



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

## Notice of Decision

Decision Date: February 2, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000005069

[REDACTED]

Dear [REDACTED],

On January 13, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 3, 2015 enrollment 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 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(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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## Decision

Decision Date: February 2, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000005069

[REDACTED]

## 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 no more than \$683.00 per month in advance payments of the premium tax credit, as reflected in the November 3, 2015 enrollment notice?

## Procedural History

The Marketplace received your application for health insurance on November 17, 2014, in which you attested to an annual household income of \$21,900.00.

On November 27, 2014, the Marketplace issued an eligibility determination notice based on the information contained in the November 17, 2014 application. The notice stated that you and your spouse were eligible to receive advance payments of the premium tax credit (APTC) of up to \$683.00 per month; eligible for cost-sharing reductions (CSR), provided you selected a silver level plan; and ineligible for Medicaid. This eligibility determination was effective January 1, 2015.

On December 9, 2014, the Marketplace issued a notice confirm the enrollment of you and your spouse in EssentialCare Silver ST INN Dep25, issued by Health Republic Insurance of New York, at a premium rate of \$62.22 per month after applying the maximum APTC of \$683.00. The notice further stated that your plan coverage could start as soon as January 1, 2015 if you paid you first month's premium.

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On October 30, 2015, the Marketplace issued two notices informing you and your spouse that the Health Republic plan you and your spouse had selected would be eliminated effective December 1, 2015. The notice instructed you to select a new plan by November 15, 2015 for coverage during the month of December 2015.

On November 2, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal insofar as you were challenging the level of APTC eligibility for you and your spouse as a result of the Health Republic plan having been discontinued.

On November 3, 2015, the Marketplace issued a notice confirming the enrollment of you and your spouse in a WellCare Silver NS INN Family Dental OTC Dep25 Acupuncture as of November 2, 2015 at a premium rate of \$260.56 per month after applying the maximum APTC of \$683.00. The notice further confirmed that your plan enrollment start date was December 1, 2015.

On January 13, 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**

A review of the record supports the following 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 no dependents on that tax return.
- 2) The application that was submitted on November 17, 2014 listed annual household income of \$21,900.00, consisting of (1) \$14,100.00 you received from your employment with [REDACTED], (2) \$5,431.00 in taxable interest you expect to receive during 2015, and (3) \$2,369.00 in taxable interest your spouse expect to receive during 2015. You testified that this amount was reasonably correct.
- 3) Your application states that you will not be taking any deductions on your 2015 tax return.
- 4) You testified that the taxable interest you and your spouse receive are withdrawals from a 401(k) retirement account.

- 5) On November 27, 2015, the Marketplace found you and your spouse eligible for an advance premium tax credit (APTC) of up to \$683.00 per month, effective January 1, 2015.
- 6) You and your spouse were enrolled in a Health Republic plan from January 1, 2015 to November 30, 2015 at a premium rate of \$62.22 per month after applying the maximum APTC of \$683.00.
- 7) In advance of the termination of your Health Republic plan, you selected a WellCare plan on November 2, 2015. You and your spouse enrolled in a WellCare plan from December 1, 2015 to December 31, 2015 at a premium rate of \$260.56 per month after applying the maximum APTC of \$683.00.
- 8) You testified that you believed that the Health Republic plan you and your spouse were enrolled in during the majority of 2015 was either the lowest or second lowest costing plan available to you and your spouse. Accordingly, you understood that this plan's expense is what your APTC award was based on.
- 9) You testified that when this Health Republic plan had been eliminated on December 1, 2015, you and your spouse were forced to select a plan that had a greater premium cost of approximately \$200.00, even after applying you maximum APTC of \$683.00.
- 10) You testified that since the Health Republic plan had been eliminated, your APTC should now be based on the most current second lowest cost silver plan available to you and your spouse, which you reasoned should be at a higher premium rate.
- 11) You live in Ulster County, New York.

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

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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).

For annual household income in the range of at least 133% but less than 150% of the 2014 FPL, the expected contribution is between 3.02% and 4.02% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

The applicable benchmark plan for each coverage month is the second lowest cost silver plan for the county in which the taxpayer resides (26 CFR § 1.36B-3(f)(1)). The benchmark plan for a taxpayer does not cease to be the applicable benchmark plan solely because a plan terminates or closes to enrollment during the taxable year (26 CFR § 1.36B-3(f)(6)).

## **Legal Analysis**

The issue under review is whether the Marketplace properly determined that you and your spouse were eligible for an APTC of up to \$683.00 per month during the month of December 2015 as reflected in the November 3, 2015 enrollment notice.

The application that was submitted on November 17, 2014 listed an annual household income of \$21,900.00 and the Marketplace relied upon that information.

You are in a two-person household. You expect to file your 2015 income taxes as married filing jointly and you will claim your son as a dependent on that tax return.

You reside in Ulster County, where the second lowest cost silver plan available for a couple through the Marketplace during 2015 cost \$744.73 per month. While the second lowest cost silver plan available to you in your county may have been eliminated or closed to enrollment during the taxable year, the applicable benchmark plan remains unchanged through the end of the taxable year.

An annual income of \$21,900.00 is 139.22% of the 2014 FPL for a two-person household. At 139.22% of the FPL, the expected contribution to the cost of the health insurance premium is 3.39% of income, or \$61.80 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 (\$744.73 per month) minus your expected contribution (\$61.80 per month), which equals \$682.93 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you and your spouse to be eligible for an APTC of up to \$683.00 per month during the month of December 2015.

Since the November 3, 2015 enrollment notice properly stated that, based on the information you provided, you were eligible for up to \$683.00 per month in APTC, it is correct and is AFFIRMED.

## **Decision**

The November 3, 2015 enrollment notice is AFFIRMED.

**Effective Date of this Decision:** February 2, 2016

## **How this Decision Affects Your Eligibility**

You were eligible for an APTC of up to \$683.00 during December 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
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- By fax: 1-855-900-5557

## **Summary**

The November 3, 2015 enrollment notice is AFFIRMED.

You were eligible for an APTC of up to \$683.00 during December 2015.

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## **Legal Authority**

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**A Copy of this Decision Has Been Provided To:**

