



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

Notice of Decision

Decision Date: February 10, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005160

[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 13, 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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NY State of Health Number: [REDACTED]
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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 were eligible to receive up to \$285.00 per month in advance payments of the premium tax credit, effective December 1, 2015?

Did the Marketplace properly determine that you were eligible for cost-sharing reductions, effective December 1, 2015?

Based on your interactions with NY State of Health, do you qualify for a health insurance exemption?

Procedural History

On November 12, 2015, the Marketplace issued a preliminary eligibility determination based on your updated application and found you newly eligible to receive up to \$285.00 per month in advance premium tax credit (APTC) and eligible for cost sharing reductions, effective December 1, 2015.

That same day, you appealed that preliminary eligibility determination as it related to the level of APTC to which you were deemed entitled.

On November 13, 2015, the Marketplace issued a notice of eligibility determination that was consistent with the November 12, 2015 preliminary determination.

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That same day, the Marketplace issued a disenrollment notice informing you that your 2015 coverage under your Medicaid Managed Care plan would end November 30, 2015.

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 closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you plan to file your 2015 taxes with a tax filing status of Single and will claim no dependents on that tax return.
- 2) According to your Marketplace account, your coverage with a Medicaid Managed Care plan was due to end November 30, 2015.
- 3) You testified and your Marketplace account reflects that you contacted the Marketplace on November 12, 2015 to update your application and gain health insurance coverage to begin December 1, 2015.
- 4) At the time of the November 13, 2015 eligibility determination, your application listed an annual household income of \$20,286.00. You testified that this amount was correct.
- 5) According to the December 11, 2015 Appeal Summary, on November 12, 2015, you appealed being deemed eligible for APTC and cost-sharing reductions and stated, due to your expenses and the APTC subsidy you are eligible to receive, the health plans are unaffordable. The summary of that date further indicates that you want your eligibility redetermined for a possible increase in APTC.
- 6) You also testified that the qualified health plans through the Marketplace were unaffordable to you without greater financial assistance.
- 7) Your application states that you live in Kings County, New York.
- 8) You testified that you explained to a Marketplace representative during a telephone conversation on November 12, 2015 that you wanted to enroll in a qualified health plan through the same insurance carrier, MetroPlus Health Plan, Inc. (Metro Plus), so that you could have continuity of care with your established medical providers.

- 9) According to the recorded telephone conversation of November 12, 2015, the Marketplace representative from the NYSOH Contact Center informed you of the cost to you after your advance premium tax credit of \$285.00 was applied for a silver-level qualified health plan through Metro Plus, as well as the deductible and co-pay amounts. She did not explain to you that there was a deadline of November 15, 2015 for you to select a health plan for coverage to begin December 1, 2015.
- 10) According to a recorded telephone conversation of November 12, 2015 with a Marketplace Account Review Unit representative, you reiterated your desire to stay on a Metro Plus plan but stated the cost was too expensive. The representative filed an appeal on your behalf and also referred your case to the Kings County Human Resources Administration to see if you qualified for Medicaid through its Excess Income Program. She did not explain to you that there was a deadline of November 15, 2015 for you to select a health plan for coverage to begin December 1, 2015.
- 11) According to a recorded telephone conversation of November 19, 2015, a Marketplace representative from the NYSOH Contact Center informed you for the first time that you missed the November 15, 2015 deadline for health insurance coverage to begin December 1, 2015. You expressed the need to have coverage effective December 1, 2015 and that you could not go without health insurance for that month because of scheduled medical appointments that you had to attend. Based on your expressed need, the representative filed a request on your behalf to have your coverage backdated to December 1, 2015.
- 12) According to a recorded telephone conversation of December 2, 2015, you contacted the NYSOH Contact Center again to discuss your special enrollment status because of a medical appointment you needed to attend that day. The customer service representative confirmed that your case had been given a high priority status the day before, which was under review. Per your request, you were transferred to a supervisor, who indicated your backdate request was still being worked on via the external review unit as diligently as it could be. You were provided with a tracking number and told to check back in a few days to see if a determination had been reached.
- 13) According to your Marketplace account, while you were next assisted by a Marketplace representative on December 2, 2015, your enrollment to a silver-level qualified health plan through MetroPlus Health Plan, Inc., was added with an effective start date of January 1, 2016.
- 14) According to a recorded telephone conversation of December 14, 2015, you contacted the NYSOH Contact Center again for a status on your

outstanding backdate request. The customer service representative confirmed that your request was still a high priority and was being worked on.

- 15) According to a recorded telephone conversation of December 22, 2015, you contacted the NYSOH Contact Center and were told your complaint had been closed because you had filed an appeal. This information was confirmed by an internal note, dated December 4, 2014; to wit: "Closing Complaint due to appeal already in process. [REDACTED]"
- 16) You testified that you feel you were given misinformation by Marketplace representatives about the qualified health plans you could select and the deadline for enrollment for a December 1, 2015 coverage start date, and had many calls afterward with Marketplace representatives and supervisors that were frustrating and non-productive.
- 17) You testified that, because of Marketplace misinformation and delay, you were not enrolled in a qualified health plan in December 2015 and had no health coverage; whereas, had you known at the time of the November 12, 2015 telephone conversations with Marketplace representatives of this deadline, you would have selected a qualified health plan so as not to have a gap in health insurance coverage.
- 18) You further testified that, as a result of the Marketplace's misinformation and delay in determining if you qualify for coverage to be backdated to December 1, 2015, you are concerned about possibly being exposed to an IRS penalty for not having health insurance in December 2015, from which penalty you want to be exempted.

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)).

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The maximum amount of APTC that can be authorized equals:

- 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 \$11,670.00 for a one-person household (80 Fed. Reg. 3236, 3237).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

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)).

IRS Exemption – Tax Penalty Exposure

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR §155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s)

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experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR §155.605(g)(1)(iii)).

The Marketplace may adopt an exemption eligibility determination made by the Department of Health and Human Services for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR §155.625(b)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for an APTC of up to \$285.00 per month.

The application that was submitted on November 12, 2015, listed an annual household income of \$20,286.00 and the eligibility determination relied upon that information.

You are in a one-person household for purposes of this analysis. This is because you expect to file your 2015 income taxes as Single and will claim no dependents on that tax return.

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

An annual income of \$20,286.00 is 173.83% of the 2014 FPL for a one-person household. At 173.83% of the FPL, the expected contribution to the cost of the health insurance premium is 5.13% of income, or \$86.72 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 an individual in your county (\$371.75 per month) minus your expected contribution (\$86.72 per month), which equals \$285.03 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you to be eligible for up to \$285.00 per month in APTC.

The second issue is whether you were properly found eligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$20,286.00 is 173.83% of the applicable FPL, the Marketplace correctly found you to be eligible for cost sharing reductions.

Since the November 13, 2015 eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$285.00 per month in APTC, and eligible for cost-sharing reductions, it is correct and is AFFIRMED.

At the hearing, however, you also testified that you were concerned about the possibility of being exposed to an IRS tax penalty for not having health insurance in December 2015. Although this issue was not raised on appeal and only at the time of the hearing, in the interest of justice and administrative efficiency, the Hearing Officer agreed to hear testimony on this issue.

Based on the facts in the record and your credible testimony, the Appeals Unit finds that representatives of the NYSOH Marketplace erred in not timely informing you of the 15th of the month deadline to select a qualified health plan for a December 1, 2015 start date of health insurance during two telephone conversations that you had on November 12, 2015. You credibly testified that, had you known of this deadline, you would have selected a qualified health plan to begin December 1, 2015. The Appeals Unit further finds that the Marketplace did not act on your backdate request or inform you in this regard of its determination verbally or by formal notice. Rather, your request was simply closed without explanation because you had an appeal pending, which we find is not a plausible explanation or resolution. Because of these errors and resultant delay, we also find that you were not able to enroll in a qualified health plan with an effective start date of December 1, 2015.

If this decision could effectuate an earlier 2015 plan year re-enrollment, we would instruct NY State of Health to redetermine your eligibility accordingly. However, NY State of Health cannot redetermine your enrollment retroactively to December 1, 2015, since we are now in February 2016. Further, it would be inequitable to hold you responsible for a monthly premium payment for December 2015 at this late date. Nevertheless, you may have other claims or remedies as a result of a finding that NY State of Health's Marketplace's error and delay that resulted in you not being informed of the November 15, 2015 deadline to enroll in a health plan for a December 1, 2015 start date and further delay on not issuing a determination on your backdate request. We therefore address your concern.

Sometimes after an appeal decision an appellant can claim an exemption from the requirement to have health insurance. If both of the following applied to you in 2015, you might qualify for a health coverage exemption:

- In 2015 you were unable to enroll to obtain coverage in a qualified health plan because of an appealable reason
- Your appeal was eventually successful

If this is accurate, you may not have to pay the penalty for the months you were uncovered. If approved, your exemption generally also covers the month of the Decision itself. It will not cover the month of the Decision itself if the Decision is in the next plan year. For example, you could not re-enroll during 2015 and we issue a decision in 2016. In this case, your exemption would cover only the

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months during 2015 that you were both uncovered; that is, the month of December 2015.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, the NY State of Health Marketplace cannot and will not accept exemption applications.

You will find all of the information you need to claim the exemption due to an appeal Decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The November 13, 2105, eligibility determination notice is AFFIRMED.

The Marketplace erred on two occasions on November 12, 2015, in not informing you of the November 15, 2015 deadline to enroll in a qualified health plan for coverage to begin December 1, 2015, and thereafter caused additional delay in not determining your request to backdate coverage to December 1, 2015.

This Decision does not grant you an exemption from the shared responsibility payment.

You will find all of the information you need to claim the exemption due to an appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

Effective Date of this Decision: February 10, 2016

How this Decision Affects Your Eligibility

You were eligible to receive up to \$285.00 per month in APTC and cost sharing reductions in December 2015.

This Decision does not grant you an exemption from the shared responsibility payment.

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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

The November 13, 2105, eligibility determination notice is AFFIRMED.

You were eligible to receive up to \$285.00 per month in APTC and cost sharing reductions in December 2015.

The Marketplace erred on two occasions on November 12, 2015, in not informing you of the November 15, 2015 deadline to enroll in a qualified health plan for coverage to begin December 1, 2015, and thereafter caused additional delay in not determining your request to backdate coverage to December 1, 2015.

This Decision does not grant you an exemption from the shared responsibility payment.

You will find all of the information you need to claim the exemption due to an appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

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:

