



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

Notice of Decision

Decision Date: January 08, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004930

[REDACTED]

Dear [REDACTED],

On December 29, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 15, 2015 eligibility determinations for you and your child.

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 45 CFR § 155.545(b).

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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 purchase a qualified health plan at full cost and not eligible for financial assistance, effective November 1, 2015?

Did the Marketplace properly determine that your child was eligible to enroll in a full price Child Health Plus plan or Child-Only qualified health plan, effective November 1, 2015?

Procedural History

On October 15, 2015, the Marketplace received your updated application for health insurance for you and your child. That day, the Marketplace prepared a preliminary eligibility determination based on your attested annual household income of \$109,303.72. You were determined eligible to purchase a qualified health plan at full cost, effective November 1, 2015, and your child was determined eligible to enroll in a full price Child Health Plus plan or Child-Only qualified health plan, effective November 1, 2015.

That same day, you spoke to a representative from the Marketplace's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you believed your annual earnings were being considered incorrectly in your and your child's eligibility for financial assistance even though you were on an unpaid medical leave at the time.

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On October 16, 2015, the Marketplace issued a notice of eligibility determination that was consistent with the October 15, 2015 preliminary determination. The notice explained that you do not qualify for Medicaid, Child Health Plus (CHP), the Essential Plan, or to receive tax credits to help pay for the cost of coverage because the income you provided on your application is over \$79,160.00, which is the allowable income limit for these programs. It also explained that you do not qualify for cost-sharing reductions because you are ineligible to receive advance premium tax credits (APTC).

The notice further explained that your child is not eligible to receive premium assistance for CHP because your household income is over the CHP income standard of \$80,360.00, and he is not eligible for Medicaid because your household income is over the allowable income limit of \$30,939.00.

That same day, the Marketplace issued an enrollment notice confirming your selection of a silver-level qualified health plan with a monthly premium of \$400.37 and an enrollment start date of November 1, 2015. The notice also confirmed your selection of a CHP plan for your child with a monthly premium of \$192.00 and an enrollment start date of November 1, 2015.

On December 29, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to 15 days to allow you to submit supporting documentation.

On December 29, 2015, you uploaded to your Marketplace account two paystubs from your previous employment. These documents were made part of the record collectively as "Appellant's Exhibit C." Since no other documentation was expected nor required, the record was closed that same day.

Findings of Fact

- 1) You testified that you expected to file your 2015 taxes with a tax filing status of married filing jointly. You will claim your son, who is under one year of age, as a dependent on that tax return.
- 2) The application that was submitted on October 15, 2015 listed annual household income of \$109,303.72, consisting of earnings you and your spouse received from your respective employments.
- 3) According to a separation from employment letter from your employer, dated November 24, 2015, your last day of work before you went on unpaid medical leave was July 2, 2015 (Appellant's Exhibit A).
- 4) According to the paystubs from your spouse's employment for a four week period that were in uploaded to your Marketplace account, on October 29, 2015, he received \$1,923.08 in gross salary for the period of October 1, 2015 to October

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25, 2015; and on November 12, 2015, received \$1,923.08 for the period of October 26, 2015 to November 8, 2015. His year-to-date earnings as of November 1, 2015 were \$31,915.26 (Appellant's Exhibit B).

- 5) According to your testimony and the copies of pay stubs you provided, you received \$2,942.32 in gross pay on October 9, 2015 for the period of September 20, 2015 to October 3, 2015; and received \$2,316.62 in gross pay on October 23, 2015 for the period of October 4, 2015 to October 17, 2015. You testified that the October 23, 2015 pay check was your last pay check for 2015 and that the earnings you received in October 2015 were for accrued vacation leave and sick time (Appellant's Exhibit C, pp. 1-2).
- 6) The October 23, 2015 pay stub showed your year-to-date gross earnings were \$63,122.45 (Appellant's Exhibit C, p. 2).
- 7) You testified that you did not receive any other source of income for the remainder of 2015.
- 8) According to your Marketplace account, in 2015, you expect to take an IRA deduction of \$5,500.00 and your spouse expects to take \$250.00 in student loan interest payments.
- 9) According to your Marketplace account, on October 16, 2015, the Marketplace conducted an override and made your child's CHP plan effective October 1, 2015.
- 10) Your application states that you and your family reside in New York County, New York.
- 11) According to your updated Marketplace account, on December 4, 2015, the Marketplace redetermined your child's eligibility based on your reported household income of \$28,532.00 and found him eligible for Medicaid, effective December 1, 2015, and you eligible for the Essential Plan, effective January 1, 2016.
- 12) You want your eligibility for financial assistance reconsidered for November and December 2015, and your child's eligibility for financial assistance reconsidered for October and November 2015 based on the income documents you provided.

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)).

In the case of a couple who expect to file a joint tax return and does not expect to be claimed by other taxpayers, the household consists of the couple as taxpayers and all persons whom they expect to claim as a tax dependent (42 CFR § 435.603(f)(1)).

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 an annual 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 \$19,790.00 for a three-person household (79 Fed. Reg. 3593, 3593).

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 \$20,090.00 for a three-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).

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)). IRA deductions are not an allowable deduction in computing adjusted gross income.

Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child’s family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% up to 400%, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)). If the family household income exceeds 400%, the premium is at full price per month.

In an analysis of Child Health Plus 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 was \$20,090.00 for a three-person household (80 Fed. Reg. 3236, 3237).

Medicaid for Children

A child who is under one year of age is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 223% of the FPL for the applicable family size. (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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 was \$20,090.00 for a three-person household (80 Fed. Reg. 3236, 3237).

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Legal Analysis

Your Eligibility for Financial Assistance

The first issue is whether the Marketplace properly determined that you were not eligible for financial assistance.

The application that was submitted on October 15, 2015 listed an annual household income of \$109,303.72 and the eligibility determination relied upon that information.

The record reflects that you expect to file your 2015 income taxes as married filing jointly and will claim your son as a dependent on that tax return. Therefore, you are in a three-person household for purposes of this analysis.

An annual income of \$109,303.72 is 552.32% of the 2014 FPL for a three-person household. At 552.32% of the FPL, the Marketplace properly determined that your income exceeded 400% of \$19,790.00, which is \$79,160.00, and that you were not eligible for APTC using the information provided in your October 15, 2015 application.

The second issue is whether you were properly found ineligible for cost-sharing reductions. As a threshold matter, cost-sharing reductions are available to a person who is eligible to receive APTC. Since it was determined that you were over-income for and not eligible to receive APTC, the Marketplace also properly determined that you were not eligible for cost-sharing reductions.

The third issue is whether the Marketplace properly determined that you were ineligible 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 adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$20,090.00 for a three-person household. Since \$109,303.72 is 544.07% of the 2015 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the October 16, 2015 notice of eligibility determination properly stated that, based on the information you provided, you were not eligible for APTC, cost-sharing reductions, or Medicaid, it is correct and is AFFIRMED with regard to your eligibility.

However, you testified that your income changed when you went on unpaid medical leave. According to your October 23, 2015 paystub, which was your last pay date, your year-to-

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date income in 2015 was \$63,122.45, and your spouse's year-to-date earnings from his salary was \$31,915.26. Based on the record, your spouse received his salary once every two weeks, and it is reasonable to infer that he had three pay periods left in 2015 during which he would receive a salary of \$1,923.08 per pay period, for additional gross earnings of \$5,769.24. Therefore, before any deductions, your households' annual income was \$100,806.95, which after your spouse's student loan interest deduction of \$250.00 is taken, equals \$100,556.95.

Since the Internal Revenue Service rules do not allow IRA deductions to be included in the calculation of your adjusted gross income, such deduction cannot be deducted when the Marketplace computes your modified adjusted gross income for APTC purposes. Therefore, the Marketplace's determination should have been based on an annual 2015 household income of \$100,556.95.

We note, however, an annual household income of \$100,556.95 is 508.12% of the 2014 FPL for a three-person household and exceeds the income limit of 400%, or \$79,160.00 to be eligible for APTC. Therefore, you would not qualify for APTC based upon your corrected annual household income and, hence, would not qualify for cost-sharing reductions during November 2015 and December 2015.

It also appears that the Marketplace determined your eligibility for Medicaid based on annual household income. We note, however, that financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Since the record suggests that you applied for health insurance through the Marketplace on October 15, 2015, your eligibility for Medicaid should have been calculated based on your October 2015 monthly income. To be eligible for Medicaid, you must meet the non-financial criteria and have an income no greater than 138% of the FPL which is \$2,311.00 per month for a three-person household. Since your household income for October 2015 was at least \$9,104.00, you did not qualify for Medicaid on the basis of monthly income when you submitted your application. The same would be true considering just your spouse's income in November 2015, which was at least \$3,846.16 (\$1,923.08 x 2 pay periods), which exceeds the maximum allowable monthly income limit of \$2,311.00 for Medicaid.

Therefore, no further action is required by the Marketplace regarding your eligibility for financial assistance in November 2015 and December 2015.

Your Child's Eligibility for Financial Assistance

The first issue under review is whether the Marketplace properly determined that your child, who is under the age of one, was eligible to enroll in Child Health Plus at the full price of the monthly premium.

According to the record, you expect to file a joint federal income tax return for the 2015 tax year and claim your one child as a dependent. Therefore, your child is in a three-person household for purposes of this analysis.

On your October 15, 2015 application, you attested to an expected household income of \$109,303.72. The application also stated that your child is under the age of one. The Marketplace relied upon this information.

A child is eligible to enroll in Child Health Plus and premium assistance if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the applicable federal poverty level (FPL). When household income exceeds 400% of that FPL, the parents are responsible for the full price of the monthly CHP premium payment.

On the date of your application, the relevant FPL was \$20,090.00 for a three-person household. Since \$109,303.72 is 544.07% of the 2015 FPL, which exceeded 400% of the FPL, the Marketplace properly found your child to be eligible for Child Health Plus at the full price of the monthly premium for the CHP plan you selected for the months of October 2015 and November 2015.

The same is true using the updated household income amount of \$100,556.95, which is 500.53% of the 2015 FPL of \$20,090.00, such that your child would not be eligible for monthly premium assistance toward the cost of his CHP plan at the corrected annual household income level.

The second issue is whether the Marketplace properly determined that your child is not eligible for Medicaid.

Medicaid can be provided through the Marketplace to children under the age of one who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 223% of the FPL for the applicable family size. Since \$109,303.72 is 544.07% of the 2015 FPL for a three-person household the Marketplace properly found your child to be ineligible for Medicaid.

The same is true using the updated household income amount of \$100,556.95, which is 500.53% of the 2015 FPL of \$20,090.00, such that your child would not be eligible for monthly premium assistance at the corrected annual household income level.

Since the October 16, 2015 notice of eligibility determination properly stated that, based on the information you provided, your child was eligible for Child Health Plus at full price of the monthly premium and ineligible for Medicaid, it is correct and is AFFIRMED.

Since the same is true, using your corrected household income of \$100,556.95, no further action by the Marketplace is required at this time.

Decision

The October 16, 2015 eligibility determination notice is AFFIRMED in its entirety.

Effective Date of this Decision: January 08, 2016

How this Decision Affects Your Eligibility

You are ineligible for financial assistance through the Marketplace's insurance affordability programs and remain eligible for and enrolled in a qualified health plan at full cost for the months of November 2015 and December 2015.

Your child remains eligible for CHP and enrolled in a CHP plan for the months of October 2015 and November 2015 at the full price of the monthly premium.

Your child is not eligible for Medicaid.

No further action by the Marketplace is required at this time.

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):

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- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The October 16, 2015 eligibility determination notice is **AFFIRMED** in its entirety.

You are ineligible for financial assistance through the Marketplace's insurance affordability programs and remain eligible for and enrolled in a qualified health plan at full cost for the months of November 2015 and December 2015.

Your child remains eligible for CHP and enrolled in a CHP plan for the months of October 2015 and November 2015 at the full price of the monthly premium.

Your child is not eligible for Medicaid.

No further action by the Marketplace is required at this time.

This decision does not affect or change any subsequent eligibility determinations made by the Marketplace.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

