



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

Notice of Decision

Decision Date: June 17, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005600

[REDACTED]

Dear [REDACTED],

On March 17, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's June 17, 2015, June 23, 2015 and August 26, 2015 eligibility determination notices.

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

Did NY State of Health (NYSOH) properly calculate your household's Modified Adjusted Gross Income, when determining the eligibility for financial assistance for you and your daughter during 2015?

Procedural History

On June 16, 2015, NYSOH received a revised application, in which you listed both your children as dependents.

On June 17, 2015, NYSOH issued an eligibility determination notice based on the information contained in the June 16, 2015 application, stating that you were eligible to purchase a qualified health plan (QHP) at full cost, effective August 1, 2015. The notice also stated that your daughter was conditionally eligible to enroll in Child Health Plus (CHP) for a cost of \$9.00 per month, effective August 1, 2015. Your son was eligible for Medicaid effective June 1, 2015.

On June 22, 2015, NYSOH received a further revised application, in which you stated you would be filing your tax return as head of household with your daughter as your only qualifying dependent. Your son was no longer to be claimed as a dependent.

On June 23, 2015, NYSOH issued an eligibility redetermination notice based on the information contained in the June 22, 2015 application, stating that you were newly conditionally eligible to receive up to \$241.00 per month in advance

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payments of the premium tax credit (APTC); newly conditionally eligible for cost-sharing reductions (CSR), provided you selected a silver-level plan; and ineligible for Medicaid. The notice also stated that your daughter was conditionally eligible to enroll in CHP at a cost of \$9.00 per month. This eligibility determination for yourself and your daughter was effective August 1, 2015. You were directed to provide proof of income before August 21, 2015 for your daughter, and before September 20, 2015 for yourself.

On August 20, 2015, NYSOH received (1) a notice issued by the Social Security Administration (SSA), dated August 7, 2015, stating that you were awarded \$1,589.00 in SSA benefits, and (2) a notice issued by the SSA, dated as of August 7, 2015, stating that your daughter was awarded \$794.00 per month in SSA benefits.

NYSOH redetermined your eligibility on August 25, 2015.

On August 26, 2015, NYSOH issued an eligibility redetermination notice, stating that you were eligible for to receive up to \$241.00 per month in APTC; eligible for CSR, provided you selected a silver-level plan; and ineligible for Medicaid. The notice also stated that your daughter was conditionally eligible to enroll in CHP at a cost of \$9.00 per month. This eligibility determination for yourself and your daughter was effective October 1, 2015. Finally, the notice stated that your son remained eligible for Medicaid, effective August 1, 2015.

On November 7, 2015, NYSOH issued a notice stating it was time to renew your coverage through NYSOH, and that you needed to update your family's account by December 15, 2015.

You updated your account on December 14, 2015, and again on December 15, 2015. You requested assistance in paying for medical bills from October and November 2015.

On December 16, 2015, NYSOH issued a notice of eligibility determination, stating that you and your daughter were eligible for Medicaid, effective December 1, 2015.

Also on December 16, 2015, NYSOH issued a notice stating that you were not eligible for retroactive Medicaid coverage for the period from October 1, 2015 to November 30, 2015, because your income for those months was above the allowable limit.

On December 17, 2015, you spoke with NYSOH's Account Review Unit and appealed you and your daughter's coverage during 2015 insofar as you were seeking Medicaid to replace your current coverage between June 1, 2015 and November 30, 2015.

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On March 17, 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 support the following findings of fact:

- 1) You testified that you expected to file your 2015 taxes with a tax filing status of head of household. You will claim your daughter as a dependent on that tax return.
- 2) The applications that were submitted on June 16, 2015, June 22, 2015 and August 25, 2015 each listed an annual household income of \$28,596.00. This amount consisted of \$1,589.00 per month you receive from Social Security disability benefits, and \$794.00 per month your daughter receives from Social Security disability benefits. You testified that these amounts were correct.
- 3) As of your June 22, 2105 application, you no longer claimed your son as a dependent.
- 4) You testified that your daughter does not expect to receive any income from a job in 2015.
- 5) Your application states that you will not be taking any deductions on your 2015 tax return.
- 6) You live in Ulster County, New York.
- 7) You testified that you were seeking for yourself and your daughter to be found eligible for Medicaid coverage during 2015 on the basis that your daughter's Social Security disability benefits were included in your household's annual income.

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

Applicable Law and Regulations

Advance Premium Tax Credit

Advance payments of the premium tax credit (APTC) are available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a

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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)).

Eligibility for APTC is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable Social Security income, non-taxable interest income, and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

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)).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be "eligible for medical assistance"; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 435.603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for

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that person (26 USC § 6012(a)(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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)).

Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

"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 savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Legal Analysis

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when determining your eligibility for financial assistance.

Your June 16, 2015, June 22, 2015 and August 25, 2015 applications each listed an annual household income of \$28,596.00. This amount consisted of \$19,068.00 (\$1,589.00 x 12 months) you would receive from Social Security disability benefits during 2015, and \$9,528.00 (\$794.00 x 12 months) per month your child would receive from Social Security disability benefits during 2015. Household income for the purposes of calculating a person's eligibility for financial assistance to help pay for the costs of health insurance through the Marketplace, consists of the Modified Adjusted Gross Income of all tax filers in a household who are required to file a tax return.

You attested to your intent to file a 2015 return when you requested financial support on the Marketplace application. Since you plan on filing your taxes as head of household and claim only your daughter as a dependent on your 2015 tax return, you are in a two-person household.

A dependent will be required to file a tax return in 2015 if her *earned* income is greater than \$6,300.00. According to the information on your application, your child will not receive any earned income during 2015. Since your dependent has an earned income less than \$6,300.00, she is NOT required to file a tax return on the basis of their earned income.

A dependent will also be required to file a tax return in 2015 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, your child anticipated receiving \$9,528.00 in income from Social Security disability benefits and \$0.00 in income from a job. Therefore, \$4,764.00 (one-half the amount of Social Security benefits she receives) plus \$0.00 income from job equals \$4,764.00. Since \$4,764.00 is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

Therefore, the June 17, 2015, June 23, 2015 and August 26, 2015 eligibility determination notices are **RESCINDED** because your child's income should not have been included in your household's income for Marketplace purposes.

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Your case is RETURNED to the Marketplace for a redetermination of your and your daughter's eligibility for financial assistance as of June 17, 2015, as persons who resides in Ulster County, are members of a two-person household, and have an expected household income of \$19,068.00, and a monthly household income during June 2015 of \$1,589.00.

NYSOH is further directed to facilitate the transition of any insurance coverage for you and your daughter and, if applicable, the reimbursement of premium amounts associated with you and your daughter's coverage between June 1, 2016 and November 30, 2015. It is also directed to reconsider any applications for retroactive Medicaid benefits.

Decision

The June 17, 2015, June 23, 2015 and August 26, 2015 eligibility determination notices are RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of you and your daughter's eligibility for financial assistance as of June 17, 2015, as persons who resides in Ulster County, are members of a two-person household, have an expected household income of \$19,068.00, and a monthly household income during June 2015 of \$1,589.00.

NYSOH is further directed to facilitate the transition of any insurance coverage for you and your daughter and, if applicable, the reimbursement of premium amounts associated with you and your daughter's coverage between June 1, 2016 and November 30, 2015. It is also directed to reconsider any applications for retroactive Medicaid benefits.

Effective Date of this Decision: June 17, 2016

How this Decision Affects Your Eligibility

Your case is being sent back to the Marketplace for a redetermination of your household's eligibility for financial assistance as of June 17, 2015, as persons who reside in Ulster County, are members of a two-person household, and have an expected household income of \$19,068.00, and a monthly household income during June 2015 of \$1,589.00.

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 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 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
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The June 17, 2015, June 23, 2015 and August 26, 2015 eligibility determination notices are RESCINDED.

This decision is not a final determination of your household's eligibility.

Your case is being sent back to the Marketplace for a redetermination of your household's eligibility for financial assistance as of June 17, 2015, as persons

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who reside in Ulster County, are members of a two-person household, and have an expected household income of \$19,068.00, and a monthly household income during June 2015 of \$1,589.00.

NYSOH is further directed to facilitate the transition of any insurance coverage for you and your daughter and, if applicable, the reimbursement of premium amounts associated with you and your daughter's coverage between June 1, 2016 and November 30, 2015.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

