



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

Notice of Decision

Decision Date: September 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002586

[REDACTED]

Dear [REDACTED],

On May 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 14, 2015 and May 9, 2015 eligibility redeterminations.

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).

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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 on March 14, 2015 that you alone are eligible to receive up to \$178.00 per month of advance premium tax credits and, if you select a silver-level qualified health plan, for cost sharing reductions effective April 1, 2015?

Did the Marketplace properly determine thereafter on May 9, 2015 that you and your spouse are eligible to share in advance premium tax credits of up to \$550.00 monthly and, if you select a silver-level qualified health plan, for cost sharing reductions effective June 1, 2015?

Did the Marketplace properly determine that you and your spouse were not eligible for Medicaid?

Procedural History

On March 13, 2015 the Marketplace received two updated applications for health insurance from you and your spouse. The second application indicated that your spouse was not seeking health insurance.

On March 14, 2015 the Marketplace issued a notice of eligibility redetermination that, based on a projected annual household income of \$33,800.00, you alone were conditionally eligible to receive up to \$178.00 of advance premium tax credits (APTC)

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per month and, if you selected a silver-level qualified health plan (QHP), for cost-sharing reductions (CSR) effective April 1, 2015. The notice further stated that you were not eligible for Medicaid because your income was over the allowable limit for that program. The notice also informed you that you needed to provide proof of income by June 11, 2015 to confirm your eligibility. The eligibility determination did not determine your spouse's eligibility.

On April 24, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed the eligibility redetermination insofar as you want coverage under Medicaid.

On May 8, 2015, the Marketplace received your updated application for health insurance.

On May 9, 2015, the Marketplace issued a notice of eligibility determination that stated you are eligible and your spouse is conditionally eligible to share in APTC of \$550.00 per month and, if you select a silver-level QHP, for CSR. The notice further stated that you and your spouse were not eligible for Medicaid because your household income is over the allowable limit for that program. The notice also informed you that your spouse needed to provide proof of citizenship by August 6, 2015, and if he did not submit such proof, he may be found ineligible for health insurance or for less help with health insurance.

On May 28, 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 and your spouse expect to file your 2015 federal income tax return as Married Filing Jointly and will not be claiming any dependents on that tax return.
- 2) According to your Marketplace account and your testimony at hearing, your attested 2015 household income is \$33,800.00, which consists of only your spouse's gross weekly earnings of \$650.00. Your expected 2015 income is \$0.00.
- 3) Both you and your spouse are seeking health insurance for 2015 through the Marketplace as is reflected in your updated marketplace application on May 9, 2015.

- 4) You testified that you cannot afford to pay any amount of monthly premium for health insurance because your household's net monthly income is used to cover basic living expenses and needs.
- 5) You testified that you may want to apply for an exemption because you cannot afford health insurance.
- 6) You and your spouse reside in Kings 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 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 both dates of your application, that was the 2014 FPL, which is \$15,730.00 for a two-person household (79 Fed. Reg. 3593, 3593).

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For annual household income in the range of at least 200% but less than 250% of the 2014 FPL, the expected contribution is between 6.34% and 8.10% of the household income (26 CFR § 1.36B-3T(g)(1), 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 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)).

Medicaid

Medicaid can be provided through the Marketplace to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2014 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a QHP. Such an exemption may be granted if that person can show that 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)).

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Legal Analysis

The first issue is whether the Marketplace properly determined that you alone were eligible for up to \$178.00 per month of APTC and CSR and not eligible for Medicaid as stated in the March 14, 2015 eligibility determination. The record reflects that this determination did not include your spouse's eligibility. You testified that your spouse is seeking health insurance through the Marketplace and the May 8, 2015 application reflects this. Therefore, the March 14, 2015 determination is now moot and has been superseded (replaced) by the Marketplace's May 9, 2015 eligibility determination.

The second issue, is whether the Marketplace properly determined that you and your husband are eligible to share in APTC of up to \$550.00 and CSR. This legal analysis is being provided in the interest of justice and to clarify how your and your spouse's eligibility was determined and the level of APTC to which you and your spouse are entitled was computed.

In the May 8, 2015 application, you attested to an expected yearly income of \$33,800.00. There are two-people in your tax household, you and your husband, and you are both seeking health insurance through the Marketplace. The eligibility determination relied upon that information.

You and your husband reside in Kings County, where the second lowest cost silver plan available for a couple through the Marketplace costs \$743.50 per month.

An annual income of \$33,800.00 is 214.88% of the 2014 Federal Poverty Level (FPL) for a two-person household. At 214.88% of the FPL, the expected contribution to the cost of the health insurance premium is 6.86% of income, or \$193.22 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 couple in your county (\$743.50 per month) minus your expected contribution (\$193.22 per month), which equals \$550.28 per month. Therefore, computing to the nearest dollar, the Marketplace correctly determined your APTC to be \$550.00 per month.

Cost-sharing reductions (CSR) are available to people who have a household income no greater than 250% of the FPL. Since a household income of \$33,800.00 is 214.88% of the 2014 FPL, the Marketplace correctly found you and your husband to be eligible for CSR.

The third issue is whether the Marketplace properly determined that you and your husband were not eligible for Medicaid.

Medicaid can be provided through the Marketplace to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your corrected application, the relevant FPL was \$15,930.00. 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).

for a two-person household. Since \$33,800.00 is 212.18% of the 2015 FPL, the Marketplace properly found you and your husband to be ineligible for Medicaid on an expected annual income basis, using the information provided in your May 8, 2015 application.

Since the May 9, 2015 eligibility determination properly stated that, based on the information you provided, you and your husband were eligible for APTC of up to \$550.00 per month, eligible for CSR, and not eligible for Medicaid, it is correct and is AFFIRMED.

However, you testified that even with the APTC of \$550.00 monthly, 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 HHS at its Federal website (www.healthcare.gov) for direction.

Decision

The Marketplace's March 14, 2015 eligibility determination has been superseded (replaced) by a subsequent determination and, therefore, is rendered moot.

The Marketplace's May 9, 2015 eligibility determination is AFFIRMED.

Effective Date of this Decision: September 14, 2015

How this Decision Affects Your Eligibility

You and your spouse remain eligible to receive an APTC of up to \$550.00 monthly and, if you enroll in a silver level health plan, eligible for CSR.

You and your spouse are not eligible for 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.

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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 for assistance.

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 Marketplace's March 14, 2015 eligibility determination has been superseded (replaced) by a subsequent determination and, therefore, is rendered moot.

The Marketplace's May 9, 2015 eligibility determination is AFFIRMED.

You and your spouse remain eligible to receive an advance premium tax credit of up to \$550.00 monthly and for CSR.

You and your spouse are not for Medicaid.

If you and your spouse wish to be considered for a hardship exemption, you can contact HHS at its Federal website (www.healthcare.gov) for direction.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

