



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

## Notice of Decision

Decision Date: February 18, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000005108

[REDACTED]

Dear [REDACTED],

On February 3, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 6, 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 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.

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## Decision

Decision Date: February 18, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000005108



## 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 receive an advance premium tax credit of up to \$74.00 per month, effective December 1, 2015?

Did the Marketplace properly determine that you were not eligible for cost-sharing reductions?

Did the Marketplace properly determine that you were not eligible for Medicaid?

## Procedural History

On September 30, 2015, the Marketplace received two applications in which you attested to a range of annual household incomes between \$28,080.00 and \$37,440.00. You also attested in each of these application to being pregnant with one child, is expected on May 8, 2016.

On October 1, 2015, the Marketplace issued an eligibility determination notice stating that you were conditionally eligible for Medicaid, effective September 1, 2015. This notice requested that you provide documentation to confirm your income before October 15, 2015. It further stated that if you did not submit the requested documentation by the date above, you may be found ineligible for health insurance or for less help with your health insurance.

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On October 9, 2015, the Marketplace received four earnings statements issued to you between August 28, 2015 and September 25, 2015.

On October 14, 2015, the Marketplace received a revised application in which included an annual household income of \$37,440.00. It also reflected that you pregnant with one child, due on May 8, 2016.

On October 15, 2015, the Marketplace issued an eligibility redetermination notice stating that you were newly eligible for an advance premium tax credit (APTC) of up to \$74.00 per month; not eligible for cost-sharing reductions (CSR); and not eligible for Medicaid. This eligibility determination was effective November 1, 2015.

Also on October 15, 2015, the Marketplace issue a disenrollment notice confirming that your Medicaid Fee-For-Service coverage would be discontinued as of October 31, 2015.

On November 5, 2015, the Marketplace received a further revised application in which included an annual household income of \$37,440.00. It also reflected that you pregnant with one child, due on May 8, 2016. Based on the information contained in this application, the Marketplace prepared a preliminary determination stating that you were eligible for an APTC of up to \$74.00 per month, effective December 1, 2015. It did not make a decision on whether you were eligible for either CSR or Medicaid.

Also on November 5, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of the November 5, 2015 preliminary eligibility determination insofar as you were found not eligible for Medicaid, or eligible for a tax credit greater than \$74.00 per month.

On November 6, 2015, the Marketplace issued an eligibility redetermination formalizing the findings contained in the November 5, 2015 preliminary determination. It stated that you were eligible for an APTC of up to \$74.00 per month; not eligible for CSR; and not eligible for Medicaid. This eligibility determination was effective December 1, 2015.

On February 2, 2016 and February 3, 2016, the Marketplace received (1) a rental agreement, effective January 1, 2015, between you and [REDACTED], (2) a letter issued by [REDACTED] center reflecting the due date of your unborn child, (3) a screenshot of your [REDACTED], (4) a screenshot of your [REDACTED], (5) a screenshot of your [REDACTED], (6) a screenshot of your [REDACTED].

On February 3, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional

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evidence to corroborate your testimony: (1) the earning statement issued to you by your employer, [REDACTED], on September 4, 2015, (2) all earning statements issued to you by your employer during October 2015 and November 2015, or (3) a signed letter by your employer confirming gross income received by you during September, October and November 2015. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On February 10, 2016, you provided two signed letters issued by [REDACTED], each dated as of February 9, 2016, to the Appeals Unit through your Marketplace account.

Accordingly, the record was closed on February 10, 2016.

## **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 single. You will not claim any dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) You testified, and the record reflects, that you are pregnant with one child who is due on May 8, 2016.
- 4) You submitted an application on September 30, 2015. At that time, you were found conditionally eligible for Medicaid pending the receipt of documentation to confirm your income. These documents were required to be received before October 15, 2015.
- 5) On October 9, 2015, you provided earnings statements reflecting that you received from your employer, [REDACTED]: (1) \$720.00 on August 28, 2015, (2) \$720.00 on September 11, 2015, (3) \$720.00 on September 18, 2015, (4) \$720.00 on September 28, 2015.
- 6) Your application was rerun on October 14, 2015 based on an annual household income of \$37,440.00. On October 15, 2015, the Marketplace found you eligible for an advance premium tax credit of up to \$74.00 per month, but not eligible for either CSR or Medicaid.
- 7) The application that was submitted on November 5, 2015 also listed annual household income of \$37,440.00, consisting solely of income you expect to receive from your employment with [REDACTED]. You testified that this amount was correct.

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- 8) You testified that you are paid once every two weeks, and receive a steady gross income of \$720.00 every pay period.
- 9) You testified, and provided documentation, that your monthly income for September 2015 was \$2,880.00.
- 10) Your application reflects that you will not be taking any deductions on your 2015 tax return.
- 11) Your application states that you live in Kings County.
- 12) You testified that you were seeking Medicaid, or a tax credit greater than \$74.00 per month, since the insurance plans through the Marketplace were unaffordable without additional financial assistance after taking into account your various living expenses.
- 13) You testified that you were seeking Medicaid coverage, if possible, back to September 1, 2015 since you had incurred some medical expenses during that month.
- 14) On February 10, 2016, you provided two signed letters issued by [REDACTED], each dated as of February 9, 2016, reflecting your income received during September, October and November 2015. One letter reflected that you were paid \$3,120.00 per month during that period, while the other letter stated that you were paid \$720.00 per week.

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

## **Applicable Law and Regulations**

### Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are 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 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:

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- 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, IRS Rev. Proc. 2014-62).

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 \$11,670 for a one-person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 300% but less than 400% of the 2014 FPL, the expected contribution is 9.56% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

### 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)).

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In New York, a pregnant woman is eligible for Medicaid at a household income of 223% of the FPL (42 CFR §435.116 (c)(2); NY Department of Social Services Admin 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 is \$15,930.00 for a two-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).

### 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)).

For purposes of Medicaid eligibility, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman but also the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

## **Legal Analysis**

The first issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$74.00 per month.

The application that was submitted on November 5, 2015 listed an annual household income of \$37,440.00 and the eligibility determination relied upon that information.

For purposes of APTC and CSR in a one-person household. You expect to file your 2015 income taxes as single and will claim no dependents on that tax return. For Medicaid purposes, you are in a two-person household. Your applications reflect that you live alone, but are pregnant with one child.

You reside in Kings County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month.

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An annual income of \$37,440.00 is 320.82% of the 2014 FPL for a one-person household. At 320.82% of the FPL, the expected contribution to the cost of the health insurance premium is 9.56% of income, or \$298.27 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 primary subscriber and one dependent in your county (\$371.75 per month) minus your expected contribution (\$298.27 per month), which equals \$73.48 per month. The Marketplace computed your APTC by rounding \$73.48 to the next highest dollar, \$74.00. It, therefore, incorrectly calculated your APTC by \$1.00.

However, since the APTC you were determined eligible for under the December November 6, 2015 eligibility determination is not materially greater than your actual APTC eligibility, which was due to the rounding anomaly noted above, the difference is properly reconciled as a tax liability on a federal individual income tax return.

The second issue is whether you were properly found ineligible for cost-sharing reductions (CSR).

CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$37,440.00 is 320.82% of the applicable FPL, the Marketplace correctly found you to be ineligible for CSR.

The third issue is whether the Marketplace properly determined that you 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 \$15,730.00 for a two-person household. Since \$37,440.00 is 238.02% 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 November 6, 2015 eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$74.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

While one of the letters issued by your employer, which you provided on February 9, 2015 at the Hearing Officer's direction, stated that you received \$3,120.00 per month during September, October and November 2015, the credible evidence of record shows during September 2015 you received four payments of \$720.00. This is reflected not only in a separate letter issued by your employer, also on February 9, 2015, but also through your separate paystubs reflecting that you were paid \$720.00 per week during September 2015. Therefore, your monthly income for September 2015 was \$2,880.00, not \$3,120.00.

Since the record suggests that, when it processed your September 30, 2015 application, the Marketplace determined your Medicaid eligibility by expected annual income but not by monthly income, your case should be returned to the Marketplace for an eligibility determination based on monthly income.

Therefore, your case is RETURNED to the Marketplace to determine your eligibility for financial assistance on the basis of monthly income using a two-person household in Kings County with a September 2015 income of \$2,880.00.

## **Decision**

The November 6, 2015 eligibility determination notice is AFFIRMED.

Your case is RETURNED to the Marketplace to determine your eligibility for financial assistance on the basis of monthly income using a two-person household in Kings County with a September 2015 income of \$2,880.00.

**Effective Date of this Decision:** February 18, 2016

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

This decision does not change your eligibility.

It does return your case to the Marketplace to consider your eligibility for financial assistance on the basis of monthly income using a two-person household in Kings County with a September 2015 income of \$2,880.00.

## **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.

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

### **Summary**

The November 6, 2015 eligibility determination notice is AFFIRMED.

This decision does not change your eligibility.

It does return your case to the Marketplace to consider your eligibility for financial assistance on the basis of monthly income using a two-person household in Kings County with a September 2015 income of \$2,880.00.

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## **Legal Authority**

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

