



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: AP000000004796

[REDACTED]

Dear [REDACTED],

On December 21, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 9, 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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Decision

Decision Date: February 18, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004796

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that your household was not eligible for advance payments of the premium tax credit during the months of June and July 2015?

Procedural History

On March 6, 2015 you updated your application for health insurance.

On March 7, 2015 the Marketplace issued a notice of eligibility determination stating that you and your spouse were newly eligible to collectively receive up to \$608.00 per month in advance payments of the premium tax credit (APTC), as well as cost-sharing reductions (CSR), effective April 1, 2015.

Also on March 7, 2015 the Marketplace issued a notice requesting more information about your household's income so that it could make an eligibility determination for your son.

On March 23, 2015, the March 7, 2015 notice regarding your son's eligibility was returned to the Marketplace as "Not Deliverable as Addressed" by the U.S. Post Office.

On March 23, 2015, you updated your application.

On March 24, 2015 the Marketplace issued a notice of eligibility determination stating that you, your spouse, and your son were collectively eligible to receive up to \$967.00 per month in APTC, as well as CSR, effective May 1, 2015

Also on March 24, 2015 the Marketplace issued an enrollment confirmation notice stating that you, your spouse, and your son were enrolled in a qualified health plan that could start as early as May 1, 2015 if you paid your first month's premium.

On May 9, 2015, the Marketplace issued a notice of eligibility determination stating that you, your spouse, and your son were eligible to purchase a qualified health plan through the Marketplace only at full cost, effective June 1, 2015. The premium would be \$1,093.09. The notice further stated that you were not eligible for APTC because the Marketplace sent you a notice by U.S. mail to the mailing address provided in your account that was returned as undeliverable.

On July 3, 2015, the Marketplace issued a notice of eligibility determination stating that you, and your spouse were eligible to receive up to \$608.00 in advance premium tax credits, effective August 1, 2015. The notice further stated that your son was eligible for Medicaid effective July 1, 2015.

On September 25, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 9, 2015 eligibility determination insofar as your household was not eligible to receive a tax credit in June and July 2015.

On December 21, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. During the hearing, Spanish Interpreter # [REDACTED] assisted. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you, your spouse, and son permanently reside in the State of New York. Furthermore, you have lived at [REDACTED].
- 2) The record reflects that the address on your Marketplace account has always been listed as [REDACTED] and all notices have been addressed as such. Only one notice was returned as undeliverable.
- 3) On May 9, 2015 the Marketplace issued a notice of eligibility determination that stated, in part, that you, your spouse, and your son were not eligible

for advance premium tax credits because notices sent to you by U.S. mail to the mailing address provided in your account were returned to the Marketplace as undeliverable.

- 4) The record indicates that your household was without an advance premium tax credit in June and July 2015.

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

Applicable Law and Regulations

State Residency Requirement

To be eligible for enrollment in a qualified health plan (QHP) and eligible to receive an advance premium tax credit (APTC) through the New York State of Health Marketplace, an applicant must be a resident of New York State (45 CFR § 155.305(a)(3)), (f)(1)(ii)(A).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a QHP, including verification of the applicant's attestation of residency (45 CFR § 155.315(a), (d)).

If an applicant attests to residency in New York State, and the New York State of Health Marketplace is unable to resolve inconsistencies with the attestation provided by the applicant, the Marketplace must provide the applicant notice of the inconsistency and a period of 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. (45 CFR § 155.315(f)(2)).

During the 90 day period, the Marketplace must proceed with all other elements of the eligibility determination using the applicant's attestation and provide enrollment in a QHP and ensure that APTC and cost-sharing reductions are provided on behalf of an applicant who is otherwise eligible (45 CFR § 155.315(f)(4)).

Legal Analysis

The issue under review is whether the Marketplace properly determined that your household was not eligible for an advance premium tax credit during the months of June and July 2015.

The Marketplace is required to determine whether individuals are eligible to enroll in coverage and obtain advance premium tax credits through the Marketplace, and must confirm, among other things, that their residency status is satisfactory.

You testified that you, your spouse, and son permanently reside in the State of New York. Furthermore, you have lived at [REDACTED] [REDACTED] years. The record reflects that the address on your Marketplace account has always been listed as [REDACTED] [REDACTED]

The record indicates that only one notice that was sent to you was returned to the Marketplace as “Not Deliverable as Addressed” by the U.S. Post Office on March 23, 2015. The mailing address on the returned notice was [REDACTED] [REDACTED]

On May 9, 2015 the Marketplace issued a notice of eligibility determination that stated, in part, that you, your spouse, and your son were not eligible for advance premium tax credits because notices sent to you by U.S. mail to the mailing address provided in your account were returned to the Marketplace as undeliverable.

If the Marketplace cannot verify an individual’s residency, it must send the individual a notice alerting them of the inconsistency and a period of 90 days from the date that notice is received to resolve the inconsistency. During the 90 days the Marketplace must maintain an applicant’s enrollment in their qualified health plan and provide advance premium tax credits and cost-sharing reductions if the applicant is otherwise eligible.

The record, as established, indicates that the Marketplace erred in discontinuing your, your spouse’s and your son’s advance premium tax credits as of June 1, 2015. The Marketplace was obligated to send you a formal notice that there was an inconsistency with your address and provide you with 90 days to correct the inconsistency, and was required to continue your eligibility during those 90 days. The Marketplace failed to comply with those requirements.

Therefore, the May 9, 2015 eligibility determination stating that you were not eligible for APTC because the Marketplace sent you information but that information was returned to the Marketplace as undeliverable, was improper.

Ordinarily, the May 9, 2015 decision would be rescinded, and your eligibility for APTC for the months in question would be restored. However, because the 2015 tax year is over, the Marketplace cannot provide for you to receive APTC for those months; instead, you can recover any amounts you should have received then when you file your tax return for 2015.

Decision

The May 9, 2015 eligibility determination is MODIFIED to reflect that your eligibility for advance payments of the premium tax credit continued, and that if the receipt of APTC could not effectively be restored retroactively, any discrepancy would be reconciled when you filled your tax return for 2015.

Effective Date of this Decision: February 18, 2016

How this Decision Affects Your Eligibility

You did not receive proper notice from the Marketplace that there was an inconsistency in your account any inconsistency.

Your household was eligible for advance premium tax credits during the months of June and July 2015. However, any credit to which you were eligible and you did not receive will be reconciled when you file your tax return for 2015.

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 May 9, 2015 eligibility determination is MODIFIED to reflect that your eligibility for advance payments of the premium tax credit continued, and that if the receipt of APTC could not effectively be restored retroactively, any discrepancy would be reconciled when you filled your tax return for 2015.

You did not receive proper notice from the Marketplace that there was an inconsistency in your account any inconsistency.

Your household was eligible for advance premium tax credits during the months of June and July 2015. However, any credit to which you were eligible and you did not receive will be reconciled when you file your tax return for 2015.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

