



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

Notice of Decision

Decision Date: December 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004519

[REDACTED]

Dear [REDACTED],

On November 20, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 19, 2015 eligibility determination notice.

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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Issues

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

Did the Marketplace properly determine that you and your spouse were not eligible for advance premium tax credits because your income was over the allowable limit, effective October 1, 2015?

Did the Marketplace properly determine that you and your spouse were not eligible to receive cost-sharing reductions, effective October 1, 2015?

Did the Marketplace properly determine that your children were eligible to enroll in a full price Child Health Plus plan or Child-Only qualified health plan, effective October 1, 2015?

Procedural History

On August 17, 2015 you submitted an application for health insurance on behalf of yourself, your spouse, and your two children.

On August 19, 2015, the Marketplace issued an eligibility determination notice based on the August 17, 2015 application, stating that you and your spouse were eligible to purchase a qualified health plan at full cost, effective October 1, 2015. You and your spouse did not qualify to receive tax credits because your household income was over the allowable limit for that program, and you and your spouse were not eligible for cost-sharing reductions because you were not eligible to receive an advance premium tax credit. The notice also stated that your two children were eligible to enroll in a full price Child Health Plus plan or

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Child-Only qualified health plan, effective October 1, 2015. Your children were not eligible to receive premium assistance for Child Health Plus because your household income was over the Child Health Plus income standard.

On August 28, 2015, you spoke to the Marketplace's Account Review Unit and appealed that determination insofar as you, your spouse, and your children were not eligible for financial assistance.

On November 20, 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) You testified that you expect to file your 2015 taxes with a tax filing status of married filing jointly with your spouse. You will claim your two children as dependents on that tax return.
- 2) The application that was submitted on August 17, 2015 listed an annual household income of \$122,100.00, consisting of \$2,100.00 in income you earn from a job, and \$120,000.00 your spouse earns from a job. You testified that this amount was correct.
- 3) You testified that you have other expenses that you would like considered as part of your income. Those expenses include your mortgage, home and car insurance, car payments for three vehicles, utility costs, and the costs of keeping up your home.
- 4) At the time of the August 17, 2015 application, both of your children were under the age of 18 years old.
- 5) You testified that you reside in Suffolk County, New York.

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

Applicable Law and Regulations

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

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“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)). Living expenses, such as rent and utilities, are not an allowable deductions in computing adjusted gross income.

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)).

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 \$23,850.00 for a four-person household (79 Fed. Reg. 3593).

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)).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with

subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

In an analysis of Child Health Plus 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 was \$24,250.00 for a four-person household (80 Fed. Reg. 3236, 3237).

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” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see *also* 26 USC § 62 (17)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you and your spouse were not eligible for an advance premium tax credit because you were over the allowable income limit for that program, effective October 1, 2015.

You are in a four-person household. You expect to file your 2015 income taxes as married filing jointly with your spouse, and to claim two dependents on that tax return.

In the application that was submitted on August 17, 2015, you attested to an annual household income of \$122,100.00, and the eligibility determination relied upon that information. During the hearing, you testified that the amount you provided in your application was correct. However, you asked that other

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expenses, which include your mortgage, home and car insurance, and car payments as well as your utility costs and the costs of keeping up your home be considered when calculating your annual household income.

Since the Internal Revenue Service rules do not allow expenses such as mortgages, utilities, and car payments 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 advance premium tax credit purposes. Therefore, the Marketplace correctly determined your household income to be \$122,100.00.

Since the annual 2014 FPL for a four-person household is \$23,850.00, you and your spouse may qualify for an advance premium tax credit if your annual household income is between \$32,913.00 (138% FPL) and \$95,400.00 (400% FPL).

The household income that was listed on your August 17, 2015 application places you and your spouse at 511.95% of the FPL. Since your household earns more than the allowable maximum for this program, you and your spouse are not eligible for an advance premium tax credit.

The second issue is whether the Marketplace properly determined that you and your spouse were not eligible for cost-sharing reductions. Cost-sharing reductions are available to a person who is eligible to receive advance premium tax credits and has an annual household income that does not exceed 250% of the FPL. Since you and your spouse are not eligible for advance premium tax credits, you are also not eligible for cost-sharing reductions.

The final issue under review is whether the Marketplace properly determined that your two children were eligible to enroll in a full price Child Health Plus plan or Child-Only qualified health plan, effective October 1, 2015.

A child is eligible to enroll in Child Health Plus with a reduced payment amount if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the federal poverty level (FPL). On the date of your application, the relevant FPL was \$24,250.00 for a four-person household. Since \$122,100.00 is 503.51% of the 2015 FPL the Marketplace properly found your children to be eligible for a full price Child Health Plus plan.

Therefore, the August 19, 2015 eligibility determination is **AFFIRMED** because it properly stated that you and your spouse do not qualify to receive tax credits because your income was over the allowable limit for that program, you and your spouse are not eligible for cost-sharing reductions because you are not eligible to receive an advance premium tax credit, and your two children are eligible to enroll in a full price Child Health Plus plan or Child-Only qualified health plan.

Decision

The August 19, 2015 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: December 10, 2015

How this Decision Affects Your Eligibility

You and your spouse remain eligible to enroll in a qualified health plan at full cost.

You and your spouse are not eligible for an advance premium tax credit or for cost-sharing reductions.

Your children remain eligible for a full price Child Health Plus plan or Child-Only qualified health plan.

Your children are not eligible for a subsidy to help cover the cost of their Child Health Plus plan.

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.

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If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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- By mail at:
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Summary

The August 19, 2015 eligibility determination notice is AFFIRMED.

You and your spouse remain eligible to enroll in a qualified health plan at full cost.

You and your spouse are not eligible for an advance premium tax credit or for cost-sharing reductions.

Your children remain eligible for a full price Child Health Plus plan or Child-Only qualified health plan.

Your children are not eligible for a subsidy to help cover the cost of their Child Health Plus plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

