

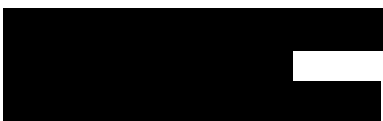


STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003744



Dear [REDACTED],

On September 2, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 25, 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 Code of 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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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003744



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you were eligible to receive up to \$57.00 per month in advance premium tax credits, effective August 1, 2015?

## Procedural History

On June 24, 2015, the Marketplace received your initial application for health insurance.

That same day, the Marketplace prepared a preliminary eligibility determination and you were found eligible to receive up to \$57.00 per month in advance premium tax credit (APTC), effective August 1, 2015, and not eligible for cost sharing reductions or Medicaid.

On June 25, 2015, the Marketplace issued a notice of eligibility determination that was consistent with the June 24, 2015 preliminary determination.

That same day, the Marketplace issued a notice confirming your enrollment in Fidelis Care Silver with a monthly premium responsibility of \$322.79 after your APTC of \$57.00 was applied. That notice also stated that your health coverage could start as early as August 1, 2015, provided you paid your first month's premium.

On July 1, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed the eligibility determination insofar as health plans were not affordable with the level of APTC you were determined eligible to receive.

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On September 2, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) 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 return.
- 2) The application that was submitted on June 24, 2015 listed an annual household income of \$40,608.00, consisting of a pension of \$21,000.00 and Social Security benefits of \$19,608.00. You testified and provided a written statement that you receive \$1,755.00 per month from your pension, which is \$21,060.00 annually, and also receive \$425.00 per month from your 401K plan, which is \$5,100.00, in addition to your Social security benefits of \$19,608.00. Your total annual income is therefore \$45,768.00.
- 3) Your application states that you will not be taking any deductions on your 2015 tax return.
- 4) You testified that you are in the process of getting a divorce, which is due to be finalized in September 2015.
- 5) You testified that you currently have health insurance through your estranged spouse's employer with United Healthcare at no cost to you, but that coverage will end once your divorce is finalized.
- 6) You testified that to continue with United Healthcare will cost you over \$400.00 per month in premiums, which you cannot afford.
- 7) You testified and submitted a written statement that you want to contribute toward your health insurance but cannot afford to pay the contribution amount calculated because most of your monthly income goes to pay for your basic living expenses such as your mortgage, utilities, car payment, insurances, and food.
- 8) Your application states that you live in Suffolk County, New York.

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

## **Applicable Law and Regulations**

### Minimum Essential Coverage

Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f); 45 CFR § 155.305(f)(1)(B)).

Generally, an individual who may enroll in an eligible employer-sponsored plan and an individual who may enroll in the plan because of a relationship to the employee are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value (see 26 CFR § 1.36B-2(c)(3)(i)).

### 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)).

### Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term "modified adjusted gross income" 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)).

"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 time savings accounts, and deductions attributable to royalties (26 USC § 62(a)). Living expenses, such as mortgage payments and utilities, are not an allowable deductions in computing adjusted gross income.

### Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic

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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)).

## **Legal Analysis**

According to your testimony, at the time of your hearing you were still insured through your estranged spouse's health insurance plan at no cost to you such that you had minimum essential coverage and did not yet qualify to enroll in health plan through New York State of Health.

Since the June 25, 2015 notice of eligibility determination relied on erroneous information regarding your income and marital status and because you had minimum essential coverage outside the Marketplace, it and the June 25, 2015 enrollment notice are RESCINDED.

Notwithstanding, you credibly testified that your coverage under your estranged spouse's employer-sponsored health plan will end once your divorce is finalized, which you expect to occur in September 2015. Once this event occurs, you need to report it to the Marketplace so that your eligibility can be redetermine based on your expected 2015 household income as noted above and a one-person household for an individual residing in Suffolk County, New York.

However, you testified that you cannot afford to pay over \$300.00 for health insurance premiums through the Marketplace because most of your income is used to pay for basic living needs, which may qualify you for a hardship exemption. If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2015, you can check the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for information.

## **Decision**

The June 25, 2015 notices of eligibility determination and enrollment are RESCINDED.

**Effective Date of this Decision:** October 28, 2015

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

You had minimum essential coverage outside the Marketplace at the time of your application and did not qualify to enroll in a qualified health plan through the Marketplace.

When you know the date that your circumstances are going to change, you need to report this information for the Marketplace so your eligibility can be redetermined.

The Marketplace will issue a notice of eligibility redetermination based on your updated application.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2015, you can at any time check the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for 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

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- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The June 25, 2015 notices of eligibility determination and enrollment are **RESCINDED**.

You had minimum essential coverage outside the Marketplace at the time of your application and did not qualify to enroll in a qualified health plan through the Marketplace.

When you know the date that your circumstances are going to change, you need to report this information for the Marketplace so your eligibility can be redetermined.

The Marketplace will issue a notice of eligibility redetermination based on your updated application.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2015, you can at any time check the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for 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:**

