



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: AP000000003978

[REDACTED]

Dear [REDACTED],

On May 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 12, 2015 eligibility determination and the subsequent denial of a special enrollment period.

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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Issues

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

Did the Marketplace properly determine that you were eligible to receive \$0.00 per month in advance premium tax credits, effective June 1, 2015?

Did the Marketplace properly determine that you were not eligible for cost-sharing reductions, effective June 1, 2015?

Did the Marketplace properly determine that you were not eligible for Medicaid as of May 11, 2015?

Do you qualify to select a health plan outside of the open enrollment period?

Procedural History

On May 11, 2015, the Marketplace received your application for health insurance.

On May 12, 2015, the Marketplace issued a notice of eligibility determination stating that you were eligible to receive \$0.00 per month in advance premium tax credits and were not eligible for cost-sharing reductions or Medicaid because your income was over the allowable limits for those programs. It further stated that you qualified to select a health plan outside of open enrollment and that you must select a plan by July 10, 2015.

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On July 21, 2015, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as you were seeking greater financial assistance and you were seeking to enroll in an affordable health plan after your special enrollment period had ended.

On October 7, 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 married filing jointly. You will claim no dependents on that tax return.
- 2) The application that was submitted on May 11, 2015 listed an annual household income of \$47,698.00, consisting of \$11,745.00 in income from you and \$35,953.00 in income from your spouse. You testified that this amount was correct.
- 3) Your application states that you will not be taking any deductions on your 2015 tax return.
- 4) Your application states that you live in Erie County, New York.
- 5) You testified that it is unfair for the Marketplace to include your spouse's income with your own and that you feel like you are being treated differently because you are married.
- 6) In the May 12, 2015 eligibility determination notice you were granted a special enrollment period to enroll in a health plan and you were given until July 10, 2015 to do so.
- 7) You testified that you did not enroll in a health plan at that time because they were all too expensive.
- 8) The Appeals Summary in the New York State of Health's Evidence Packet states that you are seeking to be able to enroll in a health plan outside of open enrollment period.

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

Applicable Law and Regulations

Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

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)).

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 \$15,730.00 for a two-person household (79 Fed. Reg. 3593).

For annual household income in the range of at least 300% but less than 400% of the 2014 FPL, the expected contribution is 9.56%% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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 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).

"Family size" means the number of persons counted as members of an individual's household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

In the case of a married couple living together, each spouse is included in the Medicaid household of the other spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4)).

In general, household income means the aggregate modified adjusted gross income of every person who is included in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)).

Enrollment Periods

The Marketplace must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)).

For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR § 155.410(e)); however, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements 'Waiting in Line' Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%99waiting-line%E2%80%99-provision-ahead-february-15-open>).

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 their enrollment to another plan. This is permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
 - (c) Pregnancy-related coverage; or
 - (d) 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; or

- (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
- (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; or
- (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; or
- (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; or
- (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
- (8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or
- (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)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

De Novo Review

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).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit of \$0.00 per month.

You are in a two-person household. You expect to file you 2015 income taxes as married filing jointly and will claim no dependents on that tax return.

The application that was submitted on May 11, 2015 listed an annual household income of \$47,698.00, consisting of \$11,745.00 in income from you and \$35,953.00 in income from your spouse. You testified that it is unfair for the Marketplace to include your spouse’s income with your own and that you feel like you are being treated differently because you are married. However, to calculate an individual’s eligibility for advance premium tax credits and cost-sharing reductions, the Marketplace must include the income of all household members for whom the taxpayer is allowed a deduction, including spouses. Since your spouse is part of your household, her income is included in calculating your eligibility for financial assistance. Therefore, the Marketplace properly determined that your annual household income is \$47,698.00.

You reside in Erie County, where the second lowest cost silver plan available to an individual through the Marketplace costs \$295.03 per month.

An annual income of \$47,698.00 is 303.23% of the 2014 FPL for a two-person household. At 303.23% of the FPL, the expected contribution to the cost of the health insurance premium is 9.56% of income, or \$379.99 per month.

The maximum amount of advance premium tax credit that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual in your county (\$295.03 per month) minus your expected contribution (\$37.99 per month). Since your expected contribution amount exceeds the cost of the second lowest cost silver plan, the Marketplace properly determined that you were eligible for \$0.00 per month in advance premium tax credits.

The second issue is whether you were properly found not eligible for cost-sharing reductions.

Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$47,698.00 is 303.23% of the applicable FPL, the Marketplace correctly found you to be not eligible for cost-sharing reductions.

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).

The third issue is whether the Marketplace properly determined that you were 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 that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$15,930.00 for a two-person household. For Medicaid purposes, your household income is also \$47,698.00 because the Marketplace must also include your spouse in your family size when determining your eligibility for Medicaid.

Since \$47,698.00 is 299.42% of the 2015 FPL, the Marketplace properly found you to be not eligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the May 12, 2015 eligibility determination properly stated that, based on the information you provided, you were eligible for an advance premium tax credit of \$0.00 per month, not eligible for cost-sharing reductions, and not eligible for Medicaid, it is correct and is AFFIRMED.

The fourth issue under review is whether you qualify to select a health plan outside of the open enrollment period.

The Appeals Summary in the New York State of Health's Evidence Packet states that you are seeking to be able to enroll in a health plan outside of open enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. 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.

Since the Appeals 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. Therefore, the issue under review is whether you should be granted a special enrollment period in order to allow you to enroll in a health plan outside of the open enrollment period.

The Marketplace provided an open enrollment period from November 15, 2014 until February 15, 2015, which was later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline.

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).

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

In the May 12, 2015 eligibility determination notice you were granted a special enrollment period to enroll in a health plan and you were given until July 10, 2015 to do so. You testified that you did not enroll in a health plan at that time because they were all too expensive.

The credible evidence of record indicates that, after your previous special enrollment period closed on July 10, 2015, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, you are denied a special enrollment period to enroll into a plan for 2015 coverage.

Decision

The May 12, 2015 eligibility determination is AFFIRMED.

You do not qualify for an additional special enrollment period.

Effective Date of this Decision: October 27, 2015

How this Decision Affects Your Eligibility

You are eligible for \$0.00 per month in advance premium tax credits.

You are not eligible for cost-sharing reductions.

You are not eligible for Medicaid.

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

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 12, 2015 eligibility determination is **AFFIRMED**.

You are eligible for \$0.00 per month in advance premium tax credits.

You are not eligible for cost-sharing reductions.

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You are not eligible for Medicaid.

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

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:

