



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: AP000000004858

[REDACTED]

Dear [REDACTED],

On January 4, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August, 27, 2015 eligibility determination, and October 7, 2015 enrollment confirmation 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 Code of Federal Regulation (CFR) 45 CFR § 155.545(b).

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Decision Date: February 8, 2016

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 you and your spouse were eligible to receive up to \$432.00 per month in advance premium tax credit effective October 1, 2015?

Did the Marketplace properly determine that you and your spouse were eligible for cost-sharing reductions effective October 1, 2015?

Was your advance premium tax credit properly applied to your premium responsibility as of May 1, 2015?

Procedural History

On April 6, 2015, the Marketplace received your household's financial application for assistance with your health insurance coverage.

That same day a preliminary eligibility determination was made finding you and your spouse conditionally eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$432.00 per month effective May 1, 2015. This determination was based on the condition that you provide documentation confirming you and your spouse's income before July 5, 2015.

On April 14, 2015, you and your spouse enrolled in a Silver level health plan with a premium responsibility of \$292.00 effective May 1, 2015.

On July 19, 2015 you and your spouse were found newly eligible to purchase a qualified health plan at full cost effective September 1, 2015. You were found ineligible to receive advance premium tax credits because you did not provide satisfactory proof of your household income within the require time frame and the NY State of Health was unable to verify your household income.

On August 12, 2015 your enrollment was confirmed with start date of September 1, 2015 and a premium cost of \$724.91.

On August 27, 2015, a preliminary eligibility determination was made finding you and your spouse conditionally eligible for advance premium tax credits and cost sharing reductions in the amount of \$432.00 per month effective October 1, 2015.

On August 28, 2015 an enrollment confirmation notice was issued confirming you and your spouse's enrollment in a Silver level health plan with a premium responsibility of \$724.91 per month effective September 1, 2015.

On October 2, 2015, you requested an appeal in order to appeal the amount of advance premium tax credit you and your spouse were found eligible to receive and whether it was applied to your health plan effective May 1, 2015.

That same day an enrollment confirmation letter was issued showing a plan enrollment start date of September 1, 2015 with your Silver level health plan and a total monthly premium cost of \$292.91 per month.

On January 4, 2016, 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.
- 2) You will be claiming three dependents.
- 3) You are seeking that the Advance Premium Tax credit in the amount of \$432.00 you and your spouse were found eligible for on April 6, 2015 was applied to your monthly premium responsibility effective May 1, 2015.
- 4) The application that was submitted on April 6, 2015 listed annual household income of \$55,664.76, consisting of \$55,664.76 your spouse receives in earned income.

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- 5) The record supports that you were asked to provide documentation confirming you and your spouse's income before July 5, 2015.
- 6) Your Marketplace account indicates income information in the form of a letter from your spouse's employer was verified on October 6, 2015. (Appellant's Exhibit 1). The letter is dated August 28, 2015 and verifies that your spouse's gross wages are \$5,375.00 monthly, and expected income for the year is \$64,500.00.
- 7) The record in addition to your testimony demonstrates that you were aware of the need to provide income documentation to the Marketplace. It is unclear as to when you were first made aware of the need to provide income documentation.
- 8) You testified that you were originally asked to provide income documentation for your spouse in the form of bi-weekly pay periods.
- 9) The record reflects that you live in Orange 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 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

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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 \$27,910.00 for a five-person household (79 Fed. Reg. 3593).

For annual household income in the range of at least 150% but less than 200% of the 2015 FPL, the expected contribution is between 4.02% and 6.34% 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).

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)).

Redetermination During a Benefit Year

When an eligibility redetermination results in a change in the amount of advance premium tax credit (APTC) for the benefit year, the Marketplace must recalculate the amount of APTC in such a manner as to account for any advance payments already made (or not made) on behalf of the tax filer, such that the recalculated

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advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the benefit year (45 CFR § 155.330(g)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Verification Process

For all individuals whose income is needed to calculate the household's eligibility, the Marketplace must request data that will allow the Marketplace to verify the household's income (45 CFR §155.320(c)(1)(i)). If the Marketplace cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f)).

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" 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)).

Generally, gross income does not include "amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions

by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer)” (26 USC § 104(a)(3)).

Married couples. In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return under section 6013 of the Code or whether one spouse expects to be claimed as a tax dependent by the other spouse. (42 CFR § 435.603 (f)(4)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you and your spouse were eligible for an advance premium tax credit (APTC) of up to \$432.00 per month.

The application that was submitted on April 6, 2015 listed annual household income of \$55,664.76, consisting of \$55,664.76 your spouse receives in earned income, and the eligibility determination relied upon that information.

You reside in a five-person household. You expect to file you 2015 income taxes as married filing jointly and will be claiming three dependents.

You reside in Orange County, where the second lowest cost silver plan available for a couple through the Marketplace costs \$724.91 per month.

An annual income of \$55,664.76 is 199.44% of the 2014 Federal Poverty Level (FPL) for a five-person household. At 199.44% of the FPL, the expected contribution to the cost of the health insurance premium is 6.31% of income, or \$292.70 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 couple in your county (\$724.91 per month) minus your expected contribution \$292.70 per month), which equals \$432.21 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you and your spouse to be eligible for up to \$432.00 per month in APTC.

The second issue is whether you and your spouse were properly found you and your spouse 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 \$55,664.76 is 199.44% of the applicable FPL, the Marketplace correctly found you and your spouse eligible for cost sharing reductions.

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The third issue under review is whether your advance premium tax credit can be applied to your health plan retroactive to May 1, 2015.

On April 6, 2015, a preliminary eligibility determination was made finding you and your spouse conditionally eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$432.00 per month effective May 1, 2015. This determination was based on the condition that you provide documentation confirming you and your spouse's income before July 5, 2015.

For all individuals whose income is needed to calculate the household's eligibility, the Marketplace must request data that will allow the Marketplace to verify the household's income. If the Marketplace cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence.

On August 27, 2015, a preliminary eligibility determination was made finding you and your spouse conditionally eligible for advance premium tax credits and cost sharing reductions in the amount of \$432.00 per month effective October 1, 2015.

Your Marketplace account indicates income documentation in the form of a letter from your spouse's employer was verified on October 6, 2015. (Appellant's Exhibit 1). The letter is dated August 28, 2015 and verifies that your spouse's gross wages are \$5,375.00 monthly, and expected income for the year is \$64,500.00.

When an individual changes information in their application before the 15th of any month, the Marketplace must make the redetermination that results from the change effective the first day of the next month. In your case your application was completed on October 6, 2015 so your effective date for receiving APTC through your health plan would be by November 1, 2015. No income verification documents were received and verified before July 5, 2015.

Therefore, the Marketplace's October 7, 2015 enrollment confirmation notice is AFFIRMED because it properly began you and your spouse's eligibility for APTC on November 1, 2015.

Please note that 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.

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Decision

The August 27, 2015 eligibility determination is AFFIRMED.

The October 7, 2015 enrollment confirmation notice is AFFIRMED.

Effective Date of this Decision: February 8, 2016

How this Decision Affects Your Eligibility

You and your spouse are eligible to receive to \$432.00 per month of APTC effective October 1, 2015.

This is not a final determination as to the amount of APTC you were entitled to as of May 1, 2015. You will be provided tax documentation in the form of a 1095-A.

Any difference between the advance premium tax credit (based on your expected 2015 income) and the premium tax credit you can claim on your 2015 federal tax return (based on your actual 2015 income) should be reconciled on your 2015 federal tax return.

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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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- By fax: 1-855-900-5557

Summary

The August 27, 2015 eligibility determination is AFFIRMED.

The October 7, 2015 enrollment confirmation notice is AFFIRMED.

You and your spouse are eligible to receive to \$432.00 per month of APTC effective October 1, 2015.

Any difference between the advance premium tax credit (based on your expected 2015 income) and the premium tax credit you can claim on your 2015 federal tax return (based on your actual 2015 income) should be reconciled on your 2015 federal tax return.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation (CFR) 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:



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