



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

Notice of Decision

Decision Date: April 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005093

[REDACTED]

Dear [REDACTED]

On January 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health’s November 5, 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 Account ID 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).

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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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did New York State of Health (NYSOH) properly determine that you and your older son were eligible to purchase a qualified health plan only at full cost, effective December 1, 2015?

Did NYSOH properly determine that you and your older son were not eligible for Medicaid as of your November 4, 2015 application?

Did NYSOH properly determine that your younger son was conditionally eligible for Child Health Plus with a monthly premium of \$60.00, effective December 1, 2015?

Procedural History

On November 4, 2015, NYSOH received your application for health insurance. That day, a preliminary eligibility determination was prepared with regard to your application, stating that you and your older son were eligible to purchase a qualified health plan at full cost through NYSOH. That same preliminary eligibility determination stated that your younger son was eligible to enroll in a Child Health Plus (CHP) plan with a monthly premium of \$60.00, effective December 1, 2015.

Also on November 4, 2015, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to yourself and your two sons.

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On November 5, 2015, NYSOH issued an eligibility determination notice based on the information contained in the November 4, 2015 application, stating you and your older son were eligible to purchase a qualified health plan at full cost effective December 1, 2015. It stated that you and your older son did not qualify for advance payments of the premium tax credit (APTC) or cost-sharing reductions. The notice also stated that your younger son was conditionally eligible to enroll in Child Health Plus with a monthly premium of \$60.00 effective December 1, 2015, pending confirmation of household income. You and your sons were not eligible for Medicaid because your household income of \$70,752.33 was over the allowable income limit of \$27,725.00.

On January 19, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open for 15 days at the end of the hearing to give you time to submit proof of your older son's employment income for December 2015, and your Unemployment Insurance Benefits history. You were also asked to indicate whether you expected to claim your oldest son as a dependent on your tax return.

You provided documentation by fax consisting of the following:

- An Unemployment Insurance Monetary Benefit Determination addressed to you, dated November 13, 2015, which shows a weekly benefit rate of \$425.00;
- Three paystubs from one of your older son's jobs with pay dates of November 25, 2015, December 3, 2015, and November 12, 2015;
- Three paystubs from your older son's second job with pay dates of November 20, 2015, December 23, 2015, and December 11, 2015.

This group of documents has been marked as Appellant's Exhibit One, and the hearing record has now been closed.

Findings of Fact

The record supports the following findings of fact:

- 1) Your November 4, 2015 application indicated that you will be filing your 2015 income tax return with a tax filing status of head of household and claiming your two children as dependents on that tax return.
- 2) You testified that you are currently married, but that you are living separately from your spouse.
- 3) You testified that you have not lived with your spouse in three years, and that you will not live with her for the rest of 2016.

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- 4) You testified that you have two sons who reside with you, and that your wife does not provide any financial support for yourself or your sons.
- 5) You testified that you believe you will claim both of your sons as dependents when you file your 2015 tax return, but that it is possible that you will not be claiming your older son as a dependent because he may file his own tax return.
- 6) Your November 4, 2015 application indicated that your expected annual household income for the year 2015 was \$70,752.33. This consisted of \$51,327.33 in earned income, \$3,825.00 in Unemployment Insurance Benefits (UIB), and \$15,600.00 in income earned by your older son.
- 7) You testified that this income was accurate, but that you have not been employed since approximately June 2015.
- 8) You further testified that the only income you have been receiving since June is UIB in the amount of \$425.00 per week. You submitted an "Unemployment Insurance Monetary Benefit Determination" (Appellant's One) that confirms that this is the weekly benefit rate you were eligible for.
- 9) You testified that your older son is still employed. You submitted pay stubs on his behalf that show he received the following gross pay from two different employers in December 2015 on the pay dates indicated:

Employer One: December 3, 2015: \$280.00
Employer Two: December 11, 2015: \$275.51
December 23, 2015: \$272.03
- 10) Your application states that you live in Westchester County.
- 11) Your November 4, 2015 application states that you are married but not a joint tax filer.

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

Applicable Law and Regulations

Advance Payments of the Premium Tax Credit

For the 2015 coverage year, APTC is generally 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 federal poverty

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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)).

Additionally, a tax filer who is married must file a joint return with his or her spouse in order to qualify for APTC (45 CFR §§ 155.305(f), 155.310(d); 26 CFR § 1.36B-2).

However, an individual will be treated as not married at the close of the taxable year if the individual:

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
 - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
 - b. pays more than one half of the cost of keeping up his/her home for the tax year; and
 - c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703(a); 26 USC § 7703(b)).

Cost-Sharing Reductions

CSRs are available to a person who (1) is eligible to enroll in a QHP through the NYSOH, (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

For the 2015 tax year, Medicaid can be provided through NYSOH 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

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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), NY Social Services 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

NYSOH 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)).

Child Health Plus

A child who meets the eligibility requirements for 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 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 PHL § 2511(2)(b)).

CHP is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY PHL § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY PHL § 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% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$60.00 per month for a child whose family household income is between 351% and 400% of the FPL (PHL § 2510(9)(d)(vi)).

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In an analysis of CHP 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).

Legal Analysis

The first issue under review is whether NYSOH properly determine that you and your older son were eligible to purchase a qualified health plan only at full cost, because you were not eligible for financial assistance.

In the eligibility determination notice issued on November 5, 2015, NYSOH determined you and your older son eligible to purchase a qualified health plan at full cost. Your NYSOH account indicates that you are not eligible for APTC because you are not a joint tax filer.

To qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

According to the information in the record and your testimony at the hearing, you are still married to your spouse and have not obtained a decree of divorce or of separate maintenance. However, you confirmed that you do not plan to file a joint federal income tax return with your spouse for the 2015 tax year, and your November 4, 2015 application indicated that you planned to file your taxes as “Head of Household with Qualifying Individual.”

There is an exception, as noted above, that allows a tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for APTC.

You credibly testified during the hearing that: (1) you expect to claim at least one, if not both, of your sons as dependents, and that your sons’ primary home is with you, (2) your wife does not pay any of the costs associated with maintaining your household and does not provide any support for your sons, and (3) your spouse has not been a member of the household in three years, and you will not live with her for the rest of 2016. Therefore, the record supports a finding that you are a head of household with a qualifying dependent and so qualify to be treated as “not married” for purposes of this decision.

Accordingly, NYSOH erred in finding you and your older son not eligible for financial assistance because you are not a joint tax filer. Therefore, the finding that you and your older son are not eligible for APTC and CSR is **RESCINDED**.

The second issue under review is whether NYSOH properly determined that you and your older son were not eligible for Medicaid as of your November 4, 2015 application.

Medicaid can be provided through NYSOH 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 \$70,752.33 is 352.18% of the 2015 FPL, NYSOH properly found that you and your older son were not eligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, Medicaid eligibility for households that are not currently receiving Medicaid can be determined based on current monthly household income and family size. In order to determine whether you and your older son were eligible for Medicaid using monthly household income, the Hearing Officer asked you to provide the following:

1. Your Unemployment Insurance Benefits payment history through the date of the hearing;
2. All pay stubs for your older son for pay that was received in the month of December 2015;
3. Confirmation of whether you plan to claim your older son as a dependent on your 2015 tax return.

You submitted your Unemployment Insurance Benefit Monetary Determination (Appellant's Exhibit One) which confirms that your weekly benefit rate was \$425.00. However, this document does not indicate what payments you have actually received or when they were received.

You submitted three pay stubs for the month of December on behalf of your older son – one from one employer, and two from the other – along with a partial paystub with the gross pay information cut off. (See Appellant's Exhibit One)

Lastly, you did not respond to the request for information as to whether you will claim your older son as a dependent for the 2015 tax year when you file your 2015 tax return.

Since you did not provide enough information to determine whether you and your son qualified for Medicaid based on current monthly income, there is insufficient evidence to review the NYSOH's finding that you and your older son were not eligible for Medicaid.

The third and final issue under review is whether NYSOH properly determined that your younger son was conditionally eligible to enroll in CHP with a monthly premium of \$60.00, effective December 1, 2015.

At the time of your application, you expected to file your 2015 tax return as head of household with two dependents. Therefore, your younger son is in a three-person household.

On your November 4, 2015 application, you attested to an expected household income of \$70,752.33. The application also stated that your child was 15 years old. NYSOH relied upon this information.

A child is eligible to enroll in CHP if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the federal poverty level (FPL). Household income between 351% and 400% of that FPL are responsible for a \$60.00 per month CHP premium payment. On the date of your application, the relevant FPL was \$20,090.00 for a three-person household. Since \$70,752.33 is 352.18% of the 2015 FPL, NYSOH properly found your child to be eligible for Child Health Plus with a \$60.00 per month premium payment.

Since the November 5, 2015 eligibility determination notice properly stated that, based on the information you provided, your child was eligible for Child Health Plus with a \$60.00 per month premium and not eligible for Medicaid, it was correct.

The record as it now stands does not contain enough information to return your case to NYSOH for a redetermination of your eligibility for 2016 coverage. If you would like your and your sons' eligibility redetermined please update your NYSOH account accordingly.

Decision

The November 5, 2015 eligibility determination notice is MODIFIED to rescind the finding that you and your older son were not eligible for APTC and CSR, and to return the matter for a determination as to your eligibility for APTC and CSR.

Effective Date of this Decision: April 12, 2016

How this Decision Affects Your Eligibility

NYSOH's finding that you and your older son were not eligible for APTC and CSR as of your November 4, 2015 application date was not correct and has been rescinded.

You and your sons remain ineligible for Medicaid as of your November 4, 2015 application.

Your younger son was properly found eligible for CHP with a monthly premium of \$60.00, effective December 1, 2015.

Your case is returned for a redetermination of your eligibility for APTC and CSR based on the information in your application, and your status as Head of Household.

If you would like to see whether your household qualifies for financial assistance for 2016, you should update the information in your NYSOH account so that a new eligibility determination can be made.

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 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 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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Summary

The November 5, 2015 eligibility determination notice is MODIFIED to rescind the finding that you and your older son were not eligible for APTC and CSR, and to return the matter for a determination as to your eligibility for APTC and CSR.

NYSOH's finding that you and your older son were not eligible for APTC and CSR as of your November 4, 2015 application date was not correct and has been rescinded.

You and your sons remain ineligible for Medicaid as of your November 4, 2015 application.

Your younger son was properly found eligible for CHP with a monthly premium of \$60.00, effective December 1, 2015.

Your case is returned for a redetermination of your eligibility for APTC and CSR based on the information in your application, and your status as Head of Household.

If you would like to see whether your household qualifies for financial assistance for 2016, you should update the information in your NYSOH account so that a new eligibility determination can be made.

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A Copy of this Decision Has Been Provided To:

