



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

Notice of Decision

Decision Date: August 25, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002390

[REDACTED]

Dear [REDACTED],

On May 18, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 19, 2015 eligibility determination.

The attached 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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Issue

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

Did the Marketplace properly determine on February 19, 2015 that you and your spouse were eligible to share an advance premium tax credit of \$394.00 per month and, if you selected a silver-level qualified health plan, eligible for cost sharing reductions effective April 1, 2015?

Procedural History

On February 19, 2015, the Marketplace issued a notice of eligibility redetermination based on updated information it had recently received. The notice stated in relevant part that you and your spouse are eligible to share up to \$394.00 per month of advance premium tax credits (APTC) and, if you selected a silver-level qualified health plan (QHP), eligible for cost sharing reductions (CSR).

That same day, the Marketplace issued an enrollment notice confirming in part that you and your spouse had selected Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care Silver) and that your monthly premium responsibility is \$328.05 after the APTC of \$394.00 was deducted. The notice also stated that coverage could begin as early as April 1, 2015, provided you paid your first month's premium on time.

On April 13, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed the eligibility determination insofar as you could not afford a monthly premium of \$328.05 for you and your spouse's coverage.

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On May 18, 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) According to your Marketplace account, you, your spouse, and your dependent child were seeking health insurance through the Marketplace.
- 2) You testified that you are appealing you and your spouse's eligibility only.
- 3) You testified you plan on filing your 2015 taxes as Married Filing Jointly and will be claiming your child as a dependent on that return.
- 4) According to your Marketplace account and your testimony at hearing, your family's monthly income is \$2,334.00, and consists of your Title II disability income of \$977.00, your spouse's earnings of \$975.00, and your child's Title II income of \$382.00.
- 5) According to your Marketplace account and your testimony, your six-year old son will receive \$4,668.00 in Title II benefits in 2015 and will not be filing taxes.
- 6) You testified that you and your spouse need health insurance but cannot afford to pay a monthly premium even with advance premium tax credits and have had to charge your premium payments to a credit card.
- 7) You testified that you might want to apply for an exemption for not having health insurance in 2015.
- 8) According to your Marketplace account, on June 25, 2015, you requested that you and your spouse's coverage with Fidelis Care Silver be cancelled, which the Marketplace processed with an end date of June 30, 2015.

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

Applicable Law and Regulations

Household 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)).

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(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, p. 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)).

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 sources that are not relevant here (26 USC § 86(b)(2)).

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

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% 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

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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)).

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)).

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, you can consult the Federal Marketplace website (www.healthcare.gov) for information and an application.

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 you and your spouse's eligibility for financial assistance.

The February 19, 2015 eligibility determination used a household income of \$36,941.00 to determine your and your spouse's eligibility for financial assistance. At that time, according to your application, this amount included your Title II disability benefits of \$11,928.00 (\$977.00 x 12 months), your spouse's reported income of \$20,345.00, and your child's Title II benefits of \$4,668.00.

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.

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.

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

According to your Marketplace account and your testimony, you and your spouse will be filing your 2015 tax return as Married Filing Jointly and will be claiming your son as a dependent on that tax return.

At the time of your application, your son was receiving \$382.00 per month in income from Social Security Title II benefits, which is \$4,668.00 per year. You testified that he does not work and will not have any earned income during 2015. Therefore, one-half the amount of Social Security Title II benefits he receives is \$2,334.00. Since \$2,334.00 is less than \$25,000.00, your son has no taxable income from Social Security and is not required to file a tax return on the basis of his unearned income.

Since your son is not required to file a tax return according to the information provided to the Marketplace, the Marketplace should not have included his Social Security benefits when determining the household's income.

Therefore, the February 19, 2015 eligibility determination notice that lists a household income of \$36,941.00 is RESCINDED. Your case will be returned to the Marketplace for a redetermination of your household's eligibility for financial assistance based on the corrected amount of household income of \$32,273.00 for a three-person household.

At the hearing, you testified that your husband works two jobs but might have to give one up due to his health, which will affect your annual income for 2015. If this is the case, you will need to update your Marketplace account to reflect the change in your household income.

You further testified that you cannot afford to pay monthly premiums even with tax credits and may want to apply for an exemption. If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, you can consult the Federal Marketplace website (www.healthcare.gov) for information and an application.

Decision

The January 7, 2015 eligibility determination is RESCINDED in part as it relates to the amount of advance premium tax credits and cost sharing reduction to which you and your spouse are entitled.

Your case is RETURNED to the Marketplace for a redetermination of you and your spouse's eligibility for financial assistance based on a three-person household, with a household income of \$32,273.00, and a county of residence of Onondaga County.

Effective Date of this Decision: August 25, 2015

How this Decision Affects Your Eligibility

This decision is not a final determination of your and your spouse's eligibility.

Your case is RETURNED to the Marketplace for a redetermination of you and your spouse's eligibility for financial assistance based on a three-person household, with a household income of \$32,273.00, and a county of residence of Onondaga County.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, you can consult the Federal Marketplace website (www.healthcare.gov) for information and an application.

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.

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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 January 7, 2015 eligibility determination is RESCINDED in part as it relates to the amount of APTC and CSR to which you and your spouse are entitled.

This decision is not a final determination of your and your spouse's eligibility.

Your case is RETURNED to the Marketplace for a redetermination of you and your spouse's eligibility for financial assistance based on a three-person household, with a household income of \$32,273.00, and a county of residence of Onondaga County.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, you can consult the Federal Marketplace website (www.healthcare.gov) for information and an application.

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:

