



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

## Notice of Decision

Decision Date: February 12, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000005355



Dear [REDACTED],

On January 28, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 23, 2015 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this letter.

### Legal Authority

We are sending you this notice in accordance with 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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## Decision

Decision Date: February 12, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000005355



## Issues

The issue presented for review by the Appeals Unit of the NY State of Health is:

Did the Marketplace fail to determine you eligible to enroll in a Basic Health Plan (Essential Health Plan) effective January 1, 2016?

## Procedural History

On November 23, 2015 the Marketplace issued an eligibility determination notice that you are conditionally eligible to receive up to \$285.00 of advance premium tax credits and cost-sharing reductions effective as of January 1, 2016.

On November 27, 2015 you spoke to the Marketplace Account Review Unit and requested an appeal insofar as your eligibility to enroll in an Essential Health Plan through the Marketplace.

On January 28, 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 hearing of the hearing. The record is now complete and closed.

## Findings of Fact

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

1. You are applying for health insurance through the Marketplace for yourself, your spouse and dependent.

2. According to your November 22, 2015 application, you plan on filing a 2016 federal income tax return with the tax status of married filing jointly, with your spouse, and will be claiming one dependent on that tax return.
3. According to your November 22, 2015 application, your 2016 expected annual household income is \$28,346.00.
4. You testified that based on your monthly expenses, you are not able to afford the costs associated with a qualified health plan through the Marketplace.
5. You testified that you are seeking to enroll in an Essential Health Plan through the Marketplace for 2016.
6. You testified that your date of birth is [REDACTED], and you are sixty-eight years old.

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

## **Applicable Law and Regulations**

### De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

### Essential Health Plan

An individual is eligible to receive coverage for health care services through an Essential Health Plan if they:

1. reside in New York state and are under sixty-five years of age,
2. are not eligible for Medicaid or Child Health Plus,

3. are not eligible for minimum essential coverage or is eligible for employer-sponsored insurance that is not affordable,
4. have a household income at or below 200% of the Federal Poverty Line (FPL),
5. are a citizen or lawfully present non-citizen, and
6. are not incarcerated, other than a period pending disposition of charges.

(N.Y. Soc. Serv. Law § 369-gg(3), (42 CFR § 600.305(a)).

## **Legal Analysis**

The issue under review is whether the Marketplace failed to determine you eligible for an Essential Health Plan effective January 1, 2016.

The record does not contain a notice of eligibility determination or redetermination on the issue of you not being eligible to enroll in an Essential Health Plan for 2016.

The lack of a notice of eligibility determination on the issue of your eligibility to receive coverage through an Essential Health Plan does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are as entitled to appeal the Marketplace's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Since the Appeals Unit review of Marketplace determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

An individual is eligible to enroll in an Essential Health Plan only if reside in New York State and are under sixty-five years of age.

According to the record, you were born on [REDACTED] and are sixty-eight years old. Therefore, the Marketplace correctly determined that you were not eligible to enroll in an Essential Health Plan.

The November 22, 2015 eligibility determination is AFFIRMED.

## **Decision**

The November 22, 2015 eligibility determination is AFFIRMED.

The Marketplace did not fail to determine you eligible to enroll in an Essential Health Plan effective January 1, 2016.

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).

**Effective Date of this Decision:** February 12, 2016

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

This decision does not change your eligibility.

You remain conditionally eligible to receive an advance premium tax credit of up to \$285.00 per month and cost-sharing reductions, if you enroll in a silver-level qualified health plan effective January 1, 2016.

You remain not eligible for coverage in an Essential Health Plan effective January 1, 2016.

## **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:

NY State of Health Appeals

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- By fax: 1-855-900-5557

## **Summary**

The November 22, 2015 eligibility determination is AFFIRMED.

The Marketplace did not fail to determine you eligible to enroll in an Essential Health Plan effective January 1, 2016.

This decision does not change your eligibility.

You remain conditionally eligible to receive an advance premium tax credit of up to \$285.00 per month and cost-sharing reductions, if you enroll in a silver-level qualified health plan effective January 1, 2016.

You remain not eligible for coverage in an Essential Health Plan effective January 1, 2016.

## **Legal Authority**

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

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

