



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

Notice of Decision

Decision Date: October 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008704

[REDACTED]

Dear [REDACTED],

On October 13, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's March 22, 2016 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 NY State of Health 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.

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DEPARTMENT OF HEALTH
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Decision

Decision Date: October 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008704



Issues

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

Did NY State of Health properly determine that you were eligible to receive up to \$94.00 per month in advance payments of the premium tax credit, effective May 1, 2016?

Did NY State of Health properly determine that you were not eligible for cost-sharing reductions?

Did NY State of Health properly determine that you were not eligible for Medicaid?

Did NY State of Health properly determine that your children were eligible for Child Health Plus?

Did NY State of Health properly determine that your children were not eligible for Medicaid?

Procedural History

On March 22, 2016, NYSOH issued an eligibility determination notice based on the information contained in the March 21, 2016 application, stating that you were newly eligible to receive up to \$94.00 in advance premium tax credits (APTC) per month. Your oldest child was newly eligible to enroll in Child Health Plus with a cost of \$30.00 per month. Your second oldest child was newly eligible to enroll in Child Health Plus with a cost of \$9.00 per month. Your youngest child

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was no longer eligible for Medicaid but her coverage would continue until May 31, 2016. You were not eligible for cost-sharing reductions and Medicaid because your household income was over the allowable income limit. Your children were also not eligible for Medicaid because your household income was over the allowable income limit. Your household's eligibility was effective as of May 1, 2016.

On April 6, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you and your children were not eligible for Medicaid.

On June 1, 2016, NYSOH issued an eligibility determination notice based on the information contained in the May 31, 2016 application, stating that you were eligible to receive up to \$94.00 in APTC per month. Your oldest child was newly eligible to enroll in Child Health Plus with a cost of \$15.00 per month. Your two other children were eligible to enroll in Child Health Plus with a cost of \$9.00 per month. You were not eligible for cost-sharing reductions and Medicaid because your household income was over the allowable income limit. Your children were also not eligible for Medicaid because your household income was over the allowable income limit.

On October 13, 2016, you had a telephone hearing with a Hearing Officer from NYSOH'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 head of household.
- 2) The applications that you submitted on March 21, 2016 and May 31, 2016 state that you will be claiming only your oldest child as a dependent on your tax return.
- 3) You testified that you and your ex-husband alternate the number of children you claim on your individual tax returns and you could not remember if this was your year to claim two children.
- 4) You testified that your three children primarily reside with you.
- 5) You are seeking Medicaid for yourself and your three children.

- 6) The applications that were submitted on March 21, 2016 and May 31, 2016 listed annual household income of \$40,040.00, consisting of income you earn from your employment. You testified that this amount was roughly correct.
- 7) You testified that you are a salaried employee and receive the same amount of income every two weeks.
- 8) Your application states that you will not be taking any deductions on your 2016 tax return.
- 9) Your application states that you live in Kings County.
- 10) You testified that it is difficult for you to afford insurance premiums because of your living expenses and because the chart that NYSOH uses to determine eligibility does not take into account people who are in your situation.

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

Applicable Law and Regulations

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)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable 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, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

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

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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 Federal Register 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).

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)).

Medicaid

Medicaid can be provided through NYSOH 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)), NY Social Services 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 the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household (81 Fed. Reg. 4036).

Household Composition

Generally, a child who is claimed as a tax dependent by their custodial parent has the same household size as the parent that is claiming them (42 CFR § 435.603(f)(2)).

In the case where a child is claimed by a non-custodial parent, the child's family includes the following persons, if living with the child: (1) the child's parents, (2) the child's spouse, (3) the child's children and siblings under the age of 19, or 21 if a full-time student (42 CFR § 435.603(f)(2)(iii)).

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)).

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child's family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income

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is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL (PHL § 2510(9)(d)(ii)).

The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL (PHL § 2510(9)(d)(iv)).

In an analysis of Child Health Plus 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 the date of your application, that was the 2015 FPL, which was \$15,930.00 for a two-person household, and \$24,250.00 for a four-person household (80 Fed. Reg. 3236, 3237).

Medicaid for Children

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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 the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household and \$24,300.00 for a four person household (81 Fed. Reg. 4036).

Legal Analysis

The first issue is whether NYSOH properly determined that you were eligible to receive up to \$94.00 per month in APTC, effective May 1, 2016.

The applications that were submitted on March 21, 2016 and May 31, 2016 listed annual household income of \$40,040.00, consisting of income you earn from your employment. During the hearing, you testified that the amount you provided in your application was correct. However, you asked that your current living expenses be considered when calculating your annual household income because the chart that NYSOH uses to determine eligibility does not take into account people who are in your situation.

Since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when NYSOH computes your

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modified adjusted gross income for APTC purposes. Therefore, NYSOH correctly determined your household income to be \$40,040.00.

Household size for tax filers is determined based on their tax filing status and number of dependents the tax filer expects to claim at the end of the tax year. Based on the applications that you submitted on March 21, 2016 and May 31, 2016, you are in a two-person household because you state that you will be filing your taxes with a tax filing status of head of household and claiming only your oldest child as a dependent on your tax return.

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

An annual income of \$40,040.00 is 251.35% of the 2015 FPL for a two-person household. At 251.35% of the FPL, the expected contribution to the cost of the health insurance premium is 8.22% of income, or \$274.27 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 (\$368.26 per month) minus your expected contribution (\$274.27 per month), which equals \$93.99 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$94.00 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 \$40,040.00 is 251.35% of the applicable FPL, NYSOH correctly found you to be ineligible for cost sharing reductions.

The third issue is whether NYSOH properly determined that were ineligible for Medicaid.

Medicaid can be provided through NYSOH 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 \$16,020.00 for a two-person household. Since \$40,040.00 is 249.94% of the 2016 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the March 22, 2016 eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$94.00 per month in APTC, ineligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is AFFIRMED.

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The fourth issue under review is whether NYSOH properly determined that your children were eligible to enroll in Child Health Plus.

A child who is claimed as a tax dependent by their custodial parent has the same household size as the parent that is claiming them. Since you are claiming your oldest daughter as a dependent, she has a household size of two people.

A child who is claimed as a tax dependent by a non-custodial parent has a household size that consists of the parent the child is living with and the child's siblings under the age of 19, or 21 if a full-time student. Since your two other children are being claimed as dependents on their father's tax return but primarily reside with you and your oldest child, they have a household size of four people

On your March 21, 2016 and May 31, 2016 application, you attested to an expected household income of \$40,040.00.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the federal poverty level (FPL). On the date of your application, the relevant FPL was \$15,930.00 for a two-person household and \$24,250.00 for a four-person household. Since \$40,040.00 is 251.35% of the 2015 FPL for a two person household and 165.11% of the 2015 FPL for a four person household, NYSOH properly found your children to be eligible for Child Health Plus.

The fifth issue under review is whether NYSOH properly determined that your children are not eligible for Medicaid.

Medicaid can be provided through the Marketplace to children between the ages of one and nineteen who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 154% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,020.00 for a two-person household and \$24,300.00 for a four-person household. Since \$40,040.00 is 249.94% of the 2016 FPL for a two person household and 164.78% of the 2016 FPL for a four person household, NYSOH properly found your children to be ineligible for Medicaid.

Since the March 22, 2016 eligibility determination properly stated that, based on the information you provided, your children were eligible for Child Health Plus and ineligible for Medicaid, it is correct and is AFFIRMED.

During the hearing you testified that you and your ex-husband alternate the number of children you claim on your individual tax returns and you could not remember if this was your year to claim two children. Please update your account if the number of dependents you are expecting to claim changes as it may have

an effect on you and your children's eligibility. NYSOH will rerun your eligibility accordingly.

Decision

The March 22, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: October 18, 2016

How this Decision Affects Your Eligibility

You remain eligible for up to \$94.00 in APTC.

You are ineligible for cost-sharing reductions and Medicaid.

Your children remain eligible for Child Health Plus.

Your children 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 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.

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If You Have Questions about this Decision (Customer Service Resources):

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Summary

The March 22, 2016 eligibility determination notice is **AFFIRMED**.

You remain eligible for up to \$94.00 in APTC.

You are ineligible for cost-sharing reductions and Medicaid.

Your children remain eligible for Child Health Plus.

Your children are ineligible for Medicaid.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

