



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

Notice of Decision

Decision Date: January 27, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004510

[REDACTED]

Dear [REDACTED],

On December 1, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 30, 2015 eligibility determination, and the July 30, August 5, and August 9, 2015 enrollment confirmation notices.

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(b).

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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 [REDACTED] was eligible for advance payments of the premium tax credit of up to \$92.00 per month, effective September 1, 2015?

Did the Marketplace properly apply her advance premium tax credit of \$92.00 to her August 2015 premium?

Procedural History

On June 5, 2015, the Marketplace issued a notice of eligibility determination stating that [REDACTED] was eligible to receive advance payments of the premium tax credit (APTC) of up to \$303.00 per month, as well as cost-sharing reductions (CSR), effective July 1, 2015.

On June 6, 2015, the Marketplace issued a notice confirming [REDACTED] enrollment in Fidelis Care Silver with a monthly premium responsibility of \$58.02, after applying \$303.00 in APTC. The notice also stated that coverage and the application of APTC would both be effective as early as July 1, 2015, after the first month's premium was paid.

On June 15, 2015, a copy of [REDACTED] unemployment insurance benefit payment history was faxed to the Marketplace. This document was available for review in your Marketplace account on June 27, 2015.

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On June 29, 2015, a signed letter from [REDACTED] employer, confirming her income for the months of May through November, was faxed to the Marketplace. This document was available for review in your Marketplace account on July 1, 2015.

On July 29, 2015, your Marketplace account was updated, and [REDACTED] income was modified to reflect an expected income of \$36,030.00 for the 2015 tax year.

On July 30, 2015, the Marketplace issued a notice of eligibility redetermination stating that [REDACTED] was eligible for APTC of up to \$92.00 per month, effective September 1, 2015.

Also on July 30, 2015, the Marketplace issued a notice confirming her enrollment in Fidelis Care Silver with a monthly premium responsibility of \$269.02, after applying an advance premium tax credit of \$92.00. It further stated that her advance premium tax credit would be applied to her monthly premium effective August 1, 2015.

On August 3, 2015, your Marketplace account was updated, and [REDACTED] income was modified to reflect an expected income of \$22,230.00 for the 2015 tax year.

On August 4, 2015, the Marketplace issued a notice of eligibility redetermination stating that [REDACTED] was eligible for an advance premium tax credit of up to \$270.00 per month and cost-sharing reductions, effective September 1, 2015.

On August 5, 2015, the Marketplace issued a notice confirming her enrollment in Fidelis Care Silver with a monthly premium responsibility of \$269.02, after applying an advance premium tax credit of \$92.00. It further stated that her advance premium tax credit would be applied to her monthly premium effective August 1, 2015.

On August 8, 2015, the Marketplace issued a notice of eligibility redetermination stating that [REDACTED] was eligible for an advance premium tax credit of up to \$270.00 per month and cost-sharing reductions, effective September 1, 2015.

On August 9, 2015, the Marketplace issued a notice confirming [REDACTED] enrollment in Fidelis Care Silver with a monthly premium responsibility of \$269.02, after applying an advance premium tax credit of \$92.00. It further stated that her advance premium tax credit would be applied to her monthly premium effective August 1, 2015.

On August 11, 2015, the Marketplace issued a notice confirming her enrollment in Fidelis Care Silver with a monthly premium responsibility of \$91.02, after applying an advance premium tax credit of \$270.00. It further stated that her

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advance premium tax credit would be applied to her monthly premium effective September 1, 2015.

On August 27, 2015, you spoke with the Marketplace's Account Review Unit and appealed the July 30, 2015 eligibility determination insofar as it was issued based on incorrect income information for [REDACTED]

On December 1, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence, including your Fidelis premium billing statement, and proof of [REDACTED] income.

On December 2, 2015, the Marketplace's Appeals Unit received your supporting evidence, with included a copy of [REDACTED] last paystub, a copy of your Fidelis Premium Billing Statement, and a letter from Fidelis Care regarding a claim for medical services. These documents were collectively marked as Appellant's Exhibit 1, and incorporated into the record.

Findings of Fact

- 1) You testified that you are only appealing [REDACTED] [REDACTED] eligibility determination.
- 2) You testified, and the record reflects, that [REDACTED] is your domestic partner and that she resides with you.
- 3) You testified, and your application reflects, that [REDACTED] expects to file her 2015 tax return as Single and will claim no dependents on that tax return.
- 4) The June 17, 2015 application listed [REDACTED] income as \$19,330.00. You testified that this income was based on her 2014 tax return and was an accurate reflection of her expected income for the 2015 tax year.
- 5) The record reflects that [REDACTED] was eligible for an advance premium tax credit of up to \$303.00 per month as of July 1, 2015.
- 6) The record reflects that income verification documents for [REDACTED] were faxed to the Marketplace in June 2015, including a copy of her unemployment insurance benefit payment history and a signed letter from her employer. According to the unemployment insurance benefit payment history, she received \$210.00 per week beginning on November 23, 2014 and ending on April 26, 2015. You confirmed [REDACTED] last unemployment insurance benefit payment was issued on April 26, 2015. According to the letter from her employer, [REDACTED] worked at [REDACTED] from

May through November 2015, at a rate of \$15.00 per hour, and approximately 40 hours per week.

- 7) The Marketplace's system reflects that your account was updated on July 29, 2015 by "86358MAX868_NONSIEBEL" at which time [REDACTED] income was changed to \$36,030.00. According to this modified application, her income was calculated using an annual weekly income of \$600.00 through her employment with [REDACTED] and 23 weeks of unemployment insurance benefit payments of \$210.00 per week. You testified that this income was incorrectly calculated because [REDACTED] did not receive 23 weeks of unemployment insurance benefit payments in 2015, and she was not employed through [REDACTED] for the entirety of the 2015 year.
- 8) The record reflects that your Marketplace account was adjusted on August 3, 2015 to modify [REDACTED] income to \$22,230.00. You testified that this was a more accurate reflection of [REDACTED] expected income for the 2015 tax year, but does not reflect her current income situation.
- 9) You provided evidence that [REDACTED] last paycheck from her employment with [REDACTED] was issued on October 9, 2015, and she earned a total income of \$13,162.48 for the season before taxes were deducted (Appellant's Exhibit 1, December 2, 2015).
- 10) According to the July 30, 2015 notice of eligibility determination, [REDACTED] advance premium tax credit of \$92.00 was to be effective September 1, 2015.
- 11) According to the July 30, 2015 enrollment confirmation notice, [REDACTED] \$92.00 advance premium tax credit was applied to her August 2015 premium.
- 12) You provided evidence that [REDACTED] was billed a monthly premium of \$269.02 beginning the August 2015 coverage month (Appellant's Exhibit 1, December 2, 2015).
- 13) You testified that [REDACTED] is unable to pay the higher premium and is at risk of losing her health insurance coverage for failure to pay the monthly premiums on time.

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 federal 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)).

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 \$11,670.00 for a one-person household (79 Fed. Reg. 3593).

APTC that is based on an eligibility redetermination begins on the first day of the month following the date of the Marketplace notice in which it is awarded (45 CFR 155.330(e)(1)(ii)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that [REDACTED] [REDACTED] was eligible for an advance premium tax credit (APTC) of up to \$92.00 per month, effective September 1, 2015.

The application that was submitted on July 29, 2015 listed an annual household income of \$36,030.00 for [REDACTED]. This income was calculated using an annual weekly income of \$600.00 through her employment with [REDACTED], or \$31,200.00, and 23 weeks of unemployment insurance benefit payments at \$210.00 per week, or \$4,830.00.

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However, according to the unemployment insurance benefit payment history faxed to the Marketplace on June 15, 2015, [REDACTED] unemployment insurance benefits began on November 23, 2014 and ended on April 26, 2015. You confirmed that [REDACTED] last unemployment insurance benefit payment was issued on April 26, 2015. Therefore, [REDACTED] received 17 weeks of unemployment benefit payments in 2015, not 23 weeks as calculated in the July 29, 2015 application, for a total of \$3,570.00 in unemployment insurance benefit payments for the 2015 tax year.

Furthermore, according to the letter signed by her employer, [REDACTED] was expected to work at [REDACTED] from May through November 2015 at a rate of \$15.00 per hour, for approximately 40 hours per week. There were approximately 30 weeks between May and November 2015; therefore, [REDACTED] expected income from her employment with [REDACTED] was \$18,000.00, and not \$31,200.00 as calculated in the July 29, 2015 application.

Therefore, according to the income documentation provided to the Marketplace in June 2015, [REDACTED] expected income for the 2015 tax year at the time of the July 29, 2015 application was \$21,570.00, and not \$36,030.00.

Since the credible evidence of record indicates that the eligibility determination issued on July 30, 2015 was based on miscalculated income information contained in the July 29, 2015 application, it is MODIFIED to reflect that the amount of APTC awarded is tentative, and may be adjusted when the appropriate tax return is filed.

The second issue under review is whether the Marketplace properly applied [REDACTED] advance premium tax credit of \$92.00 to her August 2015 premium.

Since the July 30, 2015 enrollment confirmation notice was issued in reliance upon the July 29, 2015 application, it is also MODIFIED to reflect that the amount of APTC awarded is tentative, and may be adjusted when the appropriate tax return is filed.

Furthermore, since the August 5 and August 9, 2015 enrollment confirmation notices also stated that [REDACTED] advance premium tax credit of \$92.00 would be applied to her August 2015 premium payment, they were issued in reliance upon the July 29, 2015 application, and are also MODIFIED to reflect that the amount of APTC awarded is tentative, and may be adjusted when the appropriate tax return is filed.

Ordinarily, your case would be REMANDED to the Marketplace to facilitate the application of the correct advance premium tax credit of \$303.00 to her August 2015 premium.

However, because the 2015 tax year is over, [REDACTED] may reconcile the amount of APTC she should have received when she files her tax return for 2015.

It is also noted that additional evidence provided after the hearing reflects that [REDACTED] actual income earned from her employment with [REDACTED] was lower than the expected income projected by her employer. When filing her 2015 tax return, the difference between her expected income, as stated in her corrected August 3, 2015 application, with her actual income, as stated in her income tax form will be reconciled.

Decision

The July 30, 2015 eligibility determination and the July 30, August 5, an August 9, 2015 eligibility confirmation notices are MODIFIED to reflect that the amount of APTC awarded is tentative, and may be adjusted when the appropriate tax return is filed.

Effective Date of this Decision: January 27, 2016

How this Decision Affects Your Eligibility

This decision does not change Tammy's current eligibility; instead her eligibility for premium tax credits will be reconciled when she files her tax return for 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)).

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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
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- By fax: 1-855-900-5557

Summary

The July 30, 2015 eligibility determination and the July 30, August 5, an August 9, 2015 eligibility confirmation notices are MODIFIED to reflect that the amount of APTC awarded is tentative, and may be adjusted when the appropriate tax return is filed.

This decision does not change [REDACTED] current eligibility; instead her eligibility for premium tax credits will be reconciled when she files her tax return for 2015.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

