



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

Notice of Decision

Decision Date: November 09, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003094

[REDACTED]

Dear [REDACTED],

On August 26, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 23, 2015 eligibility determination.

The attached 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).

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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 and your spouse were eligible to receive up to \$667.00 per month of advance premium tax credit, effective July 1, 2015?

Did the Marketplace properly determine that you and your spouse were eligible to receive cost-sharing reductions effective July 1, 2015?

Did the Marketplace properly determine that you and your spouse were ineligible for Medicaid?

Procedural History

On April 21, 2015, the Marketplace issued a Notice of Decision which found you and your spouse were properly determined eligible for an advance premium tax credit (APTC) of up to \$675.00 per month; eligible for cost-sharing reductions (CSR); and ineligible for Medicaid, as reflected in a December 11, 2014 notice of eligibility determination. However, at the time that your initial appeal ([REDACTED]) was heard, the Hearing Officer found that there was sufficient evidence that your case should be returned to the Marketplace to redetermine your and your spouse's eligibility for financial assistance based on a three-person household in Nassau County with an expected 2015 income of \$29,108.32.

The Marketplace reviewed a revised application for health insurance on May 22, 2015, which was based on the findings contained within the April 21, 2015 Notice

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of Decision. This application included you, your spouse, and your daughter, and confirmed that your expected income for 2015 was \$29,108.32.

On May 22, 2015, the Marketplace prepared a preliminary eligibility determination based on the information contained within the May 22, 2015 application. It found that you and spouse were eligible to receive an APTC of up to \$667.00 per month and CSR, effective July 1, 2015. The Marketplace did not prepare any decision on Medicaid eligibility for either you or your spouse.

Also on May 22, 2015, you spoke with the Marketplace Account Review Unit to appeal the May 22, 2015 preliminary eligibility determination insofar as you and your spouse were not found eligible for Medicaid.

On May 23, 2015, the Marketplace issued an eligibility determination notice formalizing the findings in the May 22, 2015 preliminary eligibility determination. The notice stated that you and your spouse were eligible to receive an APTC of up to \$667.00 per month and, if you selected a silver-level plan, eligible for CSR. This determination also found you and your spouse to be ineligible for Medicaid. The effective date of this determination was July 1, 2015.

Also on May 23, 2015, the Marketplace issued an enrollment notice confirming enrollment in a Health Republic silver-level plan as selected by you and your spouse at a premium rate of \$141.31 per month, after the maximum APTC of \$667.00 was applied.

On June 18, 2015, the Marketplace received a signed copy of a 2014 joint tax return filed by you and your spouse.

On August 23, 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 submit as additional evidence to corroborate your testimony: (1) a letter issued by spouse's employer, [REDACTED] stating that he is employed, but received no income during May 2015, (2) all earnings statements issued to you by your employer, [REDACTED] during May 2015 and (3) all earnings statements issued to your daughter by her employer, [REDACTED] during May 2015. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

The above-referenced documents were received by the Appeals Unit on September 9, 2015, considered timely given the legal holiday, and made part of the record that same day. Accordingly, the record was closed on September 9, 2015.

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Findings of Fact

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

- 1) You testified that you are married and have a 21-year-old daughter.
- 2) You live in Nassau County, New York.
- 3) You testified, and your application reflects, that you and your spouse will be your 2015 filing taxes jointly and claiming your daughter as a dependent.
- 4) You testified, and your application reflects, that you are seeking health insurance coverage only for yourself and your spouse. You further testified that your daughter is disabled and has obtained health insurance outside of the Marketplace.
- 5) The May 22, 2015 application, which was based on the findings contained within the April 21, 2015 Notice of Decision, reported an annual household income of \$29,108.32, which included (1) \$20,108.32 in expected income from ██████████ for work performed during 2015, (2) \$9,000.00 in income from your spouse's self-employment during 2015, and (3) \$200.00 per month in income your daughter received from her employer, ██████████.
- 6) On June 18, 2015, you provided a signed copy of your 2014 joint tax return in which you reported an adjusted gross income of \$22,439.00
- 7) On September 9, 2015, you provided to the Appeals Unit earnings statements issued to you from ██████████ reflecting that you received (1) \$1,057.60 for work performed between May 1, 2015 and May 14, 2015, (2) \$1,057.60 for work performed between May 28, 2015, and (3) \$951.84 for work performed between May 29, 2015 and June 11, 2015. The paystubs, however, do not indicate a date when these payments were actually received.
- 8) On September 9, 2015, you provided to the Appeals Unit a letter issued by ██████████, dated September 9, 2015, stating that "[your spouse] did not work for ██████████ during the month of May, 2015. He is not a full time employee and works as needed only if he is available."
- 9) On September 9, 2015, you provided to the Appeals Unit an earnings statement issued by ██████████ that your daughter received three payments of \$120.00 between May 1, 2015 and May 31, 2015.

10) You testified that you did not understand why the adjusted gross income of \$22,439.00 referenced in your 2014 joint tax return would not be used to compute your eligibility for financial assistance during 2015.

11) You testified that you were seeking Medicaid coverage for you and your spouse since the plans available through the Marketplace, including the Health Republic silver-level plan in which you are currently enrolled, are unaffordable based on your family's income and circumstances.

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 generally 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)).

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 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 19,790.00 for a three-person household (79 Fed. Reg. 3593).

For annual household income in the range of at least 133% but less than 150% of the 2014 FPL, the expected contribution is between 3.02% and 4.02% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

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 \$20,090.00 for a three-person household (79 Fed. Reg. 3593).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size

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(42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Modified Adjusted Gross Income

A taxpayer's household income includes the modified adjusted gross income (MAGI) all the individuals in the taxpayer's family who are required to file a return for the taxable year (26 CFR § 1-36B-1(e)(2)).

The income of children is not included within the MAGI-based income of an individual if the child is not required to file a tax return under 26 USC § 6012 (45 CFR 155.300(a), 42 CFR § 435.603(d)(2)). A child whose gross income is less than the federal standard deduction applicable to them is not required to file a U.S. Income Tax return (26 USC § 6012(a)(1)). The 2015 federal standard deduction for a tax dependent with a "single" filing status is \$6,300.00 (IRS Publication IR-2014-104 (Oct. 30, 2014)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you and your spouse were eligible for an advance premium tax credit (APTC) of up to \$667.00 per month.

The application that was submitted on May 22, 2015 listed an annual household income of \$29,108.32, which was comprised of (1) \$20,108.32 in income you expected to receive from [REDACTED] for work performed during 2015, (2) \$9,000.00 in income your spouse expected to receive from his self-employment during 2015. The application also confirmed that your daughter expects to receive approximately \$200.00 per month in income from her employer, [REDACTED]. However, the Marketplace properly excluded this income from your annual household income since her projected income during 2015 (\$2,400.00) was less than the federal standard deduction applicable to her (\$6,300.00).

The eligibility determination relied upon the balance of the income information you had provided.

You and your spouse are in a three-person household. You expect to file your 2015 income taxes as married filing jointly and will claim your daughter as a dependent on that tax return.

You and your spouse reside in Nassau County, where the second lowest cost silver plan available for a couple through the Marketplace costs \$759.86 per month.

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An annual income of \$29,108.32 is 147.09% of the 2014 FPL for a three-person household. At 147.09% of the FPL, the expected contribution to the cost of the health insurance premium is 3.85% of income, or \$93.39 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 (\$759.86 per month) minus your expected contribution (\$93.39 per month), which equals \$666.47 per month. Therefore, rounding up to the nearest dollar, the Marketplace correctly determined you and your spouse to be collectively eligible for up to \$667.00 per month in APTC.

The second issue is whether you and your spouse were properly found eligible for cost-sharing reductions (CSR).

CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$29,108.32 is 147.09% of the applicable FPL, the Marketplace correctly found you and your spouse to be eligible for cost sharing reductions.

The third issue is whether the Marketplace properly determined that you and your spouse were ineligible 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 application, the relevant FPL was \$20,090.00 for a three-person household. Since \$29,108.32 is 144.89% of the 2015 FPL, the Marketplace properly found you and your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the May 23, 2015 eligibility determination properly stated that, based on the information you provided, you and your spouse were collectively eligible for up to \$667.00 per month in APTC, eligible for CSR, and ineligible for Medicaid, it is correct and is AFFIRMED.

However, at the hearing you testified that your 2015 expected annual household income no longer reflects your current income situation. You further testified that, contrary to the information contain in the May 22, 2015 application, your overall income has decreased. Furthermore, you testified that your income during the month of your application, May 2015, was exceedingly low. Accordingly, you would like you and your spouse's financial eligibility to be reconsidered.

The credible evidence of record reflects that you received \$2,115.20 during May 2015 and that your spouse received no income during that month.

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Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Since the record suggests that the Marketplace determined your eligibility by expected annual income but not by current monthly income, and that you have a three-person household, the case should be returned to the Marketplace for a redetermination of eligibility using a three-person household with an income of \$2,115.20 for the month of May 2015.

Therefore, the case is returned to the Marketplace to redetermine eligibility for financial assistance based on a three-person household in Nassau County, with a May 2015 income of \$2,115.20.

Decision

The May 23, 2015 eligibility determination is AFFIRMED.

The case is returned to the Marketplace to redetermine eligibility for financial assistance based on a three-person household in Nassau County, with a May 2015 income of \$2,115.20.

Effective Date of this Decision: November 09, 2015

How this Decision Affects Your Eligibility

You and your spouse remain eligible to enroll in a qualified health plan, receive up to \$667.00 per month of APTC and, if you select a silver-level plan, eligible for CSR.

Your case is returned to the Marketplace to redetermine eligibility for financial assistance based on a three-person household in Nassau County, with a May 2015 income of \$2,115.20.

You will receive a new eligibility determination shortly based on the now available record reflecting your monthly income during May 2015.

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.

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

Summary

The May 23, 2015 eligibility determination is AFFIRMED.

You and your spouse remain eligible to enroll in a qualified health plan, receive up to \$667.00 per month of APTC and, if you select a silver-level plan, eligible for CSR.

Your case is returned to the Marketplace to redetermine eligibility for financial assistance based on a three-person household in Nassau County, with a May 2015 income of \$2,115.20.

You will receive a new eligibility determination shortly based on the now available record reflecting your monthly income during May 2015.

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A Copy of this Decision Has Been Provided To:

