



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

Notice of Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002948

[REDACTED]

Dear [REDACTED],

On June 30, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 6, 2015 and May 12, 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 Code of Federal Regulation (CFR) 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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NY State of Health Number: [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 calculate the amount of Modified Adjusted Gross Income used when determining your eligibility for financial assistance?

Procedural History

On May 6, 2015, and May 12, 2015, the Marketplace issued eligibility determination notices based on your May 5, 2015 application. They stated, in relevant part, that you, Theresa, were eligible to enroll in a qualified health plan (QHP) and eligible to receive an advance premium tax credit (APTC) of \$0.00 per month. They also stated that you were not eligible for cost-sharing reductions (CSR) or Medicaid.

On May 15, 2015, you contacted the Marketplace's Account Review Unit and appealed these determinations insofar as you were found not eligible for financial assistance, including Medicaid.

On June 30, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide additional evidence to corroborate your testimony: (1) Social Security Administration (SSA) benefit award letters issued to your spouse, son, and cousin for 2015, (2) a pension award letter showing amount per month issued to your spouse and (3) reasonably acceptable documentation reflecting that your spouse's pension benefits are non-taxable. The record was to be closed 15 days after the hearing

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date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On July 7, 2015, you provided all of the above referenced documents, except for reasonably acceptable documentation showing that your spouse's pension benefits are non-taxable, to the Appeals Unit via facsimile.

The record was closed on July 15, 2015.

Findings of Fact

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

- 1) You testified that you expected to file your 2015 taxes with a tax filing status of married filing jointly. You will claim your son and your cousin as dependents on that tax return.
- 2) You are seeking insurance only for yourself, because your son has been enrolled in Child Health Plus (CHP) through the Marketplace and your cousin is currently enrolled in Medicaid through your Local Department of Social Services (LDSS).
- 3) You testified that your spouse is receiving disability benefits relating to the back surgeries he sustained as a result of working on road construction for many years.
- 4) You testified that your son has received SSA benefits since your spouse qualified for disability benefits.
- 5) You testified that your cousin lives with you and also receives SSA benefits due to the death of his father.
- 6) The application that was submitted on May 5, 2015 listed an annual household income of \$59,969.64, consisting of (1) \$918.00 per month your spouse receives in SSA benefits, (2) \$1,733.00 your son receives in SSA benefits, (3) \$831.00 your cousin receives in SSA benefits and (4) \$1,515.47 your spouse received in pension benefits. You testified this amount was accurate when you submitted your application, and these figures remain an accurate estimation of your household's expected yearly income.
- 7) On July 7, 2015, you provided SSA benefits letters reflecting your spouse's, son's, and cousin's benefits amounts for 2015. While the benefit amounts you provided in your application for your spouse and cousin were consistent with the SSA benefit letters provided, the SSA benefit letter

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issued to your son reflects that he receives \$1,837.90 per month before a \$104.90 deduction for medical insurance.

- 8) On July 7, 2015, you provided a letter issued by your spouse's pension fund, [REDACTED] (Pension Fund), dated July 1, 2015, stating that his current monthly benefit is \$1,515.47. You also provided a letter stating that the pension "... is tax deductible and is recorded on my 1040 (*sic*).” You testified during the hearing that you believed the pension was being treated as income that was taxable to you by the Marketplace.
- 9) Your application states that you will not be taking any deductions on your 2015 tax return.
- 10) Your application states that you live in Nassau 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)).

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)).

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)).

There is no provision in law or regulation that allows the Marketplace to deduct the taxable portion of your spouse's pension benefits from the modified adjusted gross income.

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 May 5, 2015 your application listed an annual household income of \$59,969.64. This amount consists of (1) \$1,515.47 per month your spouse receives in pension benefits, (2) \$918.00 per month your spouse receives in Social Security disability benefits, (3) \$1,733.00 per month your child receives in Social Security disability benefits and (4) \$831.00 per month your cousin receives in Social Security survivor's benefits.

The documents you provided to the Marketplace, however, reflect that the amount of Social Security disability benefits your child receives is actually \$1,837.90 per month before a \$104.90 deduction for medical insurance.

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 jointly with your spouse and claim your child and cousin as dependents on your 2015 tax return, you are in a four-person household.

The record reflects that your spouse anticipates receiving \$11,016.00 (\$918.00 x 12 months) in Social Security disability benefits. This amount is properly included within your annual household income.

The record also reflects that your spouse anticipates receiving \$18,185.64 (\$1,515.47 x 12 months) in pension benefits. When you testified during the hearing that believed your spouse's pension benefits are non-taxable, the Hearing Officer directed you to provide reasonably acceptable documentation to corroborate that testimony. However, you did not supply any documentation reflecting that the pension benefit is non-taxable income. Therefore, the record supports including your spouse's pension benefit income within your annual household income.

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, both your child and your cousin are not employed, and will not be receiving any earned income. Since each of your dependents have an earned income less than \$6,300.00, they are NOT required to file a tax return on the basis of their 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 anticipated receiving \$22,054.80 (\$1,837.90 x 12 months) in income from Social Security disability benefits. Therefore, \$11,027.40 (one-half the amount of Social Security he receives) plus no earned income from a job equals \$11,027.40. Since \$11,027.40 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.

Your cousin received \$9,972.00 (\$831.00 x 12 months) in income from Social Security survivor benefits. Therefore, \$4,986.00 (one-half the amount of Social Security he receives) plus no earned income from a job equals \$4,986.00. Since \$4,986.00 is less than \$25,000.00, your cousin has no taxable income from Social Security and is also not required to file a tax return on the basis of unearned income.

Therefore, the May 6, 2015, and May 12, 2015 eligibility determinations are **RESCINDED** because your child's and your cousin's income should not have been included in your household's income for Marketplace purposes.

Your case is **RETURNED** to the Marketplace for a redetermination of your eligibility for financial assistance as a person who resides in Nassau County, is a member of a four-person household, has an expected household income of \$29,201.64, and received \$2,433.47 in income during the month of May 2015.

Decision

The May 6, 2015, and May 12, 2015 eligibility determinations are **RESCINDED**.

Your case is being sent back to the Marketplace for a redetermination of your eligibility for financial assistance as a person who resides in Nassau County, is a member of a four-person household, has an expected household income of \$29,201.64, and received \$2,433.47 in income during the month of May 2015.

Effective Date of this Decision: October 27, 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 Nassau County, is a member of a four-person household, has an expected household income of \$29,201.64, and received \$2,433.47 in income during the month of May 2015.

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
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The May 6, 2015 and May 12, 2015 eligibility determinations 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 Nassau County, is a

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member of a four-person household, and has an expected household income of \$29,201.64 and, if necessary, received \$2,433.47 during the month of May 2015.

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 Code of Federal Regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

