



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

Notice of Decision

Decision Date: February 17, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005449

[REDACTED]

Dear [REDACTED],

On February 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 8, 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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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 \$73.00 per month in advance payments of the premium tax credit, effective January 1, 2016?

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

Procedural History

On December 7, 2015, the Marketplace received your updated application for health insurance. That day, a preliminary eligibility determination was prepared with regard to that application, stating that you were eligible for advance payments of the premium tax credit (APTC) of up to \$73.00 per month, effective January 1, 2016.

Also on December 7, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to the amount of APTC you were determined eligible for.

On December 8, 2015, the Marketplace issued an eligibility determination notice based on the information contained in the December 7, 2015 application, stating that you were eligible for up to \$73.00 per month in APTC, effective January 1, 2016. The notice further stated that you were not eligible for cost-sharing reductions (CSR) because your income was over the allowable limit for that program.

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On February 8, 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 expect to file your 2016 taxes with a tax filing status of single. You will claim at least one dependent on that tax return.
- 2) You testified that your household consists of you and your one child.
- 3) You are seeking insurance only for yourself.
- 4) The application that was submitted on December 7, 2015 listed annual household income of \$41,600.00, consisting of earned income from your employment. You testified that you make \$20.00 an hour and work 40 hours per week, which comes out to \$41,600.00 per year.
- 5) Your application states that you will not be taking any deductions on your 2016 tax return, and you testified that this is correct.
- 6) You testified that you do not feel that you can afford the cost of your health plan because of the cost of living in the New York City area, and because you are paying child support for two children and supporting one child that lives with you.
- 7) Your application states that you live in Bronx 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

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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:

- 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 2016 is set by federal law at 2.03% to 9.66% 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 2015 FPL, which is \$15,930.00 for a two -person household (80 Fed. Reg. 3236, 3237).

For annual household income in the range of at least 250% but less than 300% of the 2015 FPL, the expected contribution is between 8.18% and 9.66% 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).

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

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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)).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, and deductions attributable to royalties (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for an APTC of up to \$73.00 per month.

The application that was submitted on December 7, 2015 listed an annual household income of \$41,600.00, and the eligibility determination relied upon that information. You testified that you have monthly expenses such as rent, food, and child support payments. However, none of these expenses are permissible

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deductions in calculating a household's adjusted gross income for purposes of determining eligibility for financial assistance from the Marketplace.

You are in a two-person household. You expect to file your 2016 income taxes as single and will claim at least one dependent on that tax return.

You reside in Bronx County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$368.26 per month.

An annual income of \$41,600.00 is 261.14% of the 2015 FPL for a two-person household. At 261.14% of the FPL, the expected contribution to the cost of the health insurance premium is 8.51% of income, or \$295.01 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 (\$368.26 per month) minus your expected contribution (\$295.01 per month), which equals \$73.25 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you to be eligible for up to \$73.00 per month in APTC.

The second issue is whether you were properly found not eligible for CSR. CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$41,600.00 is 261.14% of the applicable FPL, the Marketplace correctly found you to be not eligible for CSR.

Since the December 8, 2015 eligibility determination notice stated that you were eligible for up to \$73.00 per month in APTC, and not eligible for CSR based on the information that was contained in your application, it is correct and is AFFIRMED.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2016, you can check the Federal Marketplace website (www.healthcare.gov) for an application.

Decision

The December 8, 2015 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: February 17, 2016

How this Decision Affects Your Eligibility

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You remain eligible for up to \$73.00 per month in APTC, effective January 1, 2016.

You are not eligible for CSR as of your December 7, 2015 application date.

If you wish to apply for a hardship exemption to be exempt from a penalty for not having health insurance coverage for 2016, you can visit www.healthcare.gov for an application.

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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Summary

The December 8, 2015 eligibility determination notice is AFFIRMED.

You remain eligible for up to \$73.00 per month in APTC, effective January 1, 2016.

You are not eligible for CSR as of your December 7, 2015 application date.

If you wish to apply for a hardship exemption to be exempt from a penalty for not having health insurance coverage for 2016, you can visit www.healthcare.gov for an application.

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:

