



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

Notice of Decision

Decision Date: December 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004515

[REDACTED]

Dear [REDACTED],

On November 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 28, 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 determine that you were not eligible for advance premium tax credits or cost-sharing reductions, effective October 1, 2015?

Procedural History

On August 28, 2015, the Marketplace received your updated application for health insurance. That day, a preliminary eligibility determination was prepared finding you eligible to purchase a qualified health plan (QHP) at full cost, effective October 1, 2015. You were also found to not qualify for advance premium tax credits (APTC), cost-sharing reductions (CSR), or Medicaid.

That same day, you contacted the Marketplace's Account Review Unit and requested an appeal of the Marketplace's preliminary eligibility determination insofar as you were not eligible for financial assistance and, specifically, not eligible for Medicaid.

On August 29, 2015, the Marketplace issued an eligibility determination notice, based on your August 28, 2015 application, stating that you were eligible to purchase a QHP at full cost, effective October 1, 2015. It stated that you did not qualify for APTC because your application stated that the primary tax filers in your household were married but not filing taxes jointly. It also stated that you did not qualify for CSR because you are not eligible for APTC and you were not eligible for Medicaid because your household income was over the allowable income limit for this program.

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On November 19, 2015, you had a telephone hearing with a Hearing Officer from the Appeals Unit of NY State of Health. The record was developed during the hearing and held open for up to 15 days to allow you to submit supporting documents.

On November 23, 2015, the Appeals Unit received a five-page fax from you, consisting of a cover page and a Petition for Custody and Final Order on Petition for Custody. That same day, this five-page fax was made part of the record as "Appellant's Exhibit A" and the record was closed.

Findings of Fact

- 1) You testified that you are seeking review of only your eligibility.
- 2) You testified that you will be filing your 2015 income tax return using a tax filing status of Head of Household with Qualifying Individuals. You testified that you will be claiming your two children as dependents on that tax return.
- 3) You testified that you are currently married and are not legally separated from your spouse, but that you have filed for divorce, which you expect to be finalized in 2016.
- 4) You testified that you have full custody of your two children, as confirmed in the Final Order on Petition for Custody on Default, dated June 11, 2015, issued at a term of the Family Court of the State of New York, Westchester County (Appellant's Exhibit A, p. 5).
- 5) You testified that you have not lived with your spouse so far in 2015 and do not plan to reside with your spouse at all for the rest of the year.
- 6) You testified that your estranged spouse has not provided financial support for you or your two children during 2015.
- 7) You testified that you have two children who are currently 12 and 7 years old. You testified that your children have lived with you since birth and throughout 2015.
- 8) You testified that you pay more than half of the cost of maintain your home.
- 9) You testified that your expected 2015 income is \$31,000.00.
- 10) Your application states that you live in Westchester 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)).

Additionally, a tax filer who is married must generally file a joint return with his or her spouse in order to qualify for APTC (45 CFR § 155.305(f), 45 CFR § 155.310(d); 26 CFR § 1.36B-2).

However, an individual will be treated as not married at the close of the taxable year if the individual

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
 - a. files a separate return from his/her spouse and maintains his or her household as the primary home for a qualifying child;
 - b. pays more than one half of the cost of keeping up his or her home for the tax year; and
 - c. does not have his or her spouse as a member of the household during the last six months of the tax year

(26 USC § 7703(a); 26 USC § 7703(b)).

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 that is at or below 138% of the FPL for the applicable family size (42 CFR §§ 435.119(b), 435.911(b)(1), 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 2014 FPL, which is \$20,090.00 for a three-person household (80 Fed. Reg. 3236, 3237).

Legal Analysis

The issue under review is whether the Marketplace properly determined that you were not eligible for advance premium tax credits (APTC), cost-sharing reductions (CSR), or Medicaid.

In the eligibility determination notice issued on August 29, 2015, the Marketplace denied your eligibility for APTC because you indicated that you were married but did not plan on filing a joint federal income tax return with your spouse.

To qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

According to the information in the record and your testimony at the hearing, you are still married to your spouse and have not obtained a decree of divorce or of separate maintenance, although you are in the process of getting a divorce. Also, you confirmed that you do not plan to file a joint federal income tax return with your spouse for the 2015 tax year.

There is an exception, as noted above, that allows a married tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for APTC.

You credibly testified during the hearing that: (1) you expect to claim your two children as dependents and that the children's primary home is with you, (2) you will pay more than one-half of the cost of keeping up your home for 2015, and (3) your spouse has not been a member of the household at all in 2015 and you expect that to remain the case for the rest of the year. Therefore, the record supports a finding that you are a head of household with a qualifying dependent and qualify to be treated as “not married” for purposes of this decision. Accordingly, that portion of the August 29, 2015 eligibility

determination notice that states you are not eligible for APTC and CSR is incorrect and is RESCINDED.

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 that is at or below 138.0% of the FPL for the applicable family size. On the date of your application, the relevant FPL was the 2015 FPL of \$20,090.00 for a three-person household. Since \$31,000.00 is 154.31% of the 2015 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application. Therefore, that portion of the August 29, 2015 eligibility determination is correct and is AFFIRMED.

Your case is RETURNED to the Marketplace to redetermine your eligibility for financial assistance as of October 1, 2015, and to issue a new notice.

Decision

The August 29, 2015 eligibility determination notice is RESCINDED, in part, as it relates to you not being eligible for APTC and CSR; is AFFIRMED, in part, as it relates to you not being eligible for Medicaid; and REMAINS IN EFFECT, in part, as it relates to your children's eligibility.

Your case is being RETURNED to the Marketplace to redetermine your eligibility for financial assistance, effective October 1, 2015, using a three-person household in Westchester County with an expected income of \$31,000.00, and any new tax filing status of "not married."

Effective Date of this Decision: December 21, 2015

How this Decision Affects Your Eligibility

This decision does not decide whether you should get advance premium tax credits and, therefore, cost-sharing reductions.

Your case is returned to the Marketplace to redetermine your eligibility for financial assistance, effective October 1, 2015, using a three-person household in Westchester County with an expected income of \$31,000.00, and any new tax filing status of "not married."

You are not eligible for Medicaid.

Your children's eligibility for and enrollment in Child Health Plus is not affected by this Decision and continues in effect.

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).

Please note that this decision only applies to your eligibility for the year 2015. For insurance coverage starting January 1, 2016, you will need to reapply with the Marketplace during the Open Enrollment Period. The Open Enrollment Period for 2016 health coverage is November 1, 2015 to January 31, 2016. For more information on Open Enrollment please go to <https://nystateofhealth.ny.gov/> or contact the Marketplace at the contact information listed in this decision.

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

Summary

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).

The August 29, 2015 eligibility determination notice is RESCINDED, in part, as it relates to you not being eligible for APTC and CSR; is AFFIRMED, in part, as it relates to you not being eligible for Medicaid; and REMAINS IN EFFECT, in part, as it relates to your children's eligibility.

Your case is being RETURNED to the Marketplace to redetermine your eligibility for financial assistance, effective October 1, 2015, using a three-person household in Westchester County, New York, with an expected income of \$31,000.00, and any new tax filing status of "not married."

This decision does not decide whether you should get APTC and, therefore, CSR.

You are not eligible for Medicaid.

Your children's eligibility for and enrollment in Child Health Plus is not affected by this Decision and continues in effect.

Please note that this decision only applies to your eligibility for the year 2015. For insurance coverage starting January 1, 2016, you will need to reapply with the Marketplace during the Open Enrollment Period. The Open Enrollment Period for 2016 health coverage is November 1, 2015 to January 31, 2016. For more information on Open Enrollment please go to <https://nystateofhealth.ny.gov/> or contact the Marketplace at the contact information listed in this decision.

Legal Authority

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

Copy of this Decision Has Been Provided To:

