

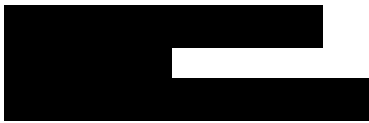


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: February 5, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005084



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

NOTICE OF DISMISSAL – INVALID APPEAL REQUEST

Decision Date: February 5, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005084

[REDACTED]

Dear [REDACTED],

On January 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 22, 2013 and April 17, 2014 eligibility determinations.

At issue is whether your appeal of the Marketplace's December 22, 2013 and April 17, 2014 eligibility determinations were timely. You also requested review of whether the Marketplace properly calculated the amount of Modified Adjusted Gross Income used when determining your eligibility as of December 22, 2013 and April 17, 2014.

By way of background, on December 18, 2013, the Marketplace received your initial application for health insurance in which you reported an expected annual income of \$19,500.00 for 2014.

On December 22, 2013, the Marketplace issued a notice of eligibility determination, based on the information contained in your December 18, 2013 Marketplace application, stating that you were eligible to receive advance premium tax credits (APTC) of up to \$79.00 per month and cost-sharing reductions. The notice indicated that you had chosen a silver-level qualified health plan and had a monthly premium responsibility of \$101.79 after your monthly APTC of \$79.00 was applied.

On April 17, 2014, the Marketplace issued a notice of eligibility redetermination, based on your updated reported annual income of \$19,006.00 as of February 19,

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2014, stating that you were eligible to receive APTC of up to \$84.00 per month and remained eligible for cost-sharing reductions. The notice also indicated that you were not eligible for Medicaid because the household income you reported of \$19,006.00 was over the allowable income limit of \$15,856.00 for that program.

On November 4, 2014, the Marketplace issued a renewal notice stating in part that you were eligible for Medicaid, effective January 1, 2015.

On November 3, 2015, you requested a telephone hearing to appeal the eligibility determinations dated December 22, 2013 and April 17, 2014, insofar as you were not found eligible for Medicaid in 2014 when you believe you should have been and, instead, had to pay monthly premiums for health insurance throughout the year.

On January 29, 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.

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

- 1) According to your Marketplace account, you expected to use the tax filing status of Single in 2014 and did not expect to claim any dependents on that return.
- 2) According to your Marketplace application, dated December 18, 2013, you listed an expected annual income of \$19,500.00; and on your February 19, 2014 application, you listed an expected annual income of \$19,006.00.
- 3) No deductions to reach adjusted gross income on your federal tax return were listed on either application.
- 4) According to the Appeal Summary, dated December 21, 2015, you expected to take a deduction of \$4,560.00 in tuition and fees on your 2014 federal tax return, which would have resulted in a much lesser adjusted gross income. You testified that this was accurate.
- 5) You appealed being found eligible for APTC in 2014 and having to pay a portion of the monthly insurance premium in the amount of \$101.79 for the months of January, February, and March 2015 totaling \$305.37; and \$181.00 from April 2014 through December 31, 2014 totaling \$1,629.00, when you believe you should have been eligible for Medicaid that entire year.
- 6) The Marketplace issued two Forms 1095-A on January 23, 2015, showing the amount of monthly APTC that was applied to your monthly premiums in 2014.

- 7) You testified that you do not know if you received a tax credit or refund for APTC in 2014 and would check with a tax professional.
- 8) Since you believe you were Medicaid eligible in 2014, you are seeking to have the premiums you paid in 2014 reimbursed.

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

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR 155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

In addition, APTC is generally available to a person who is eligible to enroll in a qualified health plan 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 Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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" is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, tuition and fees for higher education paid by the tax payer to a qualified educational institution

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can be deducted from adjusted gross income in an amount up to \$4,000.00, provided the tax payer's yearly income does not exceed \$80,000.00 for a single individual or \$160,000.00 if married filing jointly. This deduction was renewed by Congress in December 2014 and made retroactive to the 2014 tax year and extended to December 31, 2017 (26 USC § 222(e); see IRS Publication 970).

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).

As to the issue of timeliness of your appeal, on December 22, 2013 and April 17, 2014, the Marketplace issued eligibility determination notices that stated you were eligible for APTC. The April 17, 2014 notice further indicated that you were not eligible for Medicaid because your household income of \$19,006.00 was over the allowable income limit for that program.

The record reflects that the first time you contacted the Marketplace to file a formal complaint or appeal about the income the Marketplace used when determining your eligibility for financial assistance in 2014 was November 3, 2015. Individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by the Marketplace. According to the credible evidence in the record, you did not contact the Marketplace until November 3, 2015 to file a formal complaint or appeal, which is well beyond 60 days from the date of any of the above listed eligibility determination notices.

Therefore, there has been no valid, timely appeal of the December 22, 2013 and April 17, 2014 eligibility determination notices and, as such, your appeal of these determination notices is **DISMISSED**.

Notwithstanding the dismissal of your appeal on grounds of timeliness, in the interest of clarification as to the premiums you paid in 2014 and reconciliation on your 2014 federal tax return, the Appeals Unit will address this issue briefly.

On December 18, 2013, your application listed an annual household income of \$19,500.00 in earnings; and on February 19, 2014, it listed \$19,006.00 in earnings. Neither application listed any deductions that you anticipated taking on your 2014 federal tax return.

In order to determine an individual's eligibility for financial assistance, the Marketplace must determine a household's modified adjusted gross income

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(MAGI). Generally, a household's MAGI includes the adjusted gross income of all individual's in that household and adds to it any relevant amount excluded from gross income, including foreign earned income and the cost of housing for the individual, interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and an amount equal to the portion of the taxpayer's social security benefits which is not included in your gross income.

In addition, in late December 2014, Congress renewed the tuition and fees deduction and made it retroactive to the 2014 tax year. While this deduction was an unknown variable until late 2014, you nonetheless might have qualified for up to \$4,000.00 in tuition and fees as a deduction to reach your adjusted gross income for 2014.

While this deduction may have resulted in a different household income and eligibility determination had it been available at the time of your December 18, 2013 and February 19, 2014 applications, we cannot find at this late date that you were eligible retroactively for Medicaid in 2014.

However, after you have checked with a tax professional and if it is determined that you have not already had your 2014 taxes reconciled, you may be able to file an amended return to reconcile any differences between the amount of income you reported to the Marketplace and your actual adjusted gross income for 2014. If you received less tax credit than your maximum entitlement, based on adjusted gross income that year, you may be entitled to receive an income tax refund, or owe less in taxes. Please note, however, that any such reconciliation is done by the IRS.

In this regard, you can refer to the Forms 1095-A from the IRS, which reflect the amount of APTC you received in 2014.

Decision

Your appeal with regard to the December 22, 2013 and April 17, 2014 eligibility determination notices is **DISMISSED** as untimely.

Effective Date of this Decision: February 5, 2016

How this Decision Affects Your Eligibility

Your eligibility for financial assistance, including the amount of APTC you received, in 2014 will not be disturbed at this time as your appeal is dismissed as untimely.

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).

You can share this Decision with your tax professional to determine if the amount of APTC to which you were entitled in 2014 was properly reconciled with your actual adjusted gross earnings that year.

This Decision does not affect any subsequent eligibility determinations issued by the Marketplace.

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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- By fax: 1-855-900-5557

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Summary

Your appeal with regard to the December 22, 2013 and April 17, 2014 eligibility determination notices is DISMISSED as untimely.

Your eligibility for financial assistance, including the amount of APTC you received, in 2014 will not be disturbed at this time as your appeal is dismissed as untimely.

You can share this Decision with your tax professional to determine if the amount of APTC to which you were entitled in 2014 was properly reconciled with your actual adjusted gross earnings that year.

This Decision does not affect any subsequent eligibility determinations issued by the Marketplace.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

