



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

## Notice of Decision

Decision Date: February 18, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004374

[REDACTED]

Dear [REDACTED],

On November 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 23, 2015 eligibility redetermination.

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 and the NY State of Health number at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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

Decision Date: February 18, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004374

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## Issues

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

Was your appeal timely?

Did the Marketplace determine that you were eligible for the appropriate level of cost-sharing reductions, effective July 1, 2015?

## Procedural History

On October 18, 2014, the Marketplace issued a renewal notice stating that you had been enrolled in the same silver-level qualified health plan that you had in 2014 for the upcoming year, and that you did not need to do anything more.

On December 13, 2014, the Marketplace issued a notice confirming your enrollment for the upcoming coverage year.

On May 22, 2015, you updated your Marketplace application to change your address and, for the first time, you requested financial assistance from the Marketplace. You reported an annual household income of \$20,000.00.

That same day, the Marketplace prepared a preliminary eligibility determination stating that you were eligible for up to \$288.00 per month in advance payments of the premium tax credit (APTC) and eligible for cost-sharing reductions, with maximum out-of-pocket expenses of \$2,000.00 per year for a single person, effective July 1, 2015.

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On May 23, 2015, the Marketplace issued a written notice of eligibility redetermination, based on your May 22, 2015 application, stating that you were eligible for up to \$288.00 per month in APTC and eligible for CSR, effective July 1, 2015.

That same day, the Marketplace issued an enrollment notice confirming that you were enrolled in the same silver-level qualified health plan in which you had been enrolled since January 1, 2015, and that you had a monthly premium responsibility of \$94.57 after your APTC was applied.

On August 18, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of the eligibility redetermination as it related to the level of cost-sharing reductions you were to receive.

On November 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.

## **Findings of Fact**

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

- 1) According to your Marketplace account, you expect to file your 2015 taxes using a tax filing status as Single and you will not be claiming any dependents on that return.
- 2) The eligibility determination made on May 22, 2015 listed an annual household income of \$20,000.00, which, at 171.38% of the federal poverty level, meant that you were eligible for up to \$288.00 per month in APTC, effective July 1, 2015 (NYSOH Exhibit 1). In the preliminary determination, it was noted that you also were to have maximum out-of-pocket expenses of \$2,000.00 per year.
- 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 Kings County, New York.
- 5) You testified that you learned there was a change in your co-pays and deductibles when you went to your primary care physician in June 2015 for a well visit and had to pay the full cost of \$160.00 out-of-pocket for that visit.
- 6) You testified that personnel at your primary care physician's office said you have to pay \$2,000.00 before your insurance will pay for any medical treatment or care that you receive. Therefore, you have not gone back for your follow-up appointment.

- 7) You testified that you need to have an eye examination and cannot go because you cannot afford to pay for the cost of the examination.
- 8) You stated on the record that you now understand that you need to contact your health plan, and have them explain the terms regarding your deductibles, co-pays, and any other out-of-pocket costs generally, and your ability to seek medical treatment and care. You stated that you intend to contact the plan to do so.
- 9) You testified that you are requesting review of only the level of cost-sharing reductions for which you were determined eligible because you cannot afford to pay a monthly premium of \$94.57, co-pays for your cancer treatment, and an additional \$2,000.00 up front for any other medical treatment or care you may need.

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

## **Applicable Law and Regulations**

### 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).

### Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

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)).

### Appeal Timeliness

Individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by the Marketplace (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

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## 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 federal poverty level (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)).

The FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR § 155.305(g)(1)(i)(C)) was the 2014 FPL, which was \$11,670.00 for a one-person household (79 Fed. Reg. 3593).

## Levels of Cost-Sharing Reductions

The Marketplace directs insurers to offer three variations of silver-level qualified health plans, in addition to a full-cost plan, which provide varying levels of financial assistance, called “cost-sharing reductions,” using the following categories:

(1) Those individuals with an annual household income that is at least 100% but less than or equal to 150 % of the federal poverty level (FPL),

(2) Those individuals with an annual household income that is greater than 150% but less than or equal to 200% of the FPL, and

(3) Those individuals with an annual household income that is greater than 200 but less than or equal to 250% of the FPL (see 45 CFR § 155.305(g)(2)).

(The categories for policies that cover more than one person are slightly different (45 CFR § 155.305(g)(3)), but those categories are not relevant in the current case).

Each category listed above gives a different level of CSR, so that you would receive different amounts of financial assistance based on the level of your income (see 45 CFR § 156.420). These subsidies reduce the deductibles, copayments, coinsurance, and other out-of-pocket expenses that people eligible for CSR pay when they use benefits covered by their health plan.

## Mid-benefit Year Change in Level of Cost-Sharing Reductions

If an individual’s eligibility for cost-sharing reductions changes in the middle of a benefit year and that individual stays in the same qualified health plan (QHP), the health plan must ensure that any cost sharing already paid by the individual that year is taken into account when the level of future cost sharing that year is calculated (45 CFR § 156.425(b)).

## Legal Analysis

Prior to July 1, 2015, you were enrolled in QHP through the Marketplace at full cost.

You updated your application on May 22, 2015, and the Marketplace made a preliminary determination that same day. The Marketplace issued its written notice of eligibility determination regarding this application on May 23, 2015.

According to the credible evidence in the record, you did not submit an appeal request until August 18, 2015, which is more than 60 days after May 23, 2015 and, therefore, after the period for a valid appeal had expired. Ordinarily, this would result in there being no valid appeal of the May 23, 2015 eligibility redetermination and your appeal would be dismissed. However, the May 23, 2015 notice of eligibility redetermination did not provide any determination with respect to the specific level of cost-sharing reductions (CSR) for which you were eligible, nor has any written determination on your level of CSR been issued to date. Therefore, the time limit is not considered to have expired and your appeal was timely with regard to your CSR level.

Although the Marketplace did not issue a timely notice of eligibility determination with respect to your eligibility for cost sharing reduction version, this does not prevent the Appeals Unit from reaching the merits of your case on your August 18, 2015 appeal request if it so chooses, and it elects to do so in this case.

With regard to your level of cost-sharing reductions, in the application that was updated on May 22, 2015, you attested to an expected yearly income of \$20,000.00 and the eligibility determination relied upon that information.

According to the record, you are the only person in your tax household.

An annual income of \$20,000.00 is 171.38% of the 2014 federal poverty level (FPL) for a one-person household. Since you met the non-financial requirements and had a household modified adjusted gross income (MAGI) that was at or below 250% of the FPL for the applicable family size, you were correctly found eligible for CSR as of May 22, 2015.

Since you were determined to be at 171.38% of the 2014 FPL for a one-person household and you were enrolled in a silver-level qualified health plan, your health plan and cost-sharing reductions should qualify at the second level of the available CSR subsidies, as explained above.

The Appeals Unit cannot be determined by the information available in your Marketplace account whether your plan does in fact qualify under level two.

Therefore, this matter is also returned to the Marketplace to confirm that your plan complies with the requirements for this level of eligibility.

Additionally, a review of your account shows that prior to your May 22, 2015 application, no request for financial assistance had been made on your behalf; in other words, you had not been provided with any cost-sharing reductions prior to the July 1, 2015 change in your eligibility.

When your level of financial assistance increased from none to eligibility for APTC and level two CSR, your health insurance should have become more affordable, not less. Your health plan is required to take into account all expenses already paid by you during the beginning of the benefit year; your overall deductible does not begin again simply because the level of your cost-sharing reductions has changed.

Therefore, this matter is also returned to the Marketplace to address whether your plan properly calculated your entitlement to cost-sharing reductions after July 1, 2015.

Because the May 22, 2015 preliminary eligibility determination and the corresponding May 23, 2015 notice of eligibility redetermination failed to include a determination of the level of CSR to which you were entitled, they are MODIFIED to reflect that you were eligible for the second level of CSR.

## **Decision**

The May 23, 2015 notice of eligibility redetermination is MODIFIED to reflect that you were eligible for the second level of CSR.

**Effective Date of this Decision:** February 18, 2016

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

You continue to be eligible to enroll in silver-level qualified health plan with APTC and the second level of CSR, as previously awarded. However, your case is begin returned to the Marketplace to ensure that your plan complied with the requirements for category two eligibility of CSR and to ensure that your health plan properly calculated your benefits after July 1, 2015.

## **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.

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).



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 23, 2015 notice of eligibility redetermination is MODIFIED to reflect that you were eligible for the second level of CSR.

You continue to be eligible to enroll in silver-level qualified health plan with APTC and the second level of CSR, as previously awarded. However, your case is begin returned to the Marketplace to ensure that your plan complied with the requirements for category two eligibility of CSR and to ensure that your health plan properly calculated your benefits after July 1, 2015.

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## **Legal Authority**

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

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

