



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

Notice of Decision

Decision Date: December 16, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004432

[REDACTED]

Dear [REDACTED],

On November 16, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 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 Date: December 16, 2015

NY State of Health Number: [REDACTED]
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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 your 21 year-old daughter was eligible to receive up to \$181.00 per month in advance premium tax credit and, if she selected a silver-level qualified health plan, eligible for cost sharing reductions, effective October 1, 2015?

Did the Marketplace properly determine that your daughter was not eligible for Medicaid?

Procedural History

On August 24, 2015, the Marketplace received your updated application for health insurance.

That same day, the Marketplace prepared a preliminary eligibility redetermination that, in part, stated your 21 year-old daughter (daughter) was conditionally eligible to receive up to \$181.00 per month in advance premium tax credits (APTC) and eligible for cost sharing reductions, but not eligible for Medicaid. This redetermination was based on an attested household income of \$47,040.00.

Also that same day, you spoke with the Marketplace's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as your daughter was not eligible for Medicaid.

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On August 25, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with the August 24, 2015 preliminary redetermination. The notice also requested documentation to confirm your daughter's income before November 22, 2015.

On August 27, 2015, the Marketplace issued a notice of eligibility redetermination that superseded (replaced) the August 25, 2015 notice of eligibility redetermination. That notice stated, in part, that your daughter was conditionally eligible to receive up to \$115.00 in APTC and eligible for cost sharing reductions, effective October 1, 2015. This redetermination was based on a household income of \$52,823.43, as calculated by the Marketplace. The notice also requested documentation to confirm your daughter's income before November 24, 2015.

On November 16, 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 15 days to allow you to submit supporting documents regarding your daughter's expected 2015 income.

On November 20, 2015, you uploaded to your Marketplace account three earnings statements from your daughter's employment. That same day, the Appeals Unit made these three earnings statements part of the record as "Appellant's Exhibit B." Since your daughter's 2014 income tax return was not uploaded, the record remained open up to December 1, 2015.

As of December 1, 2015, no further documents regarding your daughter's proof of income were uploaded to your Marketplace account nor received via facsimile by the Appeals Unit. Accordingly, the record was closed that same day.

Findings of Fact

- 1) You testified you expect to file your 2015 taxes using a tax filing status of Head of Household with Qualifying Individuals and will claim your four children, including your daughter, as dependents on that tax return.
- 2) You testified you are appealing only your daughter's eligibility for advance premium tax credits and cost sharing reductions and her ineligibility for Medicaid in 2015.
- 3) The application that was submitted on August 24, 2015 listed annual household income of \$47,040.00, consisting of \$40,800.00 you expect to earn from your employment and \$6,240.00 your daughter expects to earn from her part-time employment. Your daughter's earnings were based on \$8.00 per hour at 15 hours per week for 52 weeks.

- 4) The application that was updated on August 26, 2015 listed annual household income of \$52,823.43, consisting of \$46,583.43 you will earn from employment and \$6,240.00 your daughter will earn from her part-time employment.
- 5) You testified that none of the income amounts as stated in Fact #s 3 and 4 accurately reflect your annual household income. You testified and previously provided the Marketplace with two earning statements showing your gross earnings per pay period of \$1,791.67, and that you get paid twice per month for 24 pay periods, not every two weeks for 26 pay periods as the Marketplace had calculated (Appellant's Exhibit A).
- 6) You testified and your pay stubs show that your annual gross earnings will be \$43,000.08 (\$1,791.67 x 24 pay periods).
- 7) You testified that your daughter is a full-time college student and works only part-time at lesser hours per week now than she did during the summer when she didn't have classes.
- 8) The copies of your daughter's pay stubs that were uploaded to your Marketplace account on November 20, 2015, show she earns \$8.75 per hour and had year-to-date gross earnings of \$9,069.34 as of her most current earnings statement that was provided, dated November 6, 2015 (Appellant's Exhibit B, p.3).
- 9) You testified that you do not think your daughter's income should be included in your household income because her earnings go toward paying for her school books and supplies, tuition, and travel expenses to and from school.
- 10) Your application states that you and your family live in Kings County, New York.

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)).

The maximum amount of APTC that can be authorized equals:

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- 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 \$27,910.00 for a five-person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% 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 \$28,410.00 for a five-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).

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)).

For purposes of Medicaid, "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)).

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)).

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

Tuition and Fees Deduction

“Adjusted gross income” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). However, the law that allowed for a deduction from adjusted gross income of up to \$4000.00 in tuition and fees paid by the taxpayer during the tax year to a qualified educational institution has not yet been renewed for the 2015 tax year (26 USC § 222(e)). Therefore, tuition and fees cannot be claimed as deductions from household income to calculate 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 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

The first issue is whether the Marketplace properly determined that your daughter was eligible for up to \$181.00 per month in advance premium tax credits (APTC).

Household income consists of the aggregate modified adjusted gross income of every person in the household who is required to file a federal tax return. Here, your household income consisted of your own income plus your daughter's income because you plan on claiming her as a tax dependent on your 2015 tax return and she plans on filing a 2015 federal tax return based on her earnings and past practices.

In the updated application that was submitted on August 24, 2015, you attested to an expected yearly income of \$47,404.00, and the eligibility determination relied upon that information. At the time of your appeal and during the hearing, you asked that your daughter's income not be included since it goes toward her college tuition and expenses. Since the Internal Revenue Service rules do not allow such expenses to be deducted from the calculation of your adjusted gross income, they cannot be deducted when the Marketplace computes your modified adjusted gross income for APTC purposes.

Therefore, on August 24, 2015, the Marketplace correctly relied upon the attested household income of \$47,040.00 in determining your daughter's eligibility for financial assistance.

You expect to file you 2015 income taxes as Head of Household with Qualifying Individuals and will claim your four children, including your 21 year-old daughter, as dependents on that tax return. Therefore, your daughter is in a five-person household for purposes of this analysis.

You and your family reside in Kings County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month.

An annual income of \$47,040.00 is 168.54% of the 2014 FPL for a five-person household. At 168.54% of the FPL, the expected contribution to the cost of the health insurance premium is 4.88% of income, or \$191.30 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual in your county (\$371.75 per month) minus your expected contribution (\$191.30 per month), which equals \$180.45 per month. Therefore, rounding up to the nearest dollar, the Marketplace correctly determined your daughter to be eligible for up to \$181.00 per month in APTC.

The second issue is whether your daughter was properly determined 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 \$47,040.00 is 168.54% of the applicable FPL, the Marketplace correctly found your daughter to be eligible for cost sharing reductions.

The third issue is whether the Marketplace properly determined that your daughter was ineligible 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 (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$28,410.00 for a five-person household. Since \$47,040.00 is 165.58% of the 2015 FPL, the Marketplace properly found your daughter to be ineligible for Medicaid on an expected annual income basis, using the information provided in your August 24, 2015 application.

The same is true using your household's monthly income. An average monthly income of \$3,920.00 ($\$47,040.00/12$) exceeds the allowable maximum income limit of \$3,268.00 per month, which is 138% of the FPL ($\$2,368 \times 1.38$). Therefore, your daughter does not qualify for Medicaid on a monthly basis either.

Since the August 25, 2015 notice of eligibility redetermination properly stated that, based on the information you provided, your daughter was eligible for up to \$181.00 per month in APTC, eligible for cost sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.

Notwithstanding, the credible evidence of record demonstrates that your 2015 gross earnings are expected to be \$40,000.08 based on earnings of \$1,791.67 x 24 pay periods (twice per month), and your daughter's gross earnings, which were at least \$9,069.34 as of November 6, 2015.

As such, the August 27, 2015 notice of eligibility redetermination as prepared by the Marketplace was based on incorrect income information and is no longer accurate and is, therefore, is RESCINDED.

However, according to your Marketplace account, a letter was issued on November 27, 2015 informing you and your daughter that she needs to provide 4 **consecutive** weeks of pay stubs or earning statements because her earnings statements uploaded on November 20, 2015 were not for four consecutive weeks of pay, but for two week pay periods ending July 17, 2015, October 9, 2015, and November 6, 2015. Therefore, if you have not already done so, you and/or your daughter need to provide the Marketplace with (1) four consecutive weeks of pay stubs, which can be in the form of earning statements for two pay periods consisting of two weeks each; (2) a letter from your daughter's employer stating her gross wages and hours; **or** (3) a letter of separation from employer if she no longer employed. Once such documents are provided, the Marketplace will then be able to redetermine your daughter's eligibility for financial assistance in 2015. Until such time, no further action is required.

In addition, if you and/or daughter wish to be considered for a hardship exemption, which would exempt you from paying a penalty for your daughter not having health insurance during 2015, you can check the Federal Marketplace website (www.healthcare.gov) for direction.

Decision

The August 25, 2015 notice of eligibility redetermination is AFFIRMED.

The August 27, 2015 notice of eligibility redetermination is based on inaccurate information and, therefore, is RESCINDED.

This decision does not affect any subsequent redetermination made or issued by the Marketplace; in particular, your daughter's eligibility for financial assistance in 2016.

Effective Date of this Decision: December 16, 2015

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How this Decision Affects Your Eligibility

Your daughter was eligible to receive \$181.00 per month in advance premium tax credits and eligible for cost sharing reduction, effective October 1, 2015.

Your daughter remains ineligible for Medicaid in 2015.

Your daughter's current eligibility for financial assistance cannot be redetermined until and unless you or she provides the Marketplace with proper proof of income as noted above. Until such time, no further action is required.

If and when that income documentation is provided, the Marketplace will redetermine your daughter's eligibility for financial assistance in 2015, which may be rendered moot by the passage of time at this juncture and since this is December 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.

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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Summary

The August 25, 2015 notice of eligibility redetermination is AFFIRMED.

The August 27, 2015 notice of eligibility redetermination is based on inaccurate information and, therefore, is RESCINDED.

This decision does not affect any subsequent redetermination made or issued by the Marketplace; in particular, your daughter's eligibility for financial assistance in 2016.

Your daughter was eligible to receive \$181.00 per month in advance premium tax credits and eligible for cost sharing reduction, effective October 1, 2015.

Your daughter remains ineligible for Medicaid in 2015.

Your daughter's current eligibility for financial assistance cannot be redetermined until and unless you or she provides the Marketplace with proper proof of income as noted above. Until such time, no further action is required.

If and when that income documentation is provided, the Marketplace will redetermine your daughter's eligibility for financial assistance in 2015, which may be rendered moot by the passage of time at this juncture and since this is December 2015.

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) for direction.

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:

