



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: AP000000004577



Dear [REDACTED],

On November 23, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's September 3, 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 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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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 calculate your household's Modified Adjusted Gross Income used when determining your and your spouse's eligibility for financial assistance?

Procedural History

On September 1, 2015, the Marketplace received your application for health insurance. That day, a preliminary eligibility determination was prepared with regard to that application, stating that you and your spouse were eligible for up to \$435.00 per month in advance payments of the premium tax credits (APTC), cost-sharing reductions, and the Advance Premium Tax Credit Assistance Program.

Also on September 1, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you and your spouse were not found eligible for Medicaid.

On September 3, 2015, the Marketplace issued an eligibility determination notice based on the information contained in the September 1, 2015 application, stating that you and your spouse were eligible for up to \$435.00 in APTC per month, cost-sharing reductions, and the Advance Premium Tax Credit Assistance Program. This eligibility was effective October 1, 2015. The notice further stated that you and your spouse were not eligible for Medicaid because your household income was over the allowable limit for that program.

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On November 23, 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 until December 14, 2015 to allow you time to submit documentation of your household's income. No documentation was received within the allotted time and the record is now closed.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You testified, and the record reflects, that you and your spouse expect to file your 2015 taxes with a tax filing status of married filing jointly. You will claim three of your children as dependents on that tax return.
- 2) The application that was submitted on September 1, 2015 listed an annual household income of \$41,376.00. This amount consists of \$10,939.00 in income that you receive from self-employment, \$31,200.00 your spouse receives from employment, and \$6,288.00 one of your children receives in Social Security disability benefits. This amount also reflects a tax deduction of \$7,051.00.
- 3) The record reflects that none of your children expect to receive any income from employment this year.
- 4) Your application states that you live in Onondaga County.

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)).

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Eligibility for APTC is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable Social Security income, non-taxable interest income, and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

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)).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 435.603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(a)(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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)).

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Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term “modified adjusted gross income” the same definition as “adjusted gross income,” without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

“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 savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

“Gross income” is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual’s income from Social Security benefits is included in their gross income only to the extent that the sum of the person’s IRS-defined “modified adjusted gross income” and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1), (c)(1)(A)).

Legal Analysis

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when determining your and your spouse’s eligibility for financial assistance.

On September 1, 2015 your application listed an annual household income of \$41,376.00. This amount consisted of \$10,939.00 in income that you receive from self-employment, \$31,200.00 your spouse receives from employment, and \$6,288.00 one of your children receives from Social Security disability. This amount also consisted of a tax deduction of \$7,051.00.

Household income for the purposes of calculating a person’s eligibility for financial assistance to help pay for the costs of health insurance through the Marketplace, consists of the Modified Adjusted Gross Income of all tax filers in a household who are required to file a tax return.

You attested to your intent to file a 2015 return when you requested financial support on the Marketplace application. Since you plan on filing your taxes as

married filing jointly and claim three of your children as dependents, you are in a five-person household.

A dependent will be required to file a tax return in 2015 if their earned income is greater than \$6,300.00. According to the information on your application, your children have no earned income. Since your dependents have an earned income less than \$6,300.00, they NOT required to file a tax return on the basis of their earned income.

A dependent will also be required to file a tax return in 2015 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, one of your children received \$6,288.00 in income from Social Security disability benefits. Since \$3,144.00 (one-half the amount of Social Security she receives) is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

Therefore, the September 3, 2015 eligibility determination is **RESCINDED** because your child's income, should not have been included in your household's income for Marketplace purposes.

Your case is **RETURNED** to the Marketplace for a redetermination of your and your spouse's eligibility for financial assistance as a person who resides in Onondaga County, is a member of a five-person household, and has an expected household income of \$35,088.00.

Please note that because you did not provide documentation of your income as requested by the Hearing Officer, the Marketplace may require you to produce documentation when your and your spouse's eligibility is redetermined.

Decision

The September 3, 2015 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to the Marketplace for a redetermination of your and your spouse's eligibility for financial assistance as a person who resides in Onondaga County, is a member of a five-person household, and has an expected household income of \$35,088.00.

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).

Effective Date of this Decision: February 18, 2016

How this Decision Affects Your Eligibility

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your and your spouse's eligibility for financial assistance as a person who resides in Onondaga County, is a member of a five-person household, and has an expected household income of \$35,088.00.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

The Marketplace may require you to produce documentation of your household income when your and your spouse's eligibility is redetermined.

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

The September 4, 2015 eligibility determination notice is **RESCINDED**.

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your and your spouse's eligibility for financial assistance as a person who resides in Onondaga County, is a member of a five-person household, and has an expected household income of \$35,088.00.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

The Marketplace may require you to produce documentation of your household income when your and your spouse's eligibility is redetermined.

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:

