



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

Notice of Decision

Decision Date: December 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004312

[REDACTED]

Dear [REDACTED],

On October 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 14, 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 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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NY State of Health Number: [REDACTED]
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Issue

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

Did the Marketplace properly calculate your household's Modified Adjusted Gross Income that was used when determining your and your child's eligibility for financial assistance?

Procedural History

On August 13, 2015, the Marketplace received your updated application for health insurance and prepared a preliminary eligibility determination that you were newly eligible to receive advance premium tax credits of up to \$89.00 per month, effective September 1, 2015, and your child, was eligible to enroll in Child Health Plus at a cost of \$30.00 per month, effective September 1, 2015.

Also on August 13, 2015, you spoke with a representative from the Marketplace's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to both your and your daughter's eligibility.

On August 14, 2015, the Marketplace issued an eligibility determination notice that was consistent with the August 13, 2015 preliminary determination findings regarding both you and your daughter.

On October 19, 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.

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Findings of Fact

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

- 1) You testified that you expected to file your 2015 taxes with a tax filing status of Head of Household with a Qualifying Individual and will claim your daughter was a dependent on that tax return.
- 2) The application that was submitted on August 13, 2015 listed an annual household income of \$40,662.00. You testified that this amount is over-stated and your income is nowhere near this amount.
- 3) According to your Marketplace account and your testimony, your expected 2015 annual income from two jobs is \$28,458.00 (\$10,920.00 and \$17,538.00, respectively).
- 4) According to your Marketplace account and your testimony, your daughter's expected 2015 Social Security survivor benefits are \$12,204.00, which is \$1,017.00 monthly.
- 5) You testified that your daughter does not expect to receive any income from a job in 2015.
- 6) Your application states that you will not be taking any deductions on your 2015 tax return.
- 7) Your application states that you and your daughter live in Kings County, New York.
- 8) You testified that your daughter's Child Health Plus premium increased from \$15.00 per month to \$30.00 per month when the Marketplace redetermined your eligibility on August 13, 2015.
- 9) You testified that, based on your annual income, you should not have to pay for health insurance and should not be charged an increase in your daughter's monthly Child Health Plus premium.

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 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)).

Eligibility for APTC is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable Social Security income, non-taxable interest income, and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 435.603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(a)(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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)).

Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term “modified adjusted gross income” the same definition as “adjusted gross income,” without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

“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 the sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

“Gross income” is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual’s income from Social Security benefits is included in their gross income only to the extent that the sum of the person’s IRS-defined “modified adjusted gross income” and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) 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 federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child’s family household income (PHL § 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 (PHL § 2510(9)(d)).

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The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL (PHL § 2510(9)(d)(ii)).

The CHP premium is \$15.00 per month for a child whose family household income is between 223% and 250% of the FPL (PHL § 2510(9)(d)(iii)).

The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL (PHL § 2510(9)(d)(iv)).

In an analysis of Child Health Plus 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 was \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

Legal Analysis

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when determining your eligibility for financial assistance.

On August 13, 2015, your application listed an annual household income of \$40,662.00. This amount consists of \$28,458.00 in income that you receive from two jobs and \$12,204.00 your child receives from Social Security survivor's benefits.

Household income for the purposes of calculating a person's eligibility for financial assistance to help pay for the costs of health insurance through the Marketplace, consists of the Modified Adjusted Gross Income of all tax filers in a household who are required to file a tax return.

You attested to your intent to file a 2015 tax return when you requested financial support on the Marketplace application. Since you plan on filing your taxes as Head of Household with a Qualifying Individual and claiming one child as a dependent on your 2015 tax return, you are in a two-person household.

A dependent will be required to file a tax return in 2015 if their earned income is greater than \$6,300.00. According to the information on your application, your child has no job and no earned income. Since your dependent has no earned income, which is less than \$6,300.00, she is not required to file a tax return on the basis of earned income.

A dependent will also be required to file a tax return in 2015 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits, including survivor benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, your child expected to receive \$12,204.00 from Social Security survivor's benefits and no income from a job. Therefore, \$6,102.00 (one-half the amount of Social Security she receives) plus \$0.00 in income from job equals \$6,102.00. Since \$6,102.00 is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the federal poverty level (FPL). Household income between 160% and 222% of that FPL are responsible for a \$9.00 per month Child Health Plus premium payment. On the date of your application, the relevant FPL was \$15,930.00 for a two-person household. Since \$28,458.00 is 178.64% of the 2015 FPL the Marketplace improperly found your child to be eligible for Child Health Plus with a \$30.00 per month premium payment.

Therefore, the August 14, 2015 eligibility determination is **RESCINDED** because your child's income should not have been included in your household's income for Marketplace purposes.

Your case is **RETURNED** to the Marketplace for a redetermination of your household's eligibility for financial assistance for persons, including both you and your daughter, residing in Kings County, New York, as members of a two-person household, and with an expected household income of \$28,458.00.

Decision

The August 14, 2015 notice of eligibility determination is **RESCINDED**.

Your case is **RETURNED** to the Marketplace for a redetermination of your household's eligibility for financial assistance for persons, including both you and your daughter, residing in Kings County, New York, as members of a two-person household, and with an expected household income of \$28,458.00.

Effective Date of this Decision: December 10, 2015

This decision is not a final determination of your eligibility.

How this Decision Affects Your Eligibility

Your case is being sent back to the Marketplace for a redetermination of your household's eligibility for financial assistance for persons, including both you and your daughter, residing in Kings County, New York, as members of a two-person household, and with an expected household income of \$28,458.00.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further 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
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

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Summary

The August 14, 2015 notice of eligibility determination is RESCINDED.

This decision is not a final determination of your eligibility.

Your case is RETURNED to the Marketplace for a redetermination of your household's eligibility for financial assistance for persons, including both you and your daughter, residing in Kings County, New York as members of a two-person household, and with an expected household income of \$28,458.00.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

