



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: AP000000003237

[REDACTED]

Dear [REDACTED],

On July 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 4, 2014 renewal notice.

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 45 CFR § 155.545(b).

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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003237

[REDACTED]

## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace timely and properly determine that you were automatically re-enrolled in a silver-level qualified health plan, effective January 1, 2015?

Did the Marketplace properly determine that you were eligible to receive up to \$3.05 per month in advance premium tax credit, effective January 1, 2015?

Did the Marketplace properly determine that you were eligible to purchase a qualified health plan at full cost through the Marketplace as of June 1, 2015?

## Procedural History

During 2014, you had health insurance through New York State of Health and received \$219.00 per month in advance premium tax credits and cost sharing reductions for the period of May 2014 through December 31, 2014.

On November 4, 2014, the Marketplace issued a renewal notice that stated, if you want to keep your present health plan for the next year and the information on your application is still accurate, you will be re-enrolled in your current health plan for another year and you don't have to do anything more. The insurance details indicated that your insurance provider will remain as Health Republic Insurance of New York (Health Republic) and you will be automatically re-enrolled in PrimarySelect PCMH Silver NS INN Dep25 Acupuncture (PrimarySelect Silver), effective January 1, 2015.

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The notice stated that you were determined to be eligible for up to \$3.05 per month in advance premium tax credits because federal and state data sources showed your income was between \$16,105.00 and \$46,680.00, and you were not to be eligible for cost sharing reductions because your income was over the allowable income limit of \$29,175.00.

The notice also stated that you can confirm or change the amount applied to your monthly cost of coverage by logging onto your online account and updating your tax credit after November 15, 2014.

The notice further informed you that, if a mistake was made about the people listed to be covered, about the health plan you have been re-enrolled into, or if anything has changed in your life that would affect how you are covered and what you pay for health insurance, you can log onto your online account and make the changes between November 16, 2014 and December 15, 2014 for your new plan to be effective January 1, 2015.

On December 12, 2014, the Marketplace issued an enrollment notice confirming your enrollment in PrimarySelect Silver with a monthly premium responsibility of \$401.11 after your APTC of \$3.05 was applied.

On April 18, 2015, the Marketplace issued a notice of eligibility redetermination that, based on updated information in your Marketplace account, you were newly eligible to purchase a qualified health plan at full cost, effective June 1, 2015.

That same day, the Marketplace issued an enrollment notice confirming your enrollment in a silver-level qualified health plan with Health Republic with a premium responsibility of \$404.16, which is the full cost of the plan. This notice stated that your health insurance coverage will begin after you have paid your first month's premium and could start as early as January 1, 2015.

On June 1, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed being automatically re-enrolled in 2015 and the monthly APTC amount of \$3.05.

On June 2, 2015, the Marketplace issued a disenrollment notice confirming that it had processed your request to end your insurance coverage with PrimarySelect Silver, effective June 30, 2015.

On July 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to fifteen days to afford you the opportunity to submit a copy of your 2014 income tax return.

On July 28, 2015, the Appeals Unit received a two page fax from you. It consisted of (1) A cover page; and (2) A copy of Page One of your 2014 Income Tax Return (Form

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1040). That same day, this two page fax was made part of the record as “Appellant’s Exhibit A” and the record was closed.

## **Findings of Fact**

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

- 1) According to your Marketplace account, you elected to receive notices from the Marketplace electronically.
- 2) You testified that you expect to file your 2015 taxes with a tax filing status of Single and will not be claiming any dependents on that tax return.
- 3) According to your Marketplace account, the November 4, 2014 renewal notice was uploaded to and viewable in your account on November 5, 2014.
- 4) According to the November 4, 2014 renewal notice, as of November 3, 2014, the Marketplace retrieved your annual income information from state and federal data sources to be used in determining your eligibility for financial assistance in 2015.
- 5) According to the November 4, 2014 renewal notice, your annual income that was retrieved by the Marketplace on or about November 3, 2014 from federal and state data sources was between \$29,175.00 and \$46,680.00.
- 6) You testified that you do not know where the Marketplace got the income figure from and that it was not accurate.
- 7) You testified that you are self-employed, do free-lance work, and you expect your 2015 gross income to be comparable to what it was in 2014. Your 2014 U.S. Income Tax Return (Form 1040) shows your adjusted gross earnings that year were \$50,366.00 less student loan interest of \$1,100.00, for an adjusted gross income of \$49,266.00 (Appellant’s Exhibit A, p. 2).
- 8) You testified that you were not aware that there was an automatic re-enrollment process through the Marketplace and thought your coverage had just continued under the same health plan in 2015 with the same financial assistance.
- 9) You testified that you continued to pay the same monthly premium amount of \$146.28 online, which is what you had been paying monthly for coverage in 2014.
- 10) You testified that you received one obscure email from the Marketplace, but did not pay attention to it because it was vague and you had always dealt with Health Republic directly.

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- 11) You testified that you happened to look at your online Health Republic account sometime in April or May 2015, and it showed that you owed \$1,400.00 to \$1,500.00 in premiums.
- 12) You testified that you contacted Health Republic and they could not explain why you had such a high balance and told you that you needed to contact the Marketplace, which you did on June 1, 2015.
- 13) You are contesting being charged \$401.11 for the months of January, February, March, April, and May 2015, and being charged for the full cost of a qualified health plan of \$404.16 in June 2015.
- 14) Your application states that you reside in New York County, New York.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the information by which the Marketplace will use to redetermine a qualified individual's eligibility for that year (45 CFR § 155.335(c) (3)). The notice must allow a reasonable amount of time for the qualified individual to respond and for the Marketplace to implement any changes that the individual has elected (45 CFR § 155.335(d)(2)(ii)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(h)(i)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year (45 CFR § 155.335(i)).

### Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, the Marketplace must generally make that redetermination effective on the first day of

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the month following the date the Marketplace is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, the Marketplace may determine that any change made after the 15<sup>th</sup> of any month will not be effective until the first of the next following month (45 CFR §155.330 (f)(2)), and it has chosen to do so.

### 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)).

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 \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

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).

## **Legal Analysis**

The first issue under review is whether the Marketplace provided timely notice of your eligibility for financial assistance in 2015.

The Marketplace must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. The Marketplace must issue a renewal notice that contains the information that the Marketplace will use to determine an individual's eligibility. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On November 4, 2014, the Marketplace issued an annual renewal notice in your case. This notice stated in part that, based on information from federal and state sources, you qualified for advance premium tax credit of \$3.05 per month and had been re-enrolled in the same silver-level qualified health plan that you had in 2014, effective January 1, 2015. The notice also stated that if the information is not accurate in the renewal notice

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that you need to update your application and you can confirm or change the amount applied to your monthly cost of coverage by logging onto your online account and updating your tax credit between November 15, 2014 and December 15, 2014, for such changes to take effect on January 1, 2015.

Your Marketplace account reflects that you requested to receive electronic notices from the Marketplace. Although you stated that you had not received the renewal notice from the Marketplace, you testified that you did receive an email notice from the Marketplace, which you disregarded because it was random and vague. Also, your Marketplace account indicates that the November 4, 2014 notice was uploaded to and viewable in your Marketplace account as of November 5, 2014. Therefore, the November 4, 2014 notice is deemed to be timely issued and your appeal regarding untimely notice is DENIED.

In addition, the Marketplace's November 4, 2014 renewal notice informed you of your re-enrollment for 2015 in the same silver-level qualified health plan that you had in 2014 and further informed you that it retrieved income information from federal and state data sources, which you could change if not accurate after November 15, 2014. Since you did not dispute nor respond to this notice, the eligibility determination contained within the renewal notice was relied upon with regard to the amount of advance premium tax credit (APTC) you were entitled to on a monthly basis. As a result, on December 18, 2014, the Marketplace issued an enrollment notice based on the eligibility determinations contained in the November 4, 2014 renewal notice and enrolled you in PrimarySelect Silver, effective January 1, 2015, with a monthly premium responsibility of \$401.11 after the monthly APTC of \$3.05 was applied.

You testified that you expected your APTC to be comparable to your 2014 APTC amount of \$219.00 per month because you also expected your 2015 income to be similar to your 2014 income. You provided your 2014 Form 1040 as evidence, which shows your adjusted gross income for that year was \$49,266.00. Since the Marketplace's November 4, 2014 renewal notice, containing an eligibility determination that you are eligible to receive up to \$3.05 per month of advance premium tax credits effective January 1, 2015, did not provide the income amount that was relied upon at that time, an analysis of its accuracy cannot be performed.

The next issue is whether the Marketplace properly determined that you are not eligible to receive financial assistance through the Marketplace, but are eligible to purchase a qualified health plan at full cost effective June 1, 2015.

You first renewed your eligibility for financial assistance through the Marketplace for 2015 on April 17, 2015, which resulted in the April 18, 2015 notice of eligibility redetermination finding you newly eligible to purchase a qualified health plan at full cost through New York State of Health, effective June 1, 2015. Therefore, we must assume that this is the information that would have been used had you updated your account as a result of the renewal notice. According to the copy of your 2014 Form 1040 you



provided, your adjusted gross income that year was \$49,266.00, and you testified you expect it will be comparable in 2015.

You reported that you expect to file your 2015 tax return as Single and will not be claiming any dependents on that tax return. Therefore, you are in a one-person tax household for purposes of this analysis.

According to the April 18, 2015 notice of eligibility determination, you were determined eligible to purchase a qualified health plan through the Marketplace at full cost, effective June 1, 2015, because your income was over \$46,680.00, which is the maximum allowable income limit for a one-person household to qualify for financial assistance (400% of \$11,670.00). This resulted in the April 18, 2015 enrollment notice that stated you were enrolled in a silver-level qualified health plan with Health Republic Insurance as of June 1, 2015 with a premium responsibility of the full cost of \$404.16 per month. The enrollment notice of that same date stated your health insurance coverage could start as early as January 1, 2015, provided you paid your first month's premium.

You testified that you contacted the Marketplace on June 1, 2015 after learning that you owed \$1,400.00 to \$1,500.00 to Health Republic for premiums from January 2015 to May 2015, and now the full cost of premium for June 2015 coverage, and believe that the Marketplace did not rely upon accurate information regarding your expected 2015 household income.

However, the eligibility redetermination made on April 18, 2015 was based on an anticipated household income of over \$46,680.00. You testified that you expect your 2015 income to be comparable to your 2014 income, which you reported on your 2014 Form 1040 was \$49,266.00, which is over the maximum allowable income limit of \$46,680.00 for a one-person household to be eligible for APTC.

Therefore, regardless of whether the April 18, 2015 eligibility redetermination had accurate income data, it is supported by your own submission and testimony that your expected 2015 household income will be \$49,266.00 and is AFFIRMED. Since the April 18, 2015 enrollment notice was predicated on the eligibility redetermination of that same date, it too is AFFIRMED.

The final issue is, if you are determined eligible for APTC, whether that APTC amount should be applied retrospectively. Advance premium tax credit is applied in advance or reconciled at the end of the tax year and, therefore, cannot be applied retrospectively. To be eligible to have your APTC reconciled at the end of a tax year, you must file a tax return and reconcile your expected income with your actual income, and must have used the tax credits within the year by timely paying your monthly premium responsibility for health insurance coverage to be in effect. Any underuse of APTC can be reconciled at that time and a tax refund or reduction of tax liability can occur then. Although you would prefer to have your APTC retrospectively applied and your balance of premiums owed adjusted accordingly, there is no provision in the law for it to be

retrospectively applied. Therefore, your request to have your APTC retrospectively applied for the months of January 2015 through May 2015 is DENIED.

## **Decision**

The November 4, 2014 renewal notice is deemed to be timely issued.

The accuracy of the Marketplace's November 4, 2014 renewal notice, containing an eligibility determination that you are eligible to receive up to \$3.05 per month of advance premium tax credits effective January 1, 2015, and the December 18, 2014 enrollment notices cannot be confirmed so an analysis of their accuracy cannot be performed.

The April 18, 2015 eligibility redetermination and enrollment notices are AFFIRMED.

Your request to have any APTC to which you may be entitled retrospectively applied for the months of January 2015 through May 2015 is DENIED.

**Effective Date of this Decision:** October 27, 2015

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

You remain eligible to receive advance premium tax credits of \$3.05 from January 1, 2015 to May 31, 2015.

You remain ineligible for advance premium tax credits as of June 1, 2015.

You are eligible to purchase a qualified health plan at full cost, effective June 1, 2015.

Advance premium tax credits cannot be retrospectively applied for months of January 2015 through May 2015. If applicable, any reconciliation will have to occur when you file your 2015 tax return.

## **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.

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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 November 4, 2014 renewal notice is deemed to be timely issued.

The accuracy of the Marketplace's November 4, 2014 renewal notice, containing an eligibility determination that you are eligible to receive up to \$3.05 per month of advance premium tax credits effective January 1, 2015, and the December 18, 2014 enrollment notices cannot be confirmed so an analysis of their accuracy cannot be performed.

The April 18, 2015 eligibility redetermination and enrollment notices are AFFIRMED.

Your request to have any APTC to which you may be entitled retrospectively applied for the months of January 2015 through May 2015 is DENIED.

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You remain eligible to receive advance premium tax credits of \$3.05 from January 1, 2015 to May 31, 2015.

You remain ineligible for advance premium tax credits as of June 1, 2015.

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You are eligible to purchase a qualified health plan at full cost, effective June 1, 2015.

Advance premium tax credits cannot be retrospectively applied for months of January 2015 through May 2015. If applicable, any reconciliation will have to occur when you file your 2015 tax return.

## **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:**

