



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

Notice of Decision

Decision Date: February 16, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005153

[REDACTED]

Dear [REDACTED],

On January 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 2, 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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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 30 year-old son were eligible to share in up to \$588.00 per month in advance premium tax credits and, if you selected a silver-level qualified health plan, eligible for cost-sharing reductions, effective November 1, 2015?

Did the Marketplace properly apply the amount of advance premium tax credits to which you and your son were entitled to share in October 2015?

Procedural History

On December 19, 2014, based on your expected 2014 annual income of \$37,689.60, you and your 30 year-old son (son) were preliminarily determined eligible to share in up to \$447.00 in advance premium tax credits (APTC) and, if you selected a silver-level qualified health plan, eligible to share in cost-sharing reductions, effective January 1, 2015.

On December 20, 2014, the Marketplace issued a notice of eligibility determination that was consistent with its December 19, 2014 preliminary determination.

Also on December 20, 2015, the Marketplace issued an enrollment notice confirming that you and your son had selected a Fidelis Care bronze plan as a primary subscriber and dependent and had a shared monthly premium

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responsibility of \$103.04 after your shared APTC monthly amount of \$447.00 was applied to the total premium cost of \$550.04.

On October 1, 2015, the Marketplace received your updated application for health insurance for you and your son. That day, the Marketplace prepared a preliminary eligibility determination based on your household size and reported income of \$37,689.60, and found you and your son eligible to share up to \$588.00 per month in APTC and eligible for cost-sharing reductions, effective November 1, 2015.

On October 2, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with the October 1, 2015 eligibility redetermination.

Also on October 2, 2015, the Marketplace issued an enrollment notice confirming that you and your son were each enrolled separately in a Fidelis Care bronze-level qualified health plans for an individual, which began on January 1, 2015. The notice further stated that your share of the APTC amount of \$279.00 (1/2 of \$588.00) would be applied to your monthly premium for your individual plan effective November 1, 2015 and your monthly premium responsibility would be \$44.55; and your son's share of the APTC amount of \$279.00 would be applied to his monthly premium amount for his individual plan effective October 1, 2015 and his monthly premium responsibility would be \$29.15.

On November 11, 2015, you spoke with the Marketplace's Account Review Unit and appealed your APTC not being applied until November 1, 2015 and not as of October 1, 2015, like your son's APTC was.

On January 27, 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) According to your Marketplace account, you expect to file your 2015 taxes with a tax filing status of Head of Household with Qualifying Individuals and will claim your two adult sons as dependents on that tax return.
- 2) Your Marketplace application does not indicated that your 30 year-old son is chronically disabled.
- 3) The application that was submitted on October 1, 2015 listed annual household income of \$37,689.60 consisting solely of your earned income. You testified that this amount was correct.

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- 4) According to your Marketplace account, your son's enrollment in the Fidelis Care bronze plan was cancelled effective October 1, 2015 due to non-payment of premium. A cancellation notice to this effect was issued on October 22, 2015.
- 5) According to your Marketplace account, on November 11, 2015, you requested that your enrollment in the Fidelis Care bronze plan be terminated, which was processed with an end date of November 30, 2015. A disenrollment notice to this effect was issued on November 12, 2015.
- 6) According to the Enrollment History in your Marketplace account, your enrollment in the Fidelis Care bronze plan was terminated effective October 31, 2015.
- 7) You testified that the agent told you that your APTC of \$279.00 would be applied to your October 2015 premium, like your son's APTC was, so that you would only have to pay \$44.55 that month.
- 8) You testified that since your share of the APTC was not applied in October 2015, you could not afford to pay your monthly premium responsibility and did not pay it that month.
- 9) You also testified that you did not pay the November 2015 premium because you were waiting for your appeal to be heard.
- 10) Your application states that you live in Bronx 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 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)).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

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)).

Young Adults Coverage Up To Age 26 on Parents' Plan

The Affordable Care Act requires plans and issuers that offer dependent child coverage to make the coverage available until a child reaches the age of 26. Eligible adult children wishing to take advantage of the coverage up to age 26 will be included in the parents' family coverage. Both married and unmarried children qualify for this coverage. This rule applies to all plans in the individual market and to all employer plans (45 CFR §147.120).

Once a dependent child reaches age 26 and "ages out" of his or her parents' coverage, they may have several options, including enrolling in an individual plan by themselves through the Marketplace.

Implementation Date of Enrollment

Generally, when an eligibility redetermination is made during a benefit year, the Marketplace implements resulting changes on the first day of the month following the date of the notice of eligibility determination (45 CFR 155.330(f)(1)(i), (e)(1)(ii)). There are some exceptions to this general rule. If a change affects enrollment or premiums only, it is implemented on the first day of the month following the date on which the Marketplace was notified of the change (45 CFR 155.330(f)(1)(iii)). A decrease in the amount of advance premium tax credit (APTC) or a change in cost-sharing reductions is implemented on the first day of the second month after the date of the notice of eligibility determination or notice to the Marketplace (45 CFR 155.330(f)(3)). Exceptions in cases of marriage, birth, adoption, placement for adoption, and placement in foster care are addressed in 45 CFR § 155.420(b)(2)(i) and (ii).

Legal Analysis

The issue is whether the Marketplace properly determined the dates on which you and your son's eligibility for an increase in APTC of up to \$588.00 per month should have taken effect.

The application that was submitted on October 1, 2015 listed an annual household income of \$37,689.60 and the eligibility determination relied upon that information.

You and your son are in a three-person household for purposes of this analysis. This is because you expect to file your 2015 income taxes as Head of Household with Qualifying Individuals and will claim your two adult sons as dependents on that tax return.

Ordinarily, when APTC is recalculated and increases, it takes effect the first day of the next month, which in your case was correctly determined to be November 1, 2015. While the October 2, 2015 enrollment notice stated that your son's increased APTC was to take effect as of October 1, 2015, that date was in error and should have also been November 1, 2015. Notwithstanding, your son's coverage terminated as of October 1, 2015 due to non-payment of premium and, therefore, no APTC was applied for him in October 2015 and no further action by the Marketplace is required.

You reside in Bronx County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month and you and your son should have been determined eligible separately using the cost of that individual plan. However, on October 1, 2015, the Marketplace recalculated your and your son's eligibility for APTC using the second lowest cost silver plan available for a couple in your county, which is \$743.50.

Since the recalculations were based on an incorrect plan type and premium amount, we would ordinarily return your case to the Marketplace to redetermine your eligibility for financial assistance and your son's eligibility for financial assistance on separate individual plans. However, at this late date and because you testified that you did not pay the monthly premiums such that both your and your son's coverages cancelled, no further action by the Marketplace is required as it relates to your and your son's 2015 health plan enrollments and application of APTC.

Any difference in the amount of APTC that you received for the months prior to your and your son's cancellations of health insurance and to which you should have been entitled can be reconciled when you file your 2015 federal tax return.

Since your son is over 26 years-old and has aged out of qualifying to be covered under your health plan, any future enrollment for him should be on an individual plan.

Decision

The October 2, 2015 enrollment notice as it relates to you is **AFFIRMED**, and is **RESCINDED** as it relates to your son.

The October 22, 2015 cancellation notice regarding your son is **AFFIRMED**.

The November 12, 2015 disenrollment notice regarding yourself is **MODIFIED** to state that your Fidelis Care bronze plan ended effective October 31, 2015 due to non-payment of premium.

Effective Date of this Decision: February 16, 2016

How this Decision Affects Your Eligibility

You and your son were eligible to share in up to \$447.00 per month in APTC until October 1, 2015.

Your son's coverage through a Fidelis Care bronze plan was cancelled effective October 1, 2015, due to non-payment of premium.

During October 2015, you were eligible to receive \$223.50 in APTC.

Your coverage through your Fidelis Care Bronze plan was cancelled effective October 31, 2015, due to non-payment of premium.

Since both your and your son's health insurance coverage was cancelled, no further action by the Marketplace is required.

Any difference in the amount of APTC that you received for the months prior to your and your son's cancellations of health insurance and to which you should have been entitled can be reconciled when you file your 2015 federal tax return.

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

Summary

The October 2, 2015 enrollment notice as it relates to you is **AFFIRMED**, and is **RESCINDED** as it relates to your son.

The October 22, 2015 cancellation notice regarding your son is **AFFIRMED**.

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The November 12, 2015 disenrollment notice regarding yourself is MODIFIED to state that your Fidelis Care bronze plan ended effective October 31, 2015 due to non-payment of premium.

You and your son were eligible to share in up to \$447.00 per month in APTC until October 1, 2015.

Your son's coverage through a Fidelis Care bronze plan was cancelled effective October 1, 2015, due to non-payment of premium.

During October 2015, you were eligible to receive \$223.50 in APTC.

Your coverage through your Fidelis Care Bronze plan was cancelled effective October 31, 2015, due to non-payment of premium.

Since both your and your son's health insurance coverage was cancelled, no further action by the Marketplace is required.

Any difference in the amount of APTC that you received for the months prior to your and your son's cancellations of health insurance and to which you should have been entitled can be reconciled when you file your 2015 federal tax return.

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:

