



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: AP000000002656

[REDACTED]

Dear [REDACTED],

On May 29, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 17, 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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Issues

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 \$12.00 per month and cost-sharing reductions, if you are enrolled in a silver-level qualified health plan as of February 17, 2015?

Did the Marketplace properly determine that your son was eligible to receive Child Health Plus with a \$15.00 monthly premium as of February 17, 2015?

Procedural History

On February 16, 2015, you updated your Marketplace account.

On February 17, 2015, the Marketplace issued an eligibility determination notice stating that you are eligible for up to \$12.00 of advance premium tax credits per month and cost-sharing reductions, if you are enrolled in a silver-level qualified health plan. Your son was determined eligible for Child Health Plus with a \$9.00 monthly premium.

On April 29, 2015, you spoke with the Marketplace's Account Review Unit and appealed the amount of financial assistance you and your son were determined eligible to receive.

On May 29, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Testimony was taken during the hearing. The record was developed during the hearing and closed at the end of the hearing.

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Findings of Fact

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

1. You are applying for yourself, your spouse and eleven-year-old son (2/16/2015 Marketplace application).
2. Your spouse was determined to be already enrolled or eligible for a public insurance program such as Medicare and was referred to the local department of social services for further determination (2/17/2015 Marketplace notice).
3. You testified that you expect to file your 2015 federal income tax return with the tax status of married filing jointly and will claim your son as a dependent on that return.
4. You reside in Cayuga County, New York.
5. The Marketplace determined your 2015 annual household income to be \$44,924.00 (2/17/2015 Marketplace notice).
6. Your 2015 annual household income amount included: (1) \$26,000.00 (500.00 X 52) in earned income you expect to receive in 2015; (2) \$12,324.00 (1,027 X 12) in Social Security Benefits your spouse expects to receive in 2015; and (3) \$6,600.00 (550.00 X 12) your son expects to receive in 2015 (2/16/2015 Marketplace application).
7. You testified that your Marketplace application is an accurate reflection of your family's expected 2015 household income.
8. You testified that you are unable to afford health insurance through the Marketplace based on the amount of financial assistance you were determined eligible to receive.

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 § 603(e), see 26 USC § 36B(d)(2)(B)).

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For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, 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)).

"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 Social Security benefits are included in gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" plus one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Household Income

A tax filer's MAGI household income includes the MAGI-based income 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 has yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 will 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).

Legal Analysis

The first question is whether the Marketplace properly determined your household's expected income for 2015.

In the February 16, 2015 application, you attested to a 2015 expected annual household income of \$44,924.00, which included (1) your earnings of \$26,000.00, (2) your spouse's Social Security benefits of \$12,324.00, and (3) \$6,600.00 of Social Security benefits for your eleven-year-old son. The Marketplace included your son's Social Security benefits in your household income when determining your eligibility for financial assistance.

An individual's Social Security benefits are counted as gross income only to the extent that the sum of the person's "modified adjusted gross income" plus one-half of their Social Security benefits is greater than \$25,000.00.

The credible evidence of record indicates that your eleven-year-old stepson has no earned income. With no earned income, the sum of his MAGI-based income plus half of his Social Security benefits cannot exceed \$25,000.00, whether one expects his 2015 benefits to be \$6,600.00 (\$500.00 per month for 12 months, as per the application). Therefore, his benefits are not counted as gross income and his expected gross income for 2015 is \$0.00.

Since your son expects no earned income during 2015 and his expected unearned income is less than \$1,050.00, the record as currently developed does not indicate that he will be required to file a federal tax return during 2015.

Since the record does not indicate that your son will be required to file a federal tax return, his income should not be included in your expected household income for 2015.

Therefore, when the Marketplace determined your eligibility on February 17, 2015, it should have counted your expected income (\$26,000.00) and your spouse's expected income (\$12,324.00), for a total of \$38,324.00.

However, the Marketplace added the \$6,600.00 you identified as your son's Social Security benefits, which overstated your household income as \$44,924.00, and made its February 17, 2015 determination on that basis.

Since the February 17, 2015 determination is based on a miscalculation of your expected 2015 household income, it is **RESCINDED**.

Your case is returned to the Marketplace for redetermination of your eligibility based on a three-person household living in Cayuga County with a household income of \$38,324.00.

Decision

The February 17, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of you and your sons' eligibility for financial assistance based on a three-person household with a household income of \$38,324.00.

Effective Date of this Decision: August 25, 2015

How this Decision Affects Your Eligibility

This decision does not determine your final eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your eligibility on your corrected household income.

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.

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If You Have Questions about this Decision (Customer Service Resources):

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Albany, NY 12211
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Summary

The February 17, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of you and your sons' eligibility for financial assistance based on a three-person household with an expected 2015 household income of \$38,324.00.

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:

