

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: AP000000002726



Dear ,

On June 25, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 3, 2015 eligibility determinations.

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).



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

#### **Decision**

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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 were no longer eligible to be enrolled in a health insurance plan through the Marketplace, effective May 31, 2015?

Did the Marketplace properly determine that your spouse was eligible to receive \$0.00 in advance premium tax credit, effective June 1, 2015?

## **Procedural History**

On December 23, 2014, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible, and your spouse was eligible, to share an advance premium tax credit of up to \$363.00 per month, effective February 1, 2015. You were requested to provide proof of your incarceration status before March 24, 2015 in order to confirm your eligibility. The notice further stated that if you did not provide the requested documentation by March 24, 2015, you might be found ineligible for health insurance.

On December 29, 2014, the Marketplace issued a notice confirming you and your spouse's enrollment in a qualified health plan (QHP). This notice directed you to provide proof of incarceration status before March 24, 2015. The notice further stated that failure to provide this information could result in a cancellation of your health insurance coverage.

Proof of your incarceration status was not received by the Marketplace by March 24, 2015.

On May 3, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were no longer eligible to enroll in health insurance through the Marketplace because you did not provide information regarding your incarceration status

Also on May 3, 2015, the Marketplace issued a notice of eligibility redetermination stating that you spouse was eligible to receive \$0.00 in advance premium tax credit, effective June 1, 2015. This eligibility determination was based on an expected household income of \$47,800.00.

On May 4, 2015, the Marketplace issued a disenrollment notice that stated you and your spouse's coverage through your qualified health plan was terminated effective May 31, 2015.

Also on May 4, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 3, 2015 eligibility determinations insofar as you were no longer eligible to enroll in health insurance, and your spouse was eligible for an advance premium tax credit no greater than \$0.00 per month.

On June 25, 2015, you had a telephone hearing with a Hearing Officer from the Appeals Unit of NY State of Health. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit proof of your incarceration status.

The Marketplace's Appeals Unit did not receive your supporting evidence by July 10, 2015, and the record was closed. However, on July 16, 2015 supporting evidence was uploaded to your account and was incorporated into the record.

## **Findings of Fact**

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

- You testified that you were incarcerated in 2013 for one month. You
  further testified that you assumed your account would "correct itself"
  because you were able to purchase health insurance through the
  Marketplace last year under your spouse's account without providing proof
  of your incarceration status.
- 2) You testified that you received electronic communications from the Marketplace but, since you do not check your email often, you may have overlooked the notices awaiting review in your Marketplace account.

- 3) You testified that you are appealing you and your spouse's eligibility determinations because his eligibility was changed when you were disenrolled from your couple's plan.
- 4) You testified, and the record reflects, that you did not submit proof of your incarceration status by March 24, 2015.
- 5) On July 16, 2015 you uploaded a letter from your employer that states you have been employed with since July 2009.
- 6) The record reflects that your application for health insurance was received by the Marketplace on December 22, 2014. The record further reflects that this application was redetermined on May 2, 2015 based on the Marketplace's findings that you were no longer eligible to enroll in health insurance through the Marketplace because you did not submit proof of your incarceration status in order to confirm your eligibility.
- 7) The record reflects that your spouse's May 3, 2015 eligibility determination was based on an expected household income of \$47,800.00 for the 2015 tax year.
- 8) According your application, you expect to file your 2015 federal income tax return jointly with your spouse and claim no dependents.
- 9) The record reflects that you reside in Queens 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:

 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 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).

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), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

#### Eligibility for Enrollment in a Qualified Health Plan

Generally, an applicant is eligible for enrollment in a qualified health plan (QHP) through the Marketplace if he: (1) is a citizen or national of the United States; (2) is not incarcerated; and (3) is a resident of the state (45 CFR § 155.305(a)(1)-(3)).

The Marketplace must verify an applicant's attestation that the applicant is not incarcerated by either relying on available electronic data sources, or accepting the applicant's attestation when electronic data sources are unavailable (45 CFR § 155.315(e)). However, if an applicant's attestation is not reasonably compatible with information from approved data sources or other information provided by the applicant, the Marketplace must notify the applicant of the inconsistency and provide the applicant with a period of 90 days to present documentation to resolve the inconsistency (45 CFR § 155.315(e)(3); 45 CFR § 155.315(f)(2)(i)-(ii)).

If the Exchange remains unable to verify the attestation after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources (45 CFR § 155.315(f)(5)(i)).

#### **Electronic Notices**

Applicants may choose to receive notices and information from the Marketplace by either electronic or regular mail. If the applicant elects to receive electronic notices, the Marketplace must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (45 CFR §155.230(d); 42 CFR §435.918(b)(4).

### Legal Analysis

The first issue is whether the Marketplace properly determined that you were no longer eligible to enroll in health insurance through the Marketplace, effective May 31, 2015.

An applicant is eligible to enroll in a qualified health plan (QHP) if he is a citizen or national of the United States, is not incarcerated, and is a resident of New York State. There being no contention regarding your citizenship or residency statuses, they are not addressed here.

If the Marketplace cannot verify information required to determine the applicant's eligibility, the Marketplace must provide the applicant a period of ninety days to resolve the inconsistency.

On December 23, 2014, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to share an advance premium tax credit of up to \$363.00 per month with your spouse. You were requested to provide proof of your incarceration status before March 24, 2015 in order to confirm your eligibility.

Ninety days from December 23, 2014 is March 23, 2015, therefore, the Marketplace provided you 91 days to submit proof of your incarceration status.

The record reflects that the Marketplace did not receive the requested documentation before March 24, 2015.

If the Marketplace remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested documentation was not received within the 91-day period provided, the Marketplace was required to redetermine your eligibility based on

the information available in the data sources, which included insufficient information to confirm your incarceration status. As a result, the Marketplace properly determined that you were no longer eligible to enroll in health insurance through the Marketplace because you did not provide the information requested by the Marketplace.

Therefore, the Marketplace's May 3, 2015 determination ending your eligibility effective May 31, 2015 was correct and is AFFIRMED.

The second issue is whether the Marketplace properly determined that your spouse was eligible for \$0.00 in advance premium tax credit (APTC), effective June 1, 2015.

On May 2, 2015, you and your spouse's application for health insurance was redetermined based on the Marketplace's findings that you were no longer eligible to enroll in health insurance through the Marketplace because you did not submit proof of your incarceration status in order to confirm your eligibility.

In the application that was redetermined on May 2, 2015, you attested to an expected yearly income of \$47,800.00, and the eligibility determination relied upon that information.

According to the record, you expect to file your 2015 federal income tax return jointly with your spouse and claim no dependents, therefore, you are a two-person household.

You reside in Queens County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month. Since you were no longer eligible to enroll in health insurance through the Marketplace as of May 31, 2015, your spouse's eligibility could only be determined using the second lowest cost silver plan available for an individual through the Marketplace, and not a couple.

An annual income of \$47,800.00 is 303.88% of the 2014 FPL for a two-person household. At 303.88% of the FPL, the expected contribution to the cost of the health insurance premium is 9.56% of income, or \$380.81 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 (\$371.75 per month) minus your expected contribution (\$380.81 per month). Since this number is less than zero, the Marketplace correctly determined your spouse's APTC to be \$0.00 per month.

Since your spouse's May 3, 2015 eligibility determination properly stated that he is eligible to receive an APTC of \$0.00 per month, it is correct and is AFFIRMED.

However, after the hearing, on July 16, 2015 you uploaded a letter from your employer that states you have been employed with since July 2009. Since the record now contains documentation regarding your incarceration status, your case is RETURNED to the Marketplace for a redetermination of your household's eligibility based on the documentation you provided, if it has not already done so.

#### Decision

The Marketplace's May 3, 2015 determination notice regarding your eligibility is AFFIRMED.

The Marketplace's May 3, 2015 determination notice regarding your spouse's eligibility is AFFIRMED.

Your case is RETURNED to the Marketplace for a redetermination of your household's eligibility based on the documentation you provided, if it has not already done so.

Effective Date of this Decision: September 14, 2015

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

You remain ineligible to enroll in health insurance through the Marketplace because you have not provided proof of your incarceration status.

Your spouse remains eligible for \$0.00 in advance premium tax credit.

Your case is being sent back to the Marketplace for a redetermination of your eligibility based on the documentation you provided.

## 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 Marketplace's May 3, 2015 determination notice regarding your eligibility is AFFIRMED; you remain ineligible to enroll in health insurance through the Marketplace because you have not provided proof of your incarceration status.

The Marketplace's May 3, 2015 determination notice regarding your spouse's eligibility is AFFIRMED.

Your spouse remains eligible for \$0.00 in advance premium tax credit.

Your case is RETURNED to the Marketplace for a redetermination of your household's eligibility based on the documentation you provided, if it has not already done so.

## **Legal Authority**

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

## A Copy of this Decision Has Been Provided To:

