



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

Notice of Decision

Decision Date: February 8, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004740

[REDACTED]

Dear [REDACTED],

On December 15, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 18, 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 Code of Federal Regulation (CFR) 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: February 8, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004740

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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 were eligible to receive advance premium tax credits (APTC) in the amount of \$260.00 per month, and cost sharing reductions (CSR), effective July 1, 2015?

Did the Marketplace properly determine that you were eligible to select a health plan outside of open enrollment no later than June 30, 2015?

Procedural History

On May 18, 2015, the Marketplace received your updated application for financial assistance.

An eligibility determination was made that same day finding you eligible to receive APTC in the amount of \$260.00 per month effective July 1, 2015, and CSR effective July 1, 2015. This determination was based on your attested household income of \$26,000.00.

The notice further found you eligible to select a health plan outside of the open enrollment period for 2015, and asked that you make a selection no later than June 30, 2015.

On May 19, 2015, a confirmation notice was issued confirming your enrollment in Health Republic Bronze level plan. The notice further stated your coverage could start as early as January 1, 2015 if you pay your first month's premium.

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On September 18, 2015, you contacted the Marketplace's Account Review Unit and appealed that start date of your qualified health plan (QHP) as you claimed were not aware you had been automatically renewed into coverage for 2015.

On October 9, 2015, a cancellation notice was issued finding your Health Republic Bronze level plan canceled effective January 1, 2015 for non-payment of premium.

On December 15, 2015, you had a telephone hearing with a Hearing Officer from the NY State of Health Appeals Unit. The record was developed during the hearing and left open 15 days to provide documentation in the form of a letter from your previous insurance carrier Health Republic addressing the cancellation of your insurance. No documentation was received by the requested deadline and will therefore not be considered part of the record for this appeal.

Findings of Fact

The record supports the following findings of fact:

- 1) You are seeking insurance for yourself.
- 2) You currently reside in Orange County, New York.
- 3) Your application states that you will be filing your tax return as head of household with a qualifying individual for 2015.
- 4) You will be claiming your son as a dependent on that tax return.
- 5) You attested to an expected annual income of \$26,000.00 on your application dated May 18, 2015.
- 6) Your Marketplace account indicates and your testimony supports that you receive notices from the Marketplace via electronic notice.
- 7) You testified that you recalled receiving the renewal notice dated November 6, 2014, but that you did not respond to that notice because you already had employer sponsored insurance. It is noted that this notice states, "If you want to keep your present health plan for the next year and the information on your application is still accurate, here's good news! We've re-enrolled you in your current health plan for another year and you don't have to do anything more."
- 8) You further testified that you do not recall receiving the notice dated December 26, 2014, which stated that your enrollment in your QHP would

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- end December 31, 2014, but that you would be automatically enrolled in the same plan for the 2015 year.
- 9) No notices sent to you at the address listed on your Marketplace account have been returned as undeliverable.
 - 10) You testified that your e-mail address listed on file by the Marketplace is correct and has not changed.
 - 11) You testified that you did not know you needed to renew your application for health insurance or that you were auto-enrolled in your previous health plan again for 2015.
 - 12) Your testimony supports that you were receiving and enrolled in your employer sponsored insurance from January 1, 2015 until April 30, 2015.
 - 13) You testified that you updated the information in your Marketplace Account when you contacted the Marketplace on May 18, 2015 because your employer sponsored health insurance was going to end. The record further supports that you were not advised during the call that you had active coverage in the system and had been automatically renewed for 2015.
 - 14) The record supports that you were provided with information on plans you would be eligible for, but you did not select a health plan as you believed that they were unaffordable.
 - 15) You testified that you did not pay any premiums for your Bronze level QHP for 2015.
 - 16) On October 9, 2015 you were disenrolled from your Bronze level QHP effective January 1, 2015 due to no premium payments being received for 2015.
 - 17) On May 18, 2015, you were determined eligible to select a plan outside of the 2015 open enrolment period and were asked to make a selection no later than June 30, 2015.

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

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APTC is generally available to a person who is eligible to enroll in a 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)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2015 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

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 \$ 15,730 for a two -person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.00% and 6.30% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Minimum Essential Coverage

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Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f); 45 CFR § 155.305(f)(1)(B)). Veterans' Health coverage includes the health care programs under 38 USC chapter 17 or 18, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services (26 USC § 5000A (f)(1)(A)(v)).

Cost-Sharing Reductions

CSR's 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)).

Hardship Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a qualified health plan QHP. Such an exemption may be granted if that person can show that she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a qualified health plan (45 CFR § 155.605 (a), (g)). NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the information by which the Marketplace will use to redetermine a qualified

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individual's eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)).

Enrollment Periods

The Marketplace must provide annual open enrollment periods during which time qualified individuals may enroll in a QHP and enrollees may change QHPs (45 CFR § 155.410(a)).

For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR § 155.410(e)); however, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements 'Waiting in Line' Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%99waiting-line%E2%80%99-provision-ahead-february-15-open>).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (b) Enrolled in any non-calendar year health insurance policy, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
 - (c) Pregnancy-related coverage; or
 - (d) Medically needy coverage.

- (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
- (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or
- (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or has a change in eligibility for cost-sharing reductions; or
- (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
- (8) The qualified individual is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and may enroll in a QHP or change from one QHP to another one time per month; or
- (9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or
- (10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible to receive APTC in the amount of \$260.00 per month, effective July 1, 2015.

You testified that you updated the information in your Marketplace Account when you contacted the Marketplace on May 18, 2015 because your employer sponsored health insurance was going to end on April 30, 2015.

The application that was submitted on May 18, 2015 listed an annual household income of \$26,000.00, and the eligibility determination relied upon that information.

You are in a two-person household. You expect to file your 2015 income taxes as head of household with a qualifying individual, and will claim one dependent on that tax return.

You reside in Orange County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$362.46 per month.

An annual income of \$26,000.00 is 165.29% of the 2014 FPL for a two-person household. At 165.29% of the FPL, the expected contribution to the cost of the health insurance premium is 4.73% of income, or \$102.48 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual in your county (\$362.46 per month) minus your expected contribution (\$102.48 per month), which equals \$259.98 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you to be eligible for up to \$260.00 per month in APTC.

The May 19, 2015 notice further found you eligible to select a health plan outside of the open enrollment period for 2015, and asked that you make a selection no later than June 30, 2015.

APTC is generally available to a person who is eligible to enroll in a QHP and is not otherwise eligible for minimum essential coverage except through the individual market. Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance.

Therefore you were not eligible to receive APTC for the period of time in which you had eligible employer sponsored health insurance, from January 1, 2015 to April 30, 2015. The May 19, 2015 eligibility determination notice, insofar as it stated you were eligible for APTC of \$260 per month and eligible for CSR, effective July 1, 2015, is therefore correct and is AFFIRMED.

The second issue is whether the Marketplace properly determined that you were eligible to select a health plan outside of open enrollment no later than June 30, 2015.

The record supports that you were not advised during your May 18, 2015 call to the Marketplace that you had active coverage in the system and had been automatically renewed for 2015.

However, you testified that you recalled receiving the November 6, 2014 renewal notice, but that you did not respond to the notice because you had employer sponsored health insurance at that time. This notice stated "If you want to keep your present health plan for the next year and the information on your application is still accurate, here's good news! We've re-enrolled you in your current health plan for another year and you don't have to do anything more." Therefore, you were notified that you had been auto-enrolled in your health plan for 2015.

The Marketplace provided an open enrollment period from November 15, 2014 until February 15, 2015, which was later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. The record reflects that you contacted the Marketplace to see what coverage you would be found eligible for on May 18, 2015. Therefore, you did not complete your application during the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified that you lost your employer sponsored health insurance on April 30, 2015.

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This may be deemed acceptable as a triggering life event that could be the basis for a special enrollment period. When a qualified individual or his or her dependent involuntarily loses certain health insurance considered to be minimum essential coverage, they may qualify to select a plan outside of open enrollment.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

Sixty days from April 30, 2015, was June 30, 2015; therefore, you would have qualified to select a QHP of the open enrollment period until June 30, 2015. This means you would have had to submit a completed application with the required supporting documentation and chosen a plan by June 30, 2015.

You testified that, when you spoke with the Marketplace on May 18, 2015, you were told that you could enroll in a plan effective July 1, 2015. You further testified that July 1, 2015 would have been an acceptable plan start date for your purposes, but you felt that the amount of the premium (over \$300 per month before any APTC was applied) was too high and not affordable to you. The Marketplace agent also gave you information about applying for a hardship exemption during this May 18, 2105 phone call.

Since you did not select a plan by June 30, 2015, the special enrollment period that you were granted expired.

The October 9, 2015 disenrollment notice which canceled your coverage effective January 1, 2015, does not entitle you to a second special enrollment period. This is because the cancellation was caused by your failure to pay any premiums for your health plan in the year 2015. The Marketplace does not consider a failure to pay premiums to be an involuntary loss of coverage such that would trigger a special enrollment period.

Since you acknowledged receipt of the November 6, 2014 notice that informed you that you were being auto-enrolled, you were on notice that you were enrolled in a health plan. Therefore, your failure to pay any premiums for that plan, and the loss of insurance coverage that resulted, is not a triggering event that would qualify you for a special enrollment period. Therefore, the Marketplace's May 19, 2015 eligibility determination notice, insofar as it stated you were eligible for a special enrollment period that required you to pick a plan by June 30, 2015, is **AFFIRMED**.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during the eight months you had no coverage in 2015, you can check the Federal Marketplace website (www.healthcare.gov) for an application.

Decision

The Marketplace's May 19, 2015 eligibility determination notice, insofar as it stated you were eligible for APTC of \$260 per month and CSR, effective July 1, 2015, is AFFIRMED.

The Marketplace's May 19, 2015 eligibility determination notice, insofar as it stated you were eligible for a special enrollment period that required you to pick a plan by June 30, 2015, is AFFIRMED.

Effective Date of this Decision: February 8, 2016

How this Decision Affects Your Eligibility

You were eligible for \$260 per month in APTC and eligible for CSR, effective July 1, 2015.

You were eligible for a special enrollment period that expired on June 30, 2015.

This decision has no effect on your current eligibility for 2016.

If you want to apply for a hardship exemption for 2015, you can visit the Federal Marketplace for an application at www.healthcare.gov.

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
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The Marketplace's May 19, 2015 eligibility determination notice, insofar as it stated you were eligible for APTC of \$260 per month and CSR, effective July 1, 2015, is AFFIRMED.

The Marketplace's May 19, 2015 eligibility determination notice, insofar as it stated you were eligible for a special enrollment period that required you to pick a plan by June 30, 2015, is AFFIRMED.

You were eligible for \$260 per month in APTC and eligible for CSR, effective July 1, 2015.

You were eligible for a special enrollment period that expired on June 30, 2015.

This decision has no effect on your eligibility for 2016.

If you want to apply for a hardship exemption for 2015, you can visit the Federal Marketplace for an application at www.healthcare.gov.

Legal Authority

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A Copy of this Decision Has Been Provided To:

