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

Notice of Decision

Decision Date: June 1, 2016

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000005728

[redacted]

Dear [redacted]

On March 7, 2016, you, your Authorized Representative and your witness appeared by telephone at a hearing on your appeal of NY State of Health's December 15, 2015 eligibility determination notice.

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: June 1, 2016

NY State of Health Account ID: [redacted]
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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

> Did NY State of Health (NYSOH) properly determine that you were conditionally eligible to receive $0.00 per month in advance payments of the premium tax credit, effective January 1, 2016?
>
> Did NYSOH properly determine that you were not eligible for cost-sharing reductions, effective January 1, 2016?

Procedural History

On December 14, 2015, NYSOH received your completed application for health insurance in which you attested to an annual household income of $57,600.00.

On December 15, 2015, NYSOH issued an eligibility determination notice based on the information contained in the December 14, 2015 application, stating that you were conditionally eligible for an advance premium tax credit of $0.00 per month, pending the receipt of income documentation before March 13, 2016; not eligible for cost-sharing reductions; and not eligible for Medicaid. This eligibility determination was effective January 1, 2016.

Also on December 15, 2015, NYSOH issued an enrollment confirming notice, stating that you had enrolled in a qualified health plan as of December 14, 2015, with a premium of $280.83 per month. Your coverage under this plan was would begin January 1, 2016.

On December 23, 2015, you contacted NYSOH's Account Review Unit and requested an appeal of the December 15, 2015 eligibility determination notice insofar you were effectively found not eligible for an APTC to reduce the cost of your premium.

On February 26, 2016, NYSOH received a completed Authorized Representative Designation Form reflecting that you wanted your daughter, [redacted], to act as your Authorized Representative for all matter related to your account.

On March 7, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your daughter, as your Authorized Representative, and [redacted] a licensed NYS Social Worker and care manager appearing as your witness, also attended the hearing. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony: (1) documents reflecting that a substantial amount of income is being used to pay for spouse's long-term care through Medicaid at a state facility, (2) your spouse's 2016 Notice of Award issued by the Social Security Administration, and (3) documentation reflecting your spouse's pension awards from [redacted] The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On March 14, 2016, NYSOH received a letter, dated March 3, 2016, purporting to contain income verification information for you in response to the request in the December 15, 2015 eligibility determination notice for income documentation, but contained no information other than your name, NYSOH account number, date of birth and Social Security number.

On March 17, 2016, the Appeals Unit received a 3 page facsimile containing (1) a letter issued by [redacted] to NYSOH, dated March 5, 2016, requesting a redetermination based on your limited income as a result of your spouse's residence at a the Skilled Nursing Facility, and (2) a form [redacted], issued by the Erie County Department of Social Services on May 15, 2015, reflecting your monthly contribution to your spouse's cost of care.

These documents were not entirely consistent with those requested by the Hearing Officer, and the record was not closed until March 22, 2015.

Findings of Fact

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

1) You testified, and your application reflects, that you expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim no dependents on that tax return.

2) You testified that while your spouse's mail is delivered to your home mailing address, he has continually resided at the long-term care facility for at least the past three years.

3) You are seeking insurance for only yourself.

4) The application that was submitted on December 14, 2015 listed annual household income of $57,600.00, consisting of $1,900.00 per month your spouse receives in Social Security benefits and $2,900.00 per month your spouse receives from pensions and annuities. Your testimony supports that the amounts referenced in your application were reasonably accurate.

5) Your application states that you will not be taking any deductions on your 2016 tax return.

6) You live in Erie County, New York.

7) [redacted] stated during the hearing that the application submitted on December 14, 2015 is not reflective of your actual income received, since your spouse is a resident in the Skilled Nursing Facility on Long-Term Nursing Home Medicaid, you only have access to $2,980.50 per month, rather than $4,800.00.

8) On March 17, 2016, you provided a determination issued by the Erie County Department of Social Services on May 15, 2015, stating that as of January 1, 2015, your monthly income contribution toward the cost of your spouse's medical care would be $2,262.60 per month.

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 federal 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)).

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 300% but less than 400% of the 2015 FPL, the expected contribution is 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).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (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)).

Modified Adjusted Gross Income

NYSOH 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)).

Legal Analysis

The first issue is whether NYSOH properly determined that you were eligible for an APTC of $0.00 per month, effective January 1, 2016.

The application that was submitted on December 14, 2015 listed an annual household income of $57,600.00, which was comprised of (1) $22,800.00 ($1,900.00 x 12 months) your spouse receives in Social Security benefits and $34,800.00 ($2,900.00 x 12 months) your spouse receives from pensions and annuities. You did not include any anticipated deductions within your application.

The eligibility determination relied upon that information.

You are in a two-person household. You expect to file your 2016 income taxes as married filing jointly and will claim no dependents on that tax return.

You reside in Erie County, where the second lowest cost silver plan available for an individual through NYSOH costs $353.19 per month.

An annual income of $57,600.00 is 361.58% of the 2015 FPL for a two-person household. At 361.58% of the FPL, the expected contribution to the cost of the health insurance premium is 9.66% of income, or $463.68 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for an individual in your county ($353.19 per month) minus your expected contribution ($463.68 per month). Since your monthly contribution exceeded the cost of the second lowest cost silver plan available through NYSOH for an individual in your county, NYSOH correctly determined you to be eligible for an APTC of $0.00 per month.

The second issue is whether you were properly found ineligible for cost-sharing reductions (CSR).

CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of $57,600.00 is 361.58% of the applicable FPL, NYSOH correctly found you to be ineligible for CSR.

Since the December 15, 2015 eligibility determination properly stated that, based on the information you provided, you were eligible for an APTC of $0.00 per month, and ineligible for CSR, it is correct and is AFFIRMED.

While you testified that you only have access to $2,980.50 per month, rather than $4,800.00, as a result of your spouse being a resident in the Skilled Nursing Facility on Long-Term Nursing Home Medicaid, there is insufficient evidence to indicate that you intend to take a tax deduction on your 2016 tax relating to the premium amount due in connection with your spouse's care that would decrease your included income before the determination of your adjusted gross income.

Additionally, medical and dental expenses, while deductible in part, are deducted on line 40 of your Form 1040, which is after your Adjusted Gross Income is determined. The Adjusted Gross Income is what eligibility through NYSOH is primarily based on, and there is no authority to deduct these medical expenses from your income for the purposes of determining your eligibility for financial assistance through NYSOH.

Therefore, we are unable to return your case to NYSOH for redetermination of your eligibility for financial assistance.

Decision

The December 15, 2015 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: June 1, 2016

How this Decision Affects Your Eligibility

You remain eligible for $0.00 in APTC.

You are ineligible for CSR.

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 December 15, 2015 eligibility determination notice is AFFIRMED.

You remain eligible for $0.00 in APTC.

You are ineligible for CSR.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

[redacted]

[redacted]

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).