



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

Notice of Decision

Decision Date: January 29, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005142

[REDACTED]

Dear [REDACTED]

On January 20, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 11, 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.

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: January 29, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005142

[REDACTED]

Issue

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

Did the Marketplace properly determine that your daughter was not eligible for Child Health Plus, as of November 10, 2015?

Did the Marketplace properly determine that your daughter was eligible to purchase a qualified health plan at full cost, without financial assistance, effective December 1, 2015?

Procedural History

On November 10, 2015, the Marketplace received three applications for health insurance for your daughter. That day, a preliminary eligibility determination was prepared with regard to the last application, stating that your daughter was not eligible to receive help paying for her health insurance coverage; however, she could purchase a qualified health plan through the Marketplace at full cost. This eligibility was effective December 1, 2015.

Also on November 10, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to your daughter's eligibility for financial assistance.

On November 11, 2015, the Marketplace issued an eligibility determination notice based on the information contained in the November 10, 2015 application, stating that your daughter was eligible to purchase a qualified health plan at full cost, effective December 1, 2015.

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On January 20, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit evidence in support of your position.

On January 25, 2016 the Marketplace's Appeals Unit received your supporting evidence, which included a copy of your paystub issued on December 24, 2015. This document was marked as Appellant's Exhibit 1, and incorporated into the record. The record is now closed.

Findings of Fact

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

- 1) You testified that you are currently married but expect to file your 2015 taxes separately from your spouse. The application that was submitted on November 10, 2015 listed your tax filing status as Head of Household, with qualifying individual. You will claim your daughter as a dependent on that tax return.
- 2) You testified that you do not reside with your spouse, but are not legally separated.
- 3) The record reflects that your tax filing status has been listed as Head of Household with qualifying individual as of January 16, 2015.
- 4) The Marketplace's system reflects that the reason you daughter was determined ineligible for financial assistance is due to primary tax filers in the household not filing taxes jointly.
- 5) You are only seeking insurance for your daughter.
- 6) At the time of the November 10, 2015 application, your daughter was 18 years old. The record reflects that your daughter turned 19 years old on [REDACTED].
- 7) The record reflects that your daughter received Child Health Plus coverage through the Marketplace, effective March 1, 2015 to October 31, 2015.
- 8) You testified that your daughter is currently a full-time student, does not have any income and, therefore, is fully supported by you. The application that was submitted on November 10, 2015 further lists that your daughter is currently a full-time student.

- 9) The application that was submitted on November 10, 2015 listed an annual household income of \$38,381.21, consisting entirely of income earned from your employment with [REDACTED]
- 10) You testified that you expect a household income between \$47,000.00 and \$53,000.00. You further testified that you receive a salary, which is paid every two weeks, and your bi-weekly payments do not fluctuate. According to the evidence provided, you receive \$1,769.23 every pay period, before taxes are deducted.
- 11) Your daughter's application states that you will not be taking any deductions on your 2015 tax return.
- 12) Your daughter's application states that she resides at the same address as you.
- 13) Your daughter's application states that you live in Kings County.

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)).

Generally, the advance premium tax credit (APTC) is available to a person who is married only if that person is filing a joint return with his or her spouse (26 CFR § 1.36B-2(b)(2)). However, an individual will be treated as not married at the close of the taxable year, and therefore potentially eligible for APTC, 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)).

In other words, if you meet the above criteria for either (1) or (2), you will be treated as not married for purposes of APTC eligibility (26 USC § 2).

To be considered a qualifying child must:

- a. be the taxpayer's child, sibling, or descendent of such a relative;
- b. have the same principal residence as the taxpayer for more than half of the year;
- c. be under the age of 19 at the end of the tax year, or under the age of 24 if a full-time student for at least 5 months of the year, or be permanently and totally disabled at any time during the year; and
- d. not provide more than one-half of her own support for the year.

(26 USC § 152(c)).

Cost-Sharing Reductions

CSRs 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)).

Child Health Plus

A child may be eligible for coverage through Child Health Plus (CHP) provided (1) he or she lives in a household having a household income at or below 400% of the FPL and (2) is not eligible for medical assistance (Medicaid), except that a child who becomes eligible for Medicaid after becoming eligible for CHP, may be eligible for a subsidy payment for a period of three months after becoming eligible for such medical assistance (NY Public Health Law § 2511(2)(b) and (3)).

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For purposes of determining CHP eligibility, an eligible child is a person under the age of 19 (NY Public Health Law § 2510(4)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that your child was not eligible for Child Health Plus (CHP).

A child may be eligible for coverage through CHP if they meet both financial and non-financial eligibility requirements, including age. In order to qualify, the child must be under the age of 19.

The record reflects that you submitted an application for health insurance for your daughter on November 10, 2015, seeking coverage effective December 1, 2015. The record reflects that, although your child was 18 years old at the time of the November 10, 2015 application, she turned 19 years old on [REDACTED], which was prior to the effective date of eligibility for coverage sought.

Since your daughter would be 19 years old at the time of the effective date of eligibility beginning December 1, 2015, she was not considered an eligible child. Therefore, the Marketplace properly determined that your child was not eligible for CHP at the time of your November 10, 2015 application.

The final issue under review is whether the Marketplace properly determined that your daughter was eligible to purchase a qualified health plan at full cost, without financial assistance, effective December 1, 2015.

In the eligibility determination notice issued on November 11, 2015, the Marketplace found your daughter eligible to purchase a qualified health plan at full cost. That notice did not discuss whether or not your daughter was eligible for financial assistance in the form of APTC. However, The Marketplace's system reflects that the reason your daughter was determined ineligible for financial assistance is due to primary tax filers in the household not filing taxes jointly.

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 10, 2015 application indicated that you planned to file your taxes as "Head of Household with Qualifying Individual" and claim your daughter on that tax return.

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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.

According to your daughter’s application and your testimony at the hearing, your daughter (1) is your child (2) principally resides with you (3) is 19 years old, and a full-time student and (4) is currently unemployed, and you provide her support.

Since your daughter meets the requirements of a qualifying child, you, therefore, meet the requirements to be considered “not married” for purposes of APTC eligibility. Therefore, the Marketplace improperly determined that your child was eligible to purchase a qualified health plan at full cost, without financial assistance because you were not filing your taxes jointly with your spouse.

Therefore, the November 11, 2015 eligibility determination is **RESCINDED**.

You credibly testified, and provided evidence, that you earn a steady income of \$1,769.23 every two weeks before taxes are deducted. Therefore, you expect a household income of approximately \$45,999.98.

Your case is **RETURNED** to the Marketplace to redetermine your daughter’s eligibility for financial assistance using a two-person household residing in Kings County, an expected income of \$45,999.98, and a tax-filing status of Head of Household with qualifying individual for the primary tax-filer in the household.

PLEASE NOTE: Your daughter may be eligible for APTC if you continue to maintain your household as her primary residence, pay more than half of the cost of keeping up your home, do not reside with your spouse for the remainder of the 2015 tax year, and file your taxes for the 2015 tax year as ‘Head of Household’. The IRS is ultimately the final decision maker on how you are allowed to file your taxes and whether your child is considered a qualifying child. If your testimony was incorrect, it may result in you **NOT** being eligible to file as ‘Head of Household’ for the 2015 tax year. If this is the case, you cannot be treated as “not married” for purposes of your daughter obtaining APTC through the Marketplace.

Decision

The November 11, 2015 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to the Marketplace to redetermine your daughter’s eligibility for financial assistance using a two-person household residing in Kings County, an expected income of \$45,999.98, and a tax-filing status of Head of Household with qualifying individual for the primary tax-filer in the household.

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Effective Date of this Decision: January 29, 2016

How this Decision Affects Your Eligibility

This decision does not change your daughter's eligibility.

It returns her case to the Marketplace to redetermine her eligibility for financial assistance based on a two-person household residing in Kings County, an expected income of \$45,999.98, and a tax-filing status of Head of Household with qualifying individual for the primary tax-filer in the household.

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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P.O. Box 11729

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The November 11, 2015 eligibility determination notice is RESCINDED.

Your case is RETURNED to the Marketplace to redetermine your daughter's eligibility for financial assistance using a two-person household residing in Kings County, an expected income of \$45,999.98, and a tax-filing status of Head of Household with qualifying individual for the primary tax-filer in the household.

This decision does not change your daughter's eligibility.

It returns her case to the Marketplace to redetermine her eligibility for financial assistance based on a two-person household residing in Kings County, an expected income of \$45,999.98, and a tax-filing status of Head of Household with qualifying individual for the primary tax-filer in the household.

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:

