



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

Notice of Decision

Decision Date: July 30, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002786

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On June 11, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 8, 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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Appeal Identification Number: AP000000002786

[REDACTED]
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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 the amount of Modified Adjusted Gross Income used to calculate your eligibility for financial assistance?

Procedural History

The Marketplace received your modified application for health insurance on May 7, 2015, and prepared a preliminary eligibility determination in your case. It stated that you were eligible to receive an advance premium tax credit (APTC) of up to \$188.00 per month and, if you enrolled in a silver level health plan, cost-sharing reductions. This preliminary determination was based on an expected household income of \$27,336.00.

Also on May 7, 2015, you spoke with the Marketplace's Account Review Unit and appealed that determination insofar as it did not determine you eligible for Medicaid.

On May 8, 2015, the Marketplace issued a notice of eligibility determination stating that you were eligible to receive up to \$188.00 in APTC. It further stated that you were not eligible for Medicaid because the household income you provided was over the allowable income limit for that program.

On June 11, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and

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left open for up to 15 days to provide you an opportunity to submit supporting evidence.

On June 15, 2015, the Marketplace received your supporting evidence, which included a copy of your child's Social Security Survivors' Benefit decision indicating that your child has been receiving these benefits since February 2014. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on June 15, 2015.

Findings of Fact

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

- 1) You testified, and the record reflects that you expect to file your 2015 federal income tax return as a qualifying widow and claim your child as a dependent.
- 2) You testified that you and your child are seeking insurance through the Marketplace.
- 3) You testified, and the record reflects, that you and your child are currently receiving Social Security benefits. The record further reflects that you and your child are each receiving \$1,139.00 per month in Title II Social Security benefits.
- 4) You provided evidence that your child has been receiving Social Security Survivors' Benefits since February 2014 (Appellant's Exhibit 1).
- 5) You testified that you do not have any other sources of income.
- 6) You testified, and the record reflects, that you reside in Monroe County, NY.

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

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

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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)).

However, when determining 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).

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

The only issue is whether the Marketplace properly determined the amount of Modified Adjusted Gross Income used to calculate your eligibility for financial assistance.

In the application that was submitted on May 7, 2015, you attested to an expected yearly income of \$27,386.00, which is the sum of your total Title II Social Security benefits (\$1,139.00 per month or \$13,668.00 for the year) plus the total Title II Social Security benefits for your child (\$1,139.00 per month or \$13,668.00 for the year). The Marketplace's May 8, 2015 eligibility determination relied upon your attested household income of \$27,336.00.

Generally, a tax filer's household income includes the modified adjusted gross income of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year. In 2015, a dependent does not have to file a tax return unless his yearly gross unearned income is greater than \$1,050.00. Unearned income is generally all income other than what is earned, including the *taxable* part of social security and pension payments.

To determine the taxable amount of income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income."

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.

The record reflects that your child's only source of income is Social Security survivors' benefits.

As your child's only source of income is \$13,668.00 in Social Security survivors' benefits, one half of this income is \$6,834.00. Since \$6,834.00 is less than \$25,000.00, his income from Social Security benefits should not be included in his gross income. Therefore, your child is not required to file a tax return, and the Marketplace improperly included your child's income in the May 8, 2015 eligibility determination.

Therefore, the May 8, 2015 notice of eligibility determination is **RESCINDED**.

Your case is returned to the Marketplace for a redetermination of your eligibility based on a two-person household living in Monroe County with a household income of \$13,668.00.

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).

Decision

The May 8, 2015 notice of eligibility determination is RESCINDED.

Your case is returned to the Marketplace for a redetermination of your eligibility based on a two-person household living in Monroe County with a household income of \$13,668.00.

Effective Date of this Decision: July 30, 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 a redetermination of your eligibility based on your corrected household income.

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:
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- By fax: 1-855-900-5557

Summary

The May 8, 2015 notice of eligibility determination is **RESCINDED**.

Your case is returned to the Marketplace for a redetermination of your eligibility based on a two-person household living in Monroe County with a household income of \$13,668.00.

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

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

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:

[REDACTED]
[REDACTED]
[REDACTED]