



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

## Notice of Decision

Decision Date: March 21, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005825



Dear [REDACTED],

On March 17, 2016, your designated authorized representative, John Winemiller, appeared by telephone on your behalf at a hearing on your appeal of NY State of Health Marketplace's December 22, 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 Account ID: [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 (the appellant) were eligible to receive up to \$42.00 per month in advance payments of the premium tax credit, effective February 1, 2016?

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

Did the Marketplace properly determine that you were not eligible for Medicaid?

## Procedural History

On December 21, 2015, the Marketplace received your completed application for health insurance in 2016. That day, a preliminary eligibility redetermination was prepared with regard to that application finding you eligible to receive advance payments of the premium tax credit, effective February 1, 2016.

On December 22, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with the December 21, 2015 preliminary determination. The notice further stated that you were not eligible for cost-sharing reductions because your household income of \$40,572.00 was over the allowable income limit of \$29,175.00 and you were not eligible for Medicaid.

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because the household income you provided of \$40,572.00 was over the allowable income limit of \$16,243.00.

On December 29, 2015, you or your authorized representative spoke with the Marketplace's Account Review Unit and requested an appeal of the eligibility redetermination as it related to the start date of coverage because you were seeking a start date of January 1, 2016.

On March 17, 2016, through sworn testimony, you designated [REDACTED] to serve as your authorized representative at the telephone hearing. Your authorized representative then 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) According to your Marketplace account, you expect to file your 2016 taxes using a tax filing status of single and will not be claiming any dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) The application that was submitted on December 21, 2015 listed annual household income of \$40,572.00, consisting of \$21,372.00 gross in Social Security Disability benefits (\$1,781.00 monthly) and \$1,600.00 in monthly rental income (\$19,200.00 annually). Your authorized representative testified he had personal knowledge of your income and that these amounts were correct.
- 4) Your application states that you will not be taking any deductions on your 2016 tax return.
- 5) Your application states that you live in Kings County, New York.
- 6) Your authorized representative testified at the hearing that you were no longer concerned with a January 1, 2016 start date because you did not incur any medical expenses that month.
- 7) Your authorized representative further testified that, even with tax credits, the monthly premium for health insurance and a \$2,000.00 deductible are not affordable because it is expensive to live in New York City and you have to pay for your basic living needs and utilities, as well as taxes related to your home and property.

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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 \$11,770.00 for a one-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 in 2016 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).

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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 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)).

### Medicaid

Medicaid can be provided through the Marketplace to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On December 21, 2015, the date of your application, that was the 2015 FPL, which is \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

### 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

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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, and property-related taxes 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**

Initially, we note that your authorized representative testified at the hearing that you were no longer concerned with a January 1, 2016 start date because you did not incur any medical expenses that month. He further testified that your present concern had to do with the amount of financial assistance you were eligible to receive. Therefore, this decision addresses only your present concern.

The first issue is whether the Marketplace properly determined that you were eligible for an APTC of up to \$42.00 per month.

The application that was submitted on December 21, 2015 listed an annual household income of \$40,572.00 and the eligibility determination relied upon that information.

Your living and tax expenses were not considered when determining your eligibility for financial assistance because the Marketplace only uses MAGI-income as explained above and in accordance with the law.

You are in a one-person household for purposes of this analysis. This is because you expect to file your 2016 income taxes as single and will not be claiming any 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 \$368.26 per month.

An annual income of \$40,572.00 is 344.71% of the 2015 FPL for a one-person household. At 344.71% of the FPL, the expected contribution to the cost of the health insurance premium is 9.66% of income, or \$326.60 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 (\$326.60 per month), which equals \$41.66 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you to be eligible for up to \$42.00 per month in APTC.

The second issue is whether you were properly found ineligible 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 \$40,572.00 is 344.71% of the applicable FPL, the Marketplace correctly found you to be ineligible for cost sharing reductions.

The third issue is whether the Marketplace properly determined that you were ineligible for Medicaid.

Medicaid can be provided through the Marketplace to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,770.00 for a one-person household. Since \$40,572.00 is 344.71% of the 2015 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the December 22, 2015 eligibility redetermination notice properly stated that, based on the information you provided, you were eligible to receive up to \$42.00 per month in APTC, ineligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.



Your authorized representative testified that you cannot afford to pay for health insurance and have a \$2,000.00 deductible because you have other basic living expenses and property-related taxes that you have to pay. Your circumstances might qualify you for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2016. If you wish to be considered for a hardship exemption, you can check the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for direction.

## **Decision**

The December 22, 2015 eligibility redetermination notice is AFFIRMED.

**Effective Date of this Decision:** March 21, 2016

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

You remain eligible for up to \$42.00 per month in APTC.

You are ineligible for cost-sharing reductions.

You are ineligible for Medicaid.

## **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

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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 22, 2015 eligibility redetermination notice is AFFIRMED.

You remain eligible for up to \$42.00 per month in APTC.

You are ineligible for cost-sharing reductions.

You are ineligible for Medicaid.

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](http://www.healthcare.gov)) for direction.

### **Legal Authority**

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

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

