



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

Notice of Decision

Decision Date: September 3, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002402

[REDACTED]

Dear [REDACTED],

On May 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 15, 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 notice.

Legal Authority

We are sending you this notice in accordance with Code of 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 issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that you are eligible to receive an advance premium tax credit of up to \$281.00 per month and eligible to receive cost-sharing reductions, if you select a silver-level qualified health plan?

Did the Marketplace properly determine that you are not eligible for Medicaid?

Procedural History

On February 11, 2015, the Marketplace issued a renewal notice stating that NY State of Health did not have enough information from state and federal data sources to determine if you and your son can get help paying for your insurance or what coverage you can have for the upcoming year. The notice informed you to update the information on your Marketplace account by March 15, 2015 so an appropriate decision could be made and, if you miss this deadline, the financial assistance you were then getting may end.

As of March 15, 2015, your Marketplace account had not been updated.

On March 17, 2015, the Marketplace issued a notice that you and your son did not respond to the renewal notice and did not complete your renewal within the required timeframe. As a result, you were both no longer qualified to receive financial assistance to help pay for your health coverage and your eligibility would end effective March 31, 2015.

On March 19, 2015, the Marketplace issued a disenrollment notice that your and your son's coverage with New York State Catholic Health Plan, Inc. will end effective March 31, 2015.

On March 26, 2015, the Marketplace issued a notice that more information regarding your household's income is needed in order for your eligibility to be determined. You were instructed to submit income documentation for your household by April 12, 2015 to confirm that the information you provided in your application is accurate.

On April 14, 2015, you updated your Marketplace application.

That same day, the Marketplace made a preliminary eligibility redetermination that you were conditionally eligible to receive up to \$281.00 per month of advance premium tax credits (APTC), eligible for cost sharing reductions, and eligible for the APTC Premium Assistance Program, effective May 1, 2015.

Also that same day, you appealed the eligibility redetermination insofar as you wanted to remain Medicaid eligible. You requested that your Medicaid coverage continue throughout the appeal process.

On April 15, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with the April 14, 2015 preliminary redetermination. The notice also informed you that you needed to provide documentation to confirm your income by July 13, 2015.

That same day, the Marketplace issued an enrollment notice confirming your enrollment in Fidelis Care Silver and your monthly premium responsibility of \$0.00, after your monthly APTC of \$281 was deducted as well as the balance, which was paid by New York State.

On April 16, 2015, The Marketplace issued another notice of eligibility redetermination that was consistent with the April 15, 2015 notice of eligibility redetermination. The notice further informed you that you needed to provide documentation to confirm your income by July 14, 2015.

On April 25, 2015, the Marketplace issued a cancellation notice that your coverage with Fidelis Care Silver will end May 1, 2015. This was because your request for aid to continue under Medicaid had been granted.

That same day, the Marketplace issued a notice of eligibility redetermination that you were eligible for Medicaid effective May 1, 2015. This notice served to inform you that your aid to continue under Medicaid was granted as of May 1, 2015 through July 31, 2015.

Also that same day, the Marketplace issued an enrollment notice that your insurance coverage through Medicaid will begin May 1, 2015 and your enrollment in a Medicaid Managed Care plan will begin June 1, 2015.

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On May 12, 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 fifteen days to allow you to submit information regarding tax deductions that you might be taking in 2015.

As of May 27, 2015, the Appeals Unit did not receive any faxes from you nor were any documents uploaded to and viewable in your Marketplace account. Therefore, the record was closed that same day and this decision is based on information contained in your Marketplace account and evidence presented at the hearing.

Findings of Fact

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

- 1) You testified that you and your spouse plan on filing your 2015 tax return as "Married Filing Jointly" and will claim your eighteen-year-old son as a dependent on that return.
- 2) According to your Marketplace account, you and your son need health insurance through the Marketplace.
- 3) According to your appeal request and your testimony at hearing, you are appealing only your eligibility for APTC, CSR, and the APTC Premium Assistance Program because you were afforded better health coverage, including dental and vision coverage, under the Medicaid Managed Care plan you were previously enrolled in.
- 4) You testified that your son was a full time student at the time of your updated application.
- 5) You testified that your son receives Title II benefits of \$447.00 monthly, which is \$5,364.00 annually.
- 6) You testified that you do not think it is fair to count your son's Title II benefits as part of your household's income.
- 7) You testified and provided documentary proof that your spouse receives Title II Disability benefits of \$1,004.90 gross per month, which is \$12,058.80 annually (Appellant's Exhibit A).
- 8) You testified that you are self-employed and earned \$1,100.00 in February 2015; \$1,050.00 in March 2015; and \$1,000.00 in April 2015, and you average \$1,050.00 per month when you take a salary.

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- 9) According to your Marketplace account, your average annual income for 2015 was projected to be \$12,600.00, which is an average of \$1,050.00 per month
- 10) You testified that you will not be taking a self-employment tax deduction in 2015 because you are not in an income bracket to do so according to your accountant.
- 11) You did not report any other tax deductions that you will be taking on your 2015 tax return to reach your household's adjusted gross income.
- 12) You and your family reside in Rockland 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

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)).

APTC Premium Assistance

Advance premium tax credit (APTC) Premium Assistance is available in New York State to a person who:

- 1) is a parent of a child under 21 years old;
- 2) has a household income greater than 138% of the FPL but less than or equal to 150% of the FPL for the applicable family size;
- 3) is not eligible for Medicaid;
- 4) is enrolled in a silver-level QHP; and
- 5) is applying the full amount of the APTC to the cost of the plan

(N.Y. Soc. Serv. Law § 367-a(3)(e)).

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)).

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, 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

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

On April 14, 2015, your application listed an annual household income of \$28,968.00. This amount consists of \$12,600.00 in income that you receive from self-employment, \$11,004.00 in Title II Disability benefits that your spouse receives, and \$5364.00 your child receives from Social Security Title II disability 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.

You attested to your intent to file a 2015 return when you requested financial support on the Marketplace application. Since you plan on filing your taxes as Married Filing Jointly with your spouse and plan on claiming one child as a dependent on your 2015 tax return, you are in a three-person household.

A dependent will be required to file a tax return in 2015 if their earned income is greater than \$6,300.00. According to the information on your application, your child was a full-time student and had no earned income in 2015. Since your dependent has no earned

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income, which is less than \$6,300.00, he is NOT required to file a tax return on the basis of earned income.

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 \$5,364.00 in income from Social Security Title II Disability benefits and had no earned income. Therefore, \$2,682.00 (one-half the amount of Social Security he receives) plus \$0.00 earned income equals \$2,682.00. Since \$2,682.00 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.

Therefore, the April 15, 2015 and April 16, 2015 eligibility redetermination notices are RESCINDED because your child's income should not have been included in your household's income for purposes of determining your eligibility for financial assistance through the Marketplace.

Your case is RETURNED to the Marketplace for a redetermination of your eligibility for financial assistance as a person who resides in Rockland County, who is a member of a three-person household, and has an expected 2015 household income of \$24,658.80.

Decision

The April 15, 2015 and April 16, 2015 eligibility redetermination notices are RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your eligibility for financial assistance as a person who resides in Rockland County, is a member of a three-person household, and has an expected 2015 household income of \$24,658.80.

Effective Date of this Decision: September 3, 2015

How this Decision Affects Your Eligibility

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your eligibility for financial assistance as a person who resides in Rockland County, is a member of a three-person household, and has an expected 2015 household income of \$24,658.80.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

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

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The April 15, 2015 and April 16, 2015 eligibility redetermination notices are RESCINDED.

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your eligibility for financial assistance as a person who resides in Rockland County, is a member of a three-person household, and has an expected 2015 household income of \$24,658.80.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

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:

