermination is **AFFIRMED**.

This Decision does not affect any subsequent decisions issued by the Marketplace.

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

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

This decision does not change your eligibility.

You remain eligible for an advance premium tax credit of \$0.00 per month effective May 1, 2015.

You are not eligible for cost-sharing reductions or Medicaid.

## **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 April 7, 2015 eligibility redetermination is **AFFIRMED**.

This Decision does not affect any subsequent decisions issued by the Marketplace.

This decision does not change your eligibility.

You remain eligible for an advance premium tax credit of \$0.00 per month effective May 1, 2015.

You are not eligible for cost-sharing reductions or Medicaid.



If you wish to be considered for a hardship exemption, you can contact the U.S. Department of Health and Human Services at its federal website ([www.healthcare.gov](http://www.healthcare.gov)) for direction.

## **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:**

