



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

Notice of Decision

Decision Date: March 14, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000014047

[REDACTED]

Dear [REDACTED],

On March 9, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's November 30, 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.

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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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 properly include your children's income when determining your household income?

Did NY State of Health properly determine that you, your spouse, and your children were eligible to receive up to \$357.00 per month in advance payments of the premium tax credit, effective January 1, 2017?

Did NY State of Health properly determine that you, your spouse, and your children were not eligible for cost-sharing reductions?

Procedural History

On November 29, 2016, you submitted an application for financial assistance.

On November 30, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you, your spouse, and your two children were eligible to receive up to \$357.00 per month in advance payments of the premium tax credit (APTC), effective January 1, 2017. That notice also stated that you were not eligible for cost-sharing reductions because your household income was over the allowable income limits for that program.

On December 15, 2016 you spoke to NYSOH's Account Review Unit and appealed the amount of your, your spouse's, and your children's APTC.

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On December 22, 2016, NYSOH issued a notice of eligibility determination stating that you, your spouse, and your children had been granted aid to continue until a decision was made on your appeal. This same notice indicated that you, your spouse, and your children were eligible for \$752.00 in APTC, effective January 1, 2017.

Also on December 22, 2016, NYSOH issued a notice of enrollment confirming your, your spouse's, and your children's enrollment in a qualified health plan with APTC of \$752.00, effective January 1, 2017.

On March 8, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing Hindi Interpreter # [REDACTED] interpreted. 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 2017 taxes with a tax filing status of married filing jointly. You testified that you are not sure if you will still claim your two children as dependents on your 2017 tax return.
- 2) The application that you submitted on November 29, 2016 indicates that you will be claiming your two children as dependents.
- 3) You are seeking insurance for yourself, your spouse, and your two children.
- 4) The application that was submitted on November 29, 2016 listed annual household income of \$96,000.00, consisting of \$34,800.00 you earn from your employment, \$13,800.00 your spouse earns from her employment, \$21,600.00 your older child earns from his employment, and \$25,800.00 your younger child earns from his employment.
- 5) You testified that you receive a monthly salary of \$2,900.00
- 6) You testified that your wife receives a monthly salary of \$1,150.00, but she only works for 6 months of the year.
- 7) You testified that one of your children receives a monthly salary of \$2,200.00 and your other child receives a monthly salary of \$1,800.00.

- 8) You testified that you operate a business, from which you are paid a salary. You further testified that you file a separate tax return for your business.
- 9) The application that you submitted on November 29, 2016 indicates that your children will not be filing a tax return.
- 10) Your application states, and you testified, that you will not be taking any deductions on your 2017 tax return.
- 11) Your application states, and you testified, that you live in Erie County.

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

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 § 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 that person (26 USC § 6012(1)(A)). For the 2017 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

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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)).

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 2017 is set by federal law at 2.04% to 9.69% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc.2016-24).

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 2016 FPL, which is \$24,300.00 for a four-person household (81 Fed. Reg. 4036.).

For annual household income in the range of at least 300% but less than 400% of the 2016 FPL, the expected contribution is 9.69 % of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH 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

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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 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)).

Legal Analysis

The first issue is whether NYSOH properly included your children's income when determining your household income.

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 NYSOH, consists of the Modified Adjusted Gross Income of all tax filers in a household who are required to file a tax return.

You testified that you will file your 2017 tax return as married filing jointly. Your application indicates that you will claim your two children as dependents. Therefore, you are in a four-person household.

A dependent will be required to file a tax return in 2017 if their earned income is greater than \$6,300.00.

Your application and your testimony indicate that each of your children have earned income greater than \$6,300.00. Since each of your children have an earned income greater than \$6,300.00, they are required to file a tax return on the basis of earned income.

Therefore, based upon the requirement to file a tax return, NYSOH properly included your children's income for 2017 in your household Modified Adjusted Gross Income.

The second issue is whether NYSOH properly determined that you, your spouse, and your children were eligible for an APTC of up to \$357.00 per month.

The application that was submitted on November 29, 2016 listed an annual household income of \$96,000.00 and the eligibility determination relied upon that information.

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You reside in Erie County, where the second lowest cost silver plan available for a couple and two dependents through NYSOH costs \$1,131.51 per month.

An annual income of \$96,000.00 is 395.06% of the 2016 FPL for a four-person household. At 395.06% of the FPL, the expected contribution to the cost of the health insurance premium is 9.69% of income, or \$775.20 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 a couple and two dependents in your county (\$1,131.51 per month) minus your expected contribution (\$775.20 per month), which equals \$356.31 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you, your spouse, and your children to be eligible for up to \$357.00 per month in APTC.

The third issue is whether you, your spouse, and your two children 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 \$96,000.00 is 395.06% of the applicable FPL, NYSOH correctly found you to be ineligible for cost sharing reductions.

Since the November 30, 2016 eligibility determination properly stated that, based on the information you provided, you, your spouse, and your children were eligible for up to \$357.00 per month in APTC, and ineligible for cost-sharing reductions, it is correct and is AFFIRMED.

However, during the hearing you testified that you receive a monthly salary of \$2,900.00, that your wife receives a monthly salary of \$1,150.00, but she only works for 6 months of the year, that one of your children receives a monthly salary of \$2,200.00 and your other child receives a monthly salary of \$1,800.00. This yields an annual expected household income of \$89,700.00.

Therefore, your case is RETURNED to NYSOH to redetermine your, your spouse's, and your children's eligibility based on a household of four residing in Erie County with an annual expected household income of \$89,700.00.

Decision

The November 30, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your, your spouse's, and your children's eligibility based on a household of four residing in Erie County with an annual expected household income of \$89,700.00.

Effective Date of this Decision: March 14, 2017

How this Decision Affects Your Eligibility

This is not a final determination on your, your spouse's, and your children's eligibility.

Your case is being sent back to NYSOH to redetermine your, your spouse's, and your children's eligibility based on a household of four residing in Erie County with an annual expected household income of \$89,700.00.

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

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The November 30, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your, your spouse's, and your children's eligibility based on a household of four residing in Erie County with an annual expected household income of \$89,700.00.

This is not a final determination on your, your spouse's, and your children's eligibility.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

