



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

## Notice of Decision

Decision Date: October 22, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003180

[REDACTED]

Dear [REDACTED]

On July 2, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 29, 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this letter.

### Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(b).

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## Decision

Decision Date: October 22, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003180



## 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 up to \$147.00 monthly of advance premium tax credit and cost-sharing reductions, if you enroll in a silver-level qualified health plan as of May 29, 2015?

Did the Marketplace properly determine that your child was eligible for Child Health Plus with a \$9.00 monthly premium as of May 29, 2015?

Did the Marketplace properly determine that you and your child are not eligible for Medicaid as of May 29, 2015?

Did the Marketplace properly determinate that you were not eligible for a special enrollment period?

## Procedural History

On May 28, 2015 you updated your Marketplace Account. The Marketplace rendered a preliminary eligibility determination that you are eligible to receive up to \$147.00 of advance premium tax credits (APTC) and cost-sharing reductions (CSR). Your child was determined eligible to enroll through Child Health Plus with a \$9.00 premium per month.

On the same day you spoke to the Marketplace Account Review Unit and requested an appeal insofar as the amount of financial assistance you and your

child were determined eligible to receive and your eligibility for a special enrollment period.

On May 29, 2015 the Marketplace issued an eligibility determination notice stating that you are eligible to receive up to \$147.00 monthly of APTC and CSR, if you enroll in a silver-level qualified health plan (QHP). The notice stated your child was eligible to enroll through Child Health Plus with a \$9.00 premium per month. The notice stated that you and your child are not eligible for Medicaid because the household income you provided is over the allowable income limit.

On July 2, 2015 you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Testimony was taken and the record was developed during the hearing. The record is now complete and closed.

## **Findings of Fact**

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

1. You are applying for health insurance through the Marketplace for yourself and your child.
2. You testified that you plan on filing a 2015 federal income tax return with the tax status of Head of Household (with qualifying individual) and will claim your eight-year-old child as a dependent on that tax return.
3. According to your May 28, 2015 Marketplace application, your 2015 expected annual household income is \$30,000.00.
4. You testified that you earn approximately \$2,500.00 from your employment per month.
5. You testified that based on your monthly expenses, you are not able to afford the monthly health insurance premiums.
6. You currently reside in Erie County, New York.
7. On January 7, 2015 the Marketplace issued an enrollment notice confirming that you enrolled in Blue Value Dental, NS, INN, Dep25, Adult/Family Dental.
8. On March 11, 2015 the Marketplace issued a cancellation notice that your Blue Value Dental, NS, INN Dep25, Adult/Family Dental is cancelled effective February 1, 2015. The notice states that "a premium payment has not been received."

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 2014 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

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through the 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).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (see 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 benefit year for which coverage is requested. (45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$15,730 for a two-person household (79 Fed. Reg. 3593, 3593).

### 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 percent of the FPL for the plan year coverage is requested and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)(1)).

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## Child Health Plus

A child who meets the eligibility requirements for Child Health Plus may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the FPL (New York Public Health Law (PHL) § 2511(2)(a)(iii)).

To be eligible for Child Health Plus, the child:

- Must be under 19 years of age;
- Must be a New York State Resident;
- Must not have other health insurance coverage; and
- Must not be eligible for, or enrolled in, Medicaid

(N.Y. Pub.Health L. § 2511(2)(a)-(e))

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in Child Health Plus depends upon the child's family household income (N.Y. Pub. Health L. § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (N.Y. Pub. Health L. § 2510(9)(d)).

## 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 2015 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

## Hardship Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a QHP. Such an exemption may be granted if that person can show that she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605 (a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

## Special Enrollment Period

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

The Marketplace must provide an annual open enrollment period during which qualified individuals may enroll in a QHP and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends through February 15, 2015 (45 CFR § 155.410(e)).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent

- i) loses health insurance considered to be minimum essential coverage
  - ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2015, even if they have the option to renew the policy
  - iii) loses pregnancy-related coverage
  - iv) loses medically needy coverage,
- 2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care,
  - 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
  - 4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange,
  - 5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee,
  - 6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions,
  - 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move,
  - 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month,
  - 9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide, or



10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

The loss of minimum essential coverage by a qualified individual or a dependent as a result of a failure to pay premiums on a timely basis, including COBRA premiums prior to the expiration of coverage, is not a sufficient basis to be awarded a special enrollment period (45 CFR § 155.420(e)).

## **Legal Analysis**

The first issue is whether the Marketplace properly determined you and your spouse eligible for up to \$147.00 monthly of advance premium tax credit (APTC).

According to the record, you have a two-person tax household. You expect to file your 2015 federal income tax return with the tax status of Head of Household (with a qualifying individual) and will claim one dependent on that return.

You reside in Erie County, New York, where the second lowest cost silver plan that is available through the Marketplace for an individual costs \$293.50 per month.

The May 29, 2015 eligibility determination was based on an annual household income of \$30,000.00, which was the amount you entered as your total household's expected annual income for 2015.

An annual household income of \$30,000.00 equals 190.72% of the 2014 federal poverty level (FPL) for a two-person household. At 190.72% of the FPL, the expected contribution to the cost of the health insurance premium is 5.91% of income, or \$147.75 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$293.50 per month) minus your expected contribution (\$147.75 per month), which equals \$145.75 per month. Therefore, the Marketplace correctly computed your APTC to be \$147.00 per month.

The second issue is whether the Marketplace properly determined you eligible for cost-sharing reductions (CSR).

Cost-sharing reductions are available to a person who has an annual household income no greater than 250% of the FPL. Since your annual household income is

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190.72% of the FPL for purposes for APTC and cost-sharing reductions, you were correctly found eligible for CSR.

The third issue is whether the Marketplace properly determined your child eligible to enroll in Child Health Plus (CHP) with a \$9.00 monthly premium.

A child who meets the eligibility requirements for CHP coverage may be eligible for subsidized premiums if the household income is at or below 400% of the FPL. No payments are required at a household income lower than 160% of the FPL, and premiums range from \$9.00 per month to \$60.00 per month between 160% and 400% of the FPL.

A household income between 161% and 222% of the FPL, the CHP premium is \$9.00 per child. Since an income \$30,000.00 is 190.72% of the 2015 FPL, the Marketplace correctly set the premium at \$9.00 monthly per child.

The fourth issue is whether the Marketplace properly determined that you and your child not eligible 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.

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if his or her household's modified adjusted gross income falls at or below 154% of the FPL.

On the date of your application, the relevant FPL was \$30,000.00 for a two-person household. Since \$30,000.00 is 188.32% of the 2015 FPL, the Marketplace properly found you and your child to be not eligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the May 29, 2015 eligibility determination properly stated that, based on the information you provided: you are eligible for APTC of up to \$147.00 per month and eligible for CSR; your child are eligible to enroll in CHP with a \$9.00 monthly premium; you and your child not eligible for Medicaid, it is correct and is **AFFIRMED**.

The fifth issue is whether the Marketplace properly determined that you are not eligible for a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination on the issue of a special enrollment period (SEP). It does, however, contain a May 29, 2015 notice in which the Marketplace acknowledges

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receipt of an appeal request and identifies the issue on appeal as “Denial of Special Enrollment Period.”

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the March 6, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Since Appeal Unit review of Marketplace determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015. The record indicates that during the open enrollment period you enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25. As a result of nonpayment of premiums, your plan ended on February 1, 2015.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a SEP in order to change to another health plan offered in the Marketplace.

In certain circumstances, a SEP is granted to individuals so that they may enroll in a QHP outside of the open enrollment period if the individual experiences a triggering event. Loss of insurance coverage may be considered a triggering event for purposes of being granted a SEP. However, loss of insurance coverage as a result of failing to pay insurance premiums on a timely basis is not considered a triggering event to support approval of SEP.

Therefore, since your insurance coverage ended for non-payment of premiums, a non-qualifying event, you are not entitled to a SEP under 45 CFR § 155.420(d)(1).

No evidence has been offered, or argument made, to support granting of a SEP under the remaining provisions of CFR § 155.420(d).

Since the credible evidence of record confirms that you were ineligible for a SEP, the denial of a SEP is AFFIRMED.

## **Decision**

The May 29, 2015 eligibility determination is AFFIRMED.

The Marketplace’s determination to deny you a special enrollment is AFFIRMED.

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**Effective Date of this Decision:** October 22, 2015

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

You remain eligible to receive an advance premium tax credit of up to \$147.00 per month and cost-sharing reductions, if you enroll in a silver-level qualified health plan.

Your child remains eligible to enroll in Child Health Plus with a \$9.00 monthly premium.

You and your child remain not eligible to enroll in Medicaid.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for additional information and an application.

You did not qualify for a special enrollment period to enroll or in a qualified health plan for 2015 health insurance coverage.

If you believe you made your premium payment within the required timeframe, please contact your plan directly at 1-855-809-4073.

## **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

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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 29, 2015 eligibility determination is AFFIRMED.

You remain eligible to receive an advance premium tax credit of up to \$147.00 per month and cost-sharing reductions, if you enroll in a silver-level qualified health plan.

Your child remains eligible to enroll in Child Health Plus with a \$9.00 monthly premium.

You and your child remains not eligible to enroll in Medicaid.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for additional information and an application.

You did not qualify for a special enrollment period to enroll or in a qualified health plan for 2015 health insurance coverage.

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

