



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: AP000000004488

[REDACTED]

Dear [REDACTED],

On November 17, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 27, 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

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

## Procedural History

On August 26, 2015, the Marketplace prepared a preliminary eligibility redetermination, finding that you and your spouse were eligible to share in up to \$479.00 per month in advance payments of the premium tax credit (APTC), as well as cost-sharing reductions (CSR), effective October 1, 2015.

That same day, you contacted the Marketplace's Account Review Unit and requested an appeal of the eligibility redetermination as it related to the change in the level of CSR you and your spouse were eligible to receive.

On August 27, 2015, the Marketplace issued a notice of eligibility redetermination stating that you and your spouse were eligible to share in up to \$479.00 per month in APTC, as well as CSR, effective October 1, 2015. The level of CSR was not specified.

That same day, the Marketplace issued an enrollment notice confirming that you and your spouse had health insurance through Fidelis Care Silver, with a monthly premium responsibility of \$234.79 after your APTC of \$479.00 was applied, which could start as early as September 1, 2015, if you paid your first month's premium.

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 and your spouse expect to file your 2015 taxes using a tax filing status of Married Filing Jointly and will not be claiming any dependents on that return.
- 2) Your application states that you will not be taking any deductions on your 2015 tax return.
- 3) Your application states that you and your spouse live in Washington County, New York.
- 4) According to your Marketplace account, preliminary eligibility determinations made on November 16, 2014 and March 20, 2015 were based on an attested annual household income of \$26,047.92, which at 165.59% of the relevant federal poverty level (FPL), meant that you and your spouse were eligible to share up to \$560.00 per month in APTC, effective January 1, 2015 and again on May 1, 2015. Your account indicates that the maximum out-of-pocket expenses would be \$4,000.00 per year for a couple or family (NYSOH Exhibits 1 and 2).
- 5) According to your Marketplace account, the preliminary eligibility determinations made on August 5, 2015 and August 26, 2015 were based on an attested annual household income of \$33,046.96, which at 210.09% of the FPL, meant that you and your spouse were eligible to share up to \$479.00 per month in APTC, effective September 1, 2015 and again on October 1, 2015. Your account indicates that the maximum out-of-pocket expenses would be \$8,000.00 per year for a couple or family (NYSOH Exhibits 3 and 4).
- 6) You testified that you and your spouse cannot afford to see your doctors anymore because of the drastic increase in your deductible amounts from \$4,000.00 to \$8,000.00, which you cannot afford to satisfy in order to get coverage for your medical care and treatment.
- 7) You testified that you are requesting review of only the level of cost-sharing reductions for which you and your spouse were determined eligible because you cannot afford to pay a monthly premium of \$234.79, as well as co-pays, co-insurance, and deductibles.

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)).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a qualified health plan (QHP) through the Marketplace, (2) meets the requirements to receive advance payments of the premium tax credit (APTC), (3) is expected to have an annual household income that does not exceed 250% of the applicable 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 \$15,730.00 for a two-person household (79 Fed. Reg. 3593).

### Levels of Cost-Sharing Reductions

The Marketplace directs insurers to offer three levels of silver-level qualified health plans, in addition to a full-cost plan, which provide varying levels of financial assistance, called “cost-sharing reductions” (CSR), 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), 45 CFR § 155.305(g)(3)).

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 CSR 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**

You updated your application on August 5, 2015, and August 26, 2015 and changed your attested annual household income from \$26,047.92 to \$33,046.96, which resulted in the Marketplace redetermining your and your spouse's eligibility for financial assistance. The Marketplace issued its written notices of eligibility determination regarding those applications on August 6, 2015 and August 27, 2015 respectively. Neither of these notices provided a determination with respect to the specific level of CSR for which you and your spouse were eligible.

Although the Marketplace did not issue a timely notice of eligibility determination with respect to your and your spouse's eligibility for the applicable 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. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews of Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

In the application that was updated on August 6, 2015 and August 26, 2015, you attested to an expected annual household income of \$33,046.96 and the corresponding eligibility determinations relied upon that information.

According to the record, you are in a two-person tax household with your spouse.

An annual income of \$33,046.96 is 210.09% of the 2014 federal poverty level (FPL) of \$15,730.00 for a two-person household. Since you and your spouse 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 both correctly found eligible to share in cost sharing reductions.

Since you and your spouse were redetermined to be at 210.09% of the 2014 FPL for a two-person household and you were enrolled in a couple's silver-level qualified health plan, you were eligible for the third level of CSR, as provided by 45 CFR § 155.305(g)(2) and 45 CFR § 155.305(g)(3).

The Appeals Unit cannot determine by the information available in your Marketplace account whether your plan does in fact qualify under level three of the federal regulations. It is also not clear if your health plan took into account the payments you had already made in the first part of 2015 when it calculated your remaining deductible for the year.

Therefore, this matter is returned to the Marketplace to confirm that your plan complies with the requirements for this level of CSR eligibility and to ensure that your health plan properly calculated your benefits after your eligibility for CSR changed mid-year.

## **Decision**

The August 5, 2015 and August 26, 2015 preliminary eligibility redeterminations and the corresponding August 6, 2015 and August 27, 2015 notices of eligibility redetermination are MODIFIED to reflect that you and your spouse were eligible for the third level of cost-sharing reductions.

**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 advance payments of the premium tax credit and the third level of cost-sharing reductions, as previously awarded. However, your case is begin returned to the Marketplace to ensure that your plan complied with the requirements for third level of cost-sharing reductions

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and to ensure that your health plan properly calculated your benefits after your eligibility for CSR changed mid-year.

This Decision has no effect any subsequent determination issued by the Marketplace on or after August 27, 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
- 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 5, 2015 and August 26, 2015 preliminary eligibility redeterminations and the corresponding August 6, 2015 and August 27, 2015 notices of eligibility redetermination are MODIFIED to reflect that you and your spouse were eligible for the third level of cost-sharing reductions.

You continue to be eligible to enroll in silver-level qualified health plan with advance payments of the premium tax credit and the third level of cost-sharing reductions, as previously awarded. However, your case is being returned to the Marketplace to ensure that your plan complied with the requirements for third level of cost-sharing reductions and to ensure that your health plan properly calculated your benefits after your eligibility for CSR changed mid-year.

This Decision has no effect any subsequent determination issued by the Marketplace on or after August 27, 2015.

Please note that this decision only applies to your eligibility for the year 2015.

## **Legal Authority**

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

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

