



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: AP000000004763

[REDACTED]

Dear [REDACTED],

On December 7, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's September 18, 2015 eligibility determination regarding your spouse.

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).

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NY State of Health Number: [REDACTED]
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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 your spouse was eligible to receive up to \$212.00 per month in advance premium tax credits and, if she selects a silver-level qualified health plan, eligible for cost-sharing reductions, effective May 1, 2015?

Did the Marketplace properly determine that your spouse was not eligible for Medicaid?

Procedural History

According to your Marketplace account, on September 17, 2015, the Marketplace corrected enrollment for you and your spouse and terminated your couple plan with shared advance premium tax credits (APTC), effective April 30, 2015. Although you as the account holder had Medicare starting on April 1, 2015, because you had requested an appeal of your and your spouse's eligibility and requested aid to continue, on April 28, 2015, you were both granted aid to continue and remained in a couple plan with shared APTC.

In June, you were marked on your Marketplace account as not applying which retroactively terminated your coverage, effective April 30, 2015. Because the APTC was given to you and your spouse via an eligibility override conducted by the Marketplace, your spouse remained enrolled in an individual plan with a couple APTC in error, which made her monthly premium \$0. To correct this, the Marketplace conducted an eligibility override to give your spouse an individual APTC of \$212.00 per month and a start date

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for the individual plan of May 1, 2015. The Department of Health Plan Management Unit contacted her health plan, Affinity, to advise them not to reset her deductibles or maximum out of pocket.

On September 18, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with its September 17, 2015 conduct and override. The notice stated that your spouse was eligible to receive advance premium tax credits and cost sharing reductions, and not eligible for Medicaid, effective May 1, 2015, based on a redetermination conducted by an eligibility specialist. Your spouse was also found eligible for a special enrollment period within which to select a qualified health plan (QHP).

That same day, the Marketplace issued an enrollment notice confirming that your spouse was enrolled in a silver-level QHP, with Affinity Health Plan, and that her monthly premium responsibility was \$159.75 after the monthly APTC of \$212.00 was applied.

On September 22, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of that eligibility determination as your income was included in the calculation of your spouse's eligibility and you do not want it counted since you are not seeking health insurance through the Marketplace.

On December 7, 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

- 1) You testified that you expected to file your 2015 taxes with a tax filing status of married filing jointly and will not be claiming any dependents on that tax return.
- 2) Your Marketplace application as of April 28, 2015, and again as of September 17, 2015, listed an annual household income of \$31,004.00, consisting of your annual Social Security benefits of \$16,704.00 (\$1,392.00 x 12 months) and your spouse's expected 2015 earnings of \$14,300.00. You testified that these amounts were correct.
- 3) You further testified, however, that your income was reduced to \$1,200.00 per month as of May 1, 2015, because of worker's compensation benefits you were receiving.
- 4) Your application states that you will not be taking any deductions on your 2015 tax return.

- 5) According to your Marketplace application, you became Medicare eligible as of April 1, 2015, and no longer need health insurance through the Marketplace.
- 6) You testified that you disagree with your income being counted toward your spouse's eligibility since you are not applying for health insurance through the Marketplace.
- 7) According to your Marketplace application, your spouse is 56 years old.
- 8) Your application states that you and your spouse 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

Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

For Medicaid purposes, "family size" means the number of persons counted as members of an individual's household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

In the case of a married couple living together, each spouse is included in the Medicaid household of the other spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4)).

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)).

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“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)).

In general, household income means the aggregate modified adjusted gross income of every person who is included in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)).

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)).

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 \$15,730.00 for a two-person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 200% but less than 250% of the 2014 FPL, the expected contribution is between 6.34% and 8.10% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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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).

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 (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 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 2015 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Legal Analysis

For purposes of determining your spouse's eligibility, there are two people in your household: yourself, and your spouse. Although you do not need health insurance through the Marketplace since you have health coverage through Medicare, you are counted as a household member because you are married and reside with your spouse.

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Under the U.S. Code, your Social Security benefits count in calculating your household's modified adjusted gross income and were counted in determining your spouse's eligibility. Household income consists of the aggregate modified adjusted gross income of every person in the household who is required to file a federal tax return. The record reflects that you and your spouse expect to file your 2015 federal tax return jointly. Accordingly, your household income consists of your own income plus your spouse's income.

The first issue is whether the Marketplace properly determined that your spouse eligible for an APTC of up to \$212.00 per month.

The application that was redetermined by an eligibility specialist on September 17, 2015 listed an annual household income of \$31,004.00 and the eligibility determination relied upon that information.

You expect to file you 2015 income taxes as married filing jointly and will not be claiming any dependents on that tax return. Therefore, for purposes of this analysis, your spouse is in a two-person household.

You and your spouse reside in Westchester County, New York, where the second lowest cost silver plan available for an individual through the Marketplace costs \$372.40 per month.

An annual income of \$31,004.00 is 197.1% of the 2014 FPL for a two-person household. At 197.1% of the FPL, the expected contribution to the cost of the health insurance premium is 6.24% of income, or \$161.22 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 a primary subscriber and one dependent in your county (\$372.40 per month) minus your expected contribution (\$161.22 per month), which equals \$211.18 per month. Therefore, rounding up to the nearest dollar, the Marketplace correctly determined your spouse to be eligible for up to \$212.00 per month in APTC.

The second issue is whether your spouse was properly found eligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$31,004.00 is 197.1% of the applicable FPL, the Marketplace correctly found your spouse to be eligible for cost sharing reductions.

The third issue is whether the Marketplace properly determined that your spouse was not eligible for Medicaid.

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

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adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your spouse's eligibility redetermination, your spouse was 56 years old. The relevant FPL as of that date was \$15,930.00 for a two-person household. Since \$31,004.00 is 194.63% of the 2015 FPL, the Marketplace properly found your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the September 18, 2015 notice of eligibility determination properly stated that, based on the information you provided, your spouse was eligible for up to \$212.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.

However, you testified that your Social Security benefits changed as of May 1, 2015 from \$1,392.00 per month to \$1,200.00 per month as of May 1, 2015. This change in monthly income changes your expected 2015 annual income of \$16,704.00 to \$15,268.00 (\$5,568.00 at \$1,392.00 per month for 4 months; and \$9,600.00 at \$1,200.00 per month for 8 months). If the change in your income is accurate, you can reconcile any difference in APTC when you file your 2015 joint federal tax return. If you and your spouse have taken less tax credit in advance than you claim to be entitled to on your 2015 tax return, you and your spouse may get the rest of it as an income tax refund or have your tax bill reduced.

Decision

The September 18, 2015 notice of eligibility redetermination notice is AFFIRMED.

Effective Date of this Decision: December 21, 2015

How this Decision Affects Your Eligibility

Your income from Social security benefits was correctly including in determining your spouse's eligibility for financial assistance through the Marketplace.

Your spouse was eligible for up to \$212.00 per month in APTC and eligible for cost-sharing reductions in 2015, and was enrolled in a silver-level QHP throughout 2015.

Your spouse was correctly determined ineligible for Medicaid in 2015.

If the change in your income is accurate, you can reconcile any difference in APTC when you file your 2015 joint federal tax return. If you and your spouse have taken less tax credit in advance than you claim to be entitled to on your tax return, you and your spouse may get the rest of it as an income tax refund or have your tax bill reduced.

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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:
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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The September 18, 2015 notice of eligibility redetermination notice is **AFFIRMED**.

Your income from Social security benefits was correctly including in determining your spouse's eligibility for financial assistance through the Marketplace.

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Your spouse was eligible for up to \$212.00 per month in APTC and eligible for cost-sharing reductions in 2015, and was enrolled in a silver-level QHP in 2015.

Your spouse was correctly determined ineligible for Medicaid in 2015.

If the change in your income is accurate, you can reconcile any difference in APTC when you file your 2015 joint federal tax return. If you and your spouse have taken less tax credit in advance than you claim to be entitled to on your tax return, you and your spouse may get the rest of it as an income tax refund or have your tax bill reduced.

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:

