



Rhode Island Executive Office of Health and Human Services  
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February 23, 2015

Docket # 14-1196  
Hearing Date: January 22, 2015



## **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

### **RULES AND REGULATIONS PERTAINING TO THE RHODE ISLAND HEALTH BENEFITS EXCHANGE (RIHBE)**

**SECTION 1.0 Definitions**

**SECTION 5.5 Calculation of Advance Payments of the Premium Tax Credit**

**SECTION 5.0 Advanced Payments of the Premium Tax Credit**

### **EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS) MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

**SECTION 1307 "MAGI" Income Eligibility Determinations**

**SECTION 1307.01 Scope and Purpose**

The facts of your case, the Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant) and Health Source RI (HSRI) Agency representatives: Noah Zimmerman, and Lindsay Lang.

Present at the hearing were: You (the Appellant), your husband, and Agency representative Noah Zimmerman.

**ISSUE: Is the appellant responsible for any taxes she may owe due to an incorrect calculation and/or overpayment of advanced premium tax credits (APTC's)?**

**RIHBE AND MCAR RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from: the Rules and Regulations Pertaining to the Rhode Island Health Benefits Exchange, and from the Medicaid Code of Administrative Rules

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:****The Agency representative testified:**

- We (HSRI) received the complaint that a HSRI representative misrepresented your (the appellants) income causing undue economic harm.
- It's our position that we have a very minimal interaction in terms of the customer's choice of tax credits.
- We provide a mechanism for customers to choose their tax credits when they go through the process.
- During the application process there are several steps where the customer is told about tax credits, and told that any extra tax credit they take above what they are entitled to; they may have to pay back at the end of the year.
- I understand there is a question of possible misinformation from the representative which might have caused you (the appellant) to take a larger credit than you should have been entitled to.
- From my understanding HSRI contacted you and advised you to change your income reporting in July.
- I will look into the records to see if there was incorrect information given to you when you came into the office.
- Reading from a July 18, 2014 internal email which was sent to the HSRIP team from the team-This email indicates that according to the call log the income reported at the beginning of the year was much lower than their (appellants) actual yearly earnings resulting in receipt of an incorrect tax credit which was much higher than they should have been eligible for. The couple informed the representative that their accountant had informed them they most likely had not

been eligible for a subsidy and whatever they received would need to be reimbursed at the end of the year. It was found that the "couple had attested to the incorrect income due to misinformation given by the HSRI rep."

- The letter further identified-"since the subsidy is federal money, HSRI cannot reconcile the issue...It will have to happen when her taxes are filed next year or in the process of an appeal."
- An APTC is an advanced premium tax credit offered through the Federal government in order to help customers buy health insurance.
- Health Source does not provide the APTC-it comes from the federal government to the tax payer based on the choices they make when they apply or re-enroll.
- Health Source creates a place for you (the appellant) to choose a tax credit through the federal government.
- HSRI does not touch that money, or house that money.
- The relevant part of policy on APTC reconciliation is that a taxpayer must reconcile all premium tax credits that were received in advance for themselves...The final credit amount is calculated based on actual income reported when individuals file their federal income taxes. The IRS compares the amount of APTC received to the premium tax credit they are eligible for based on actual income. If the advance premium tax credit is less than the amount of the premium tax credit for which an individual qualifies when taxes are filed, the individual will receive the difference in the form of a refundable tax credit. If more, the individual must repay the excess advance with their tax return filing.
- In essence what this means is-if you took too little of what you're eligible for, you might be eligible for a refund; but if you took more than what you're entitled to at the end of the year you will probably have to pay that back.
- HSRI does not dispute the email (July) regarding the misinformation by a representative, and it is possible the misinformation did contribute to the tax choice of the appellant in the tax credit.
- However, if they took more than they're entitled to, they will have to pay it back.
- If there is any recourse in HSRI, I will look into this, but from the perspective of the actual tax credit, that would be between you and the IRS unfortunately.
- My suggestion is to contact the IRS to work with them.
- Some or all of the operators that HSRI uses are contracted through other agencies which are Connexions or possibly Optum.

- There is definitely a level of training, and they are taxed with learning a whole lot about insurance and about taxes and about the system and enrolling. There is a lot of information they need to know to do their job well.
- If there was a mistake, or misstatement, or incorrect reading of the tax form then it would stand to reason then they might need some more training.
- There is no dispute about the actual numbers which are being presented, and there is no dispute about the email sent from Health Source.
- We agree that the 2012 figures would not have allowed them any tax credit.
- Unless we find from a conversation that a representative actually told you to do x, y, and z-then we might have something. But barring that, it is the customer who makes the choice and chooses the tax credit.
- It is your choice, it was not our choice.
- But, if someone told you to choose this figure, or choose this number, then that is something that we have to go on.

**The appellant's representative submitted a letter which included the following information: (pertinent portions of the letter are summarized-they do not include discussion of a second issue already resolved by HSRI):**

- The appellant visited HSRI during open enrollment in the fall of 2013, with copies of 2012 tax returns. They were advised that eligibility for tax credits was based on their taxable income, line 43 on their 1040 form.
- Based upon this advice, they projected their income for 2014 at approximately \$29,000, using that same logic.
- We now know that the more relevant income figure is adjusted gross income, AGI, line 37. At the time, their MAGI figure would have reached an amount above 400% of the federal poverty level (FPL).
- The appellant was awarded an advanced premium tax credit (APTC) of \$538.61 per month. Resulting from the high APTC, she selected a gold plan, with an out of pocket premium payment of \$170.21.
- The appellant "asserts that she would have been unlikely to enroll in the more-expensive gold plan if she had not received such a high APTC award."

- This APTC and premium structure remained in place through the end of July, 2014.
- Upon an awareness of the issue, eventually coverage was terminated on July 31, 2014.
- The appellant re-enrolled in an insurance program on September 1, 2013 for a monthly premium of \$637.03 with no APTC's. She did not partake in any medical appointments in the month of August due to re-enrollment issues.
- The appellant likely received \$3770.27 in APTCs from January through July 2014.
- She may now be liable to repay this full amount to the IRS.
- It is the case that misinformation from the contact center played a key role in causing this problem.
- We have received one email from the priority team that seems to indicate that the appellant's underreporting of income was caused at least in part by "misinformation given by an HSRI rep."
- The appellant understands they received a benefit out of the high APTC award because the appellant's coverage was made much more affordable for those seven months.
- But, if misinformation from the contact center put them in a worse position in any way, for example by inducing them to buy a more expensive plan, then they would like to explore any options available for making them whole.

**The appellant and her husband testified:**

- We were asked to come into Health Source Rhode Island in July, and verify our income and that's when it (the APTC issue) was noted.
- We welcome and appreciate your (the Agency) understanding and willingness to help.
- Regarding the letter sent by Sam (the representative), and his reference to reconciliation-is that if you owe the federal government monies at the end of the year, and it's excessive, they can charge you penalties, and late fees, and all of that, and we are concerned.

- We went to the IRS immediately, and at the time they assured us there was no protocol, and not even the IRS knew how they were going to handle this.
- They just announced recently what the protocol would be in terms of a form letter and if we took too much we would have to pay it back, and if we did not take enough, we would get a refund.
- We feel that if the federal government has some way of mitigating this, or erasing, or assuring us there would be no late fees that you folks (HSRI) would be willing to write us a letter.
- We brought our 2012 tax returns in October 2013 when we went to HSRI at the onset of Health Source, and we didn't yet have our 2013 taxes.
- The Agent told us to use taxable income on line 43 which was \$43,000.
- She asked us to estimate our income for 2014 and we estimated \$29,000.
- We thought it would mirror our 2013 taxes using the logic explained to us.
- She asked us how the income would be reduced that much next year. We told her that my wife (the appellant) would be on total disability and it's not taxable.
- Line 43 in 2014 was actually \$25,000 and we had estimated slightly higher (\$29,000).
- We always knew there could be no break in health insurance for his wife (the appellant) from the time her work medical dropped to the time she went on Health Source.
- His wife has medical issues.
- We went to HSRI because we figured that they have the superior knowledge in the process, and we could trust them to make out this right.
- If the person was trained and equipped she would have known immediately that you can't go from \$74,000 in 2012 to \$29,000. In 2013 -that impossible.
- We went from \$74,000 to \$58,000.
- In looking at my income tax, if they had looked only at line 16b they would have noted already that I had reached \$25,000, so a sharp eyed person would have known that was impossible.
- The fact that we did not do due diligence is further proof that we relied on her.

- To say we signed the document, therefore we're liable, or to say ignorance is no excuse is just shifting.
- She purported to be a trained representative, and she should have told us the right lines to use.
- Had we known we were eligible for \$100 or \$50 only, we would have shopped around, or we would have taken a Bronze plan, as we needed it for only 10 months.
- If we knew we were eligible for less APTC's we would have ratcheted down our visits to the doctors for 10 months, and then when Medicare kicked in, we could have ratcheted it back up.
- As it was, my wife cancelled appointments in August because we were not covered at the time.
- I understand that some of the Agents working for HSRI are farmed out, then that company should have a liability for these mistakes, and they should have consequences, and they should suffer just like I had to.
- This issue is not a matter between me and the federal government; it's a matter between me and whatever company was farmed out to-not just Health Source.
- We now know that we will receive a HSRI document indicating the dollar value of what they gave us, and there will be an IRS formula matching up what you were given to what your actual income was.
- So for example, if we had too much of a credit it may reduce our tax return, or we may now even owe; or if we were entitled to more money we could get a larger return.
- We agree that we don't know exactly what numbers the IRS will be using, and we agree that we are unaware what kind of hardship, penalties or late fees would be handled.
- We are in agreement that we don't know if there will be a foul and how they (IRS) are going to handle that.
- Even if HSRI wrote a letter saying they were at fault, the IRS is not going to consider this, they are going to consider that we were given a tax credit dollar for dollar, and you owe us this.

- We would be looking for some mitigating circumstance if the IRS would even accept this.
- Noah (HSRI representative) says he has no monies to turn this around, but there has to be a consequence, because one can't just say we made a mistake, because there's no logic in that.
- We agree that we were not told to pick a certain plan, but we picked the plan based on the misinformation we received from Health Source about which line to look at.
- We do not dispute that we knew that APTC's get reconciled at the end of the year, and either you owe or you get something back.
- We were aware that if we took too large a tax credit we would pay it, and if we took less we would get a larger return.

#### **FINDINGS OF FACT:**

- In mid July 2014, the appellant and her husband were contacted by HSRI and asked to come into the office to discuss verification of income. That July meeting informed the appellant of the miscalculations of their APTC's.
- The appellant appealed filed a timely appeal on July 25, 2014 both by means of a July 13 notice, and in response to the information disseminated at the meeting.
- A hearing was held on January 22, 2015.
- The record of hearing was held open until February 3, 2015 for additional evidence.
- No additional evidence was submitted prior to the close of hearing.

#### **CONCLUSION:**

**The issue to be decided is whether the appellant is responsible for any taxes she may owe due to an incorrect or overpayment of advanced premium tax credits (APTC's).**

Advanced premium tax credits (APTC's) are payments of the tax credits which are provided on an advance basis to an eligible individual enrolled in a Qualified Health plan

through the Rhode Island Health Benefits Exchange also known as Health Source Rhode Island (HSRI). Regulations specific to the RI Health Benefit Exchange (RIHBE) identify that an applicant eligible for a premium assistance amount may elect not to take the full monthly premium amount for which they are determined eligible. The amount of premium credit the applicant should have received over the course of the benefit year will be reconciled when the applicant files a tax return for that year.

There is no dispute that the appellant was given incorrect information from the Health Source Rhode Island (HSRI) representative in October 2013. There is no disagreement that the appellant used her taxable income rather than her adjusted gross income to determine her tax credits.

The appellant argues that she went into HSRI when they first became operational in October 2013. At that time, an open enrollment period was established to implement the federal Affordable Care Act (ACA) eligibility system developed to make determinations for all forms of affordable coverage. The appellant testifies, and evidence supports, that the representative used the wrong line on the appellant's taxes, line 43 (taxable income) rather than line 37 (adjusted gross income/AGI) when advising the appellant. The appellant argues that all her decisions moving forward were based on an income which was much lower than that which should have been used in the determination. The appellant then estimated the following year's income to be discrepantly lower than her actual adjusted gross income, based upon the initial logic presented by the HSRI agent. This lower income figure allowed the appellant a much larger APTC than she would have been eligible for had the correct figures been recommended.

Per testimony presented from the appellant's representative, the appellant then chose a more-expensive gold plan, which she "asserts that she would have been unlikely to enroll in ...if she had not received such a high APTC award." The appellant then chose to receive monthly tax credits of \$538.61 up front. Per policy the appellant may choose to offset the cost of premiums by taking credits up front, or may choose to receive, or "save" some of the credit towards a tax refund at the end of the year.

The appellant testified that in July the error was determined, and HSRI contacted the family. They met immediately with the Agency who informed them of the issue. An internal email in July from HSRI to HSRI indicated they became aware of the problem in July, took responsibility for the misinformation, and dis-enrolled the appellant from her current policy. The appellant indicated they had some additional issues in August but the Agency has since rectified those issues. The email acknowledged the issue, but then informed, "Since the subsidy is federal money, HSRI cannot reconcile the issue... It will happen when her taxes are filed next year or in the process of an appeal." The appellant and her husband went to the IRS offices in July and were told that there was not yet protocol to deal with the issue, and "not even the IRS knew how they were going to handle this."

The appellant argues that the upcoming reconciliation by the IRS will determine her eligibility for APTC's based on her higher income number-the AGI, and she will owe monies, and perhaps penalties, and fees resulting from the mistake made by HSRI.

The Agency agrees that the appellant was misled by the financial information given. He argues however, that during the application process there are several steps where the customer is told about the tax credits, and the resulting consequences of the possibility of owing the IRS at the end of the year. The appellant and her husband did not dispute that they were aware of the cautions that if you took too much, you might owe at the end of the year. Further exploration of the evidence revealed that the notices as well cautioned the buyer similarly. The Agency contends that HSRI creates a space for you to choose a tax credit, through the federal government. They do not tell you how to spend that money, and in fact, they do not "touch" or "house" any of the money themselves. They indicated that the appellant chose their own insurance policy and chose to take their credits up front.

The appellant relates that they "did not do due diligence" resulting from their trust of the expertise, and training of the HSRI agents. They asked that those representatives be held responsible. The Agency countered that the representatives were trained, that the breadth of knowledge for which they were responsible was great; and, in the event they had misinformed, they might possibly need additional training in certain areas. The appellant takes responsibility for choosing the coverage they chose, but testifies it was unlikely they would have chosen such an expensive plan if it was not offset by the high APTC's. The appellant further indicated they may have chosen a lesser plan with little or no APTC's. They point to the fact that they managed without coverage for the month of August due to the confusion following clarity of their APTC's. However, the appellant's husband also testified that due to his wife's ongoing medical needs, "he always knew he could have no break in health insurance" from the time her work medical dropped to the time she went onto Health Source.

Policy indicates that final calculation of the tax credits is conducted by the IRS. The appellant and her representative testify that they do not know what the repayment or any other IRS actions will be. The representative testified as well that the family is aware that they received a benefit out of the high APTC as their insurance was much more affordable due to the offsetting of the premium. Additionally, the benefits themselves-such as the extent of the coverage, the lower or nonexistent deductibles, the increase in services-all of which are attributed to the better plans-have now been utilized by the appellant for seven months.

In summary, the appellant attested to incorrect income on her insurance application as a result of misinformation from an HSRI representative. Although it would have been difficult for the appellant to have a working knowledge of the coverage at the time, because she signed up for the new ACA benefits during the initial implementation of the both the computer system, and the change in the law; she chose to rely on the advice of one source for her subsequent tax choices. The evidence and testimony supported that the appellant was cautioned by notice, by the HSRI representative, and by policy that if she claimed too much in credits, she could owe extra taxes at the end of the year. The notice cautioned a second time-"You may owe money to the State or Federal government in connection to the coverage provided during this period." The

overabundance of caution on the part of HSRI and the Feds suggests that the buyer should take **extra** caution with this decision due to the tax ramifications at the end of the year. The inference is that there are things that can go wrong, which necessitate consideration prior to purchase. The buyer in this case, testified that she deferred completely to the recently hired HSRI representative suggesting she (the appellant) did not do due diligence because she and her husband relied entirely on the agents' expertise. However, the appellant and her husband also acknowledged that the program was so new that the IRS themselves could not tell the appellant how they would be reconciling their new policy, as the protocol was not yet established.

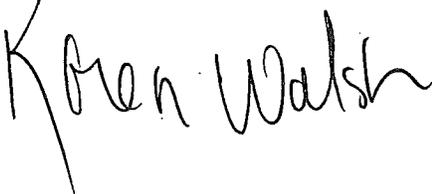
The appellant chose an expensive coverage plan, and chose to take her tax credits up front, thereby offsetting the price of the premiums. Had she chosen to pay her premiums in full, she would now owe no taxes to the IRS, and might be the recipient of a tax refund. Additionally, she had the benefit of a substantial coverage plan for seven months before determining that she had taken more tax credits than she should have been allowed. Although the appellant and her husband anticipate repayment penalties assessed by the IRS, they do not know if and by how much they may be penalized. They do not know if the IRS appeals process will result in considerations for first time users, and whether or not the IRS will allow mitigating explanations for the implementation of the new ACA system, and the ensuing issues inherent in a first time program. Additionally, the benefits of the "gold" coverage plan in comparison to what the appellant might have had are not quantifiable.

Regulations, notice instructions, and cautioning by the HSRI representative were clear in that advance payments chosen initially, which exceeded the tax credit actually owed, would be reconciled and owed to the federal government at the end of the year. Thus, regardless of the Agency's misinformation, the appellant was cautioned about her ongoing choices, and she still chose not to seek additional expertise, chose to take credits up front, and chose an expensive coverage plan. It was those choices which resulted in an overpayment of her APTC's. As a result, she should be held responsible for any taxes she may owe due to an incorrect and/or an overpayment of APTC's. Regulations define that the IRS will conduct this APTC reconciliation.

After a careful review of the Agency's regulations, as well as the evidence and testimony given, the Appeals Officer finds that the appellant's request for relief is denied.

**Please note that the final calculation of tax credits is conducted by the federal Internal Revenue Service through the reconciliation process, in accordance with section 36B(f) of the Internal Revenue code, and that decisions or interpretations of the EOHHS appeals office are not binding against the IRS during that process.**

Karen Walsh  
Appeals Officer



## APPENDIX

## **RULES AND REGULATIONS PERTAINING TO THE RHODE ISLAND HEALTH BENEFITS EXCHANGE**

### **SECTION 1.0 DEFINITIONS**

1.2 *“Advance Payments of the Premium Tax Credit” or “APTCs”* means payments of the tax credits specified in 26 USC section 36B which are provided on an advance basis to an eligible individual enrolled in a Qualified Health Plan through the Exchange.

### **SECTION 5.0 ADVANCED PAYMENTS OF THE PREMIUM TAX CREDIT**

5.1 **In General.** Section 1401 of the ACA creates new section 36B of the Internal Revenue Code (the Code), which provides for a premium tax credit for eligible individuals who enroll in a QHP through an Exchange. Section 1402 of the ACA establishes provisions aimed at reducing the cost-sharing obligations of certain eligible individuals enrolled in a QHP offered through an Exchange, including standards for determining Indians eligible for certain categories of cost-sharing reductions. The ACA and its implementing regulations, found in 45 C.F.R. §155.305, authorize the Exchange to determine qualified individuals' eligibility for Advance Payments of the Premium Tax Credits. In order to qualify for Advance Payments of Premium Tax Credits, an applicant must meet both the eligibility requirements to enroll in a Qualified Health Plan as described at §3.0 of these Regulations and the eligibility requirements for the advance payment of premium tax credits as described in this subpart. An applicant determined eligible for a premium assistance amount may elect not to take the full monthly premium assistance amount for which he or she is determined eligible. The amount of the premium tax credit the applicant should have received over the course of the benefit year will be reconciled when the applicant files a tax return for that year.

5.5 **Calculation of Advance Payments of the Premium Tax Credit.** The Exchange shall calculate any applicant's advance payment of the premium tax credit in accordance with the requirements of 26 C.F.R. §1.36B-3.

## **RIEOHHS MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

### **1307 “MAGI” Income Eligibility Determinations**

#### **1307.01. Scope and Purpose**

To implement the federal Affordable Care Act (ACA), Rhode Island took the option under the law to establish its own new web-based eligibility system with the capacity to determine whether an individual or family qualifies for affordable health care coverage paid for by Medicaid or in whole or in part by federal tax credits or other subsidies. The Executive Office of Health and Human Services (EOHHS), the Medicaid Single State Agency, and the recently established Rhode Island Health Benefits Exchange, known as HealthSourceRI (HSRI), are using this new

eligibility system to make determinations for all forms of affordable coverage available under the ACA, including Medicaid.

One of the principal goals of the ACA is to improve access to affordable coverage by simplifying and streamlining the application and eligibility determination process. Toward this end, the Act established a distinct income standard – Modified Adjusted Gross Income or MAGI – to determine eligibility for affordable coverage across payers (e.g., Medicaid, tax credits, state subsidies, employers) and populations (families, pregnant women, children, adults without children). Effective January 1, 2014, the MAGI standard will be used to determine eligibility for all new applicants for Medicaid coverage in the Medicaid Affordable Care Coverage (MACC) groups identified in section 1301 of the Medicaid Code of Administrative Rules (MCAR). The process for applying for Medicaid affordable coverage using the new eligibility system is located in MCAR section 1303.

The purpose of this rule is to: describe the MAGI and explain how it will be applied; and establish the role and responsibilities of the Medicaid agency and consumers when determining MAGI-related eligibility.

### **1307.02. Definitions**

**“Advance payments of the premium tax credit (APTC)”** means payment of the federal health insurance premium tax credit on an advance basis to an eligible person enrolled in a qualified health plan through a health insurance exchange.

**“Affordable Care Act (ACA)”** means the federal Patient Protection and Affordable Care Act of 2010. The law is also sometimes referred to as “Obamacare” and federal health reform.

**“APTC/CSR eligibility”** APTC/CSR eligibility means the application of the IRS-based measure of income known as “Modified Adjusted Gross Income” for determining eligibility for affordable health care through health insurance exchanges/marketplaces established under the ACA. Also, APTC means advanced premium tax credits and CSR means cost sharing reductions.

## NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

This hearing decision constitutes a final order pursuant to RI General Laws §42-35-12. An appellant may seek judicial review to the extent it is available by law. 45 CFR 155.520 grants appellants who disagree with the decision of a State Exchange appeals entity, the ability to appeal to the U.S. Department of Health And Human Services (HHS) appeals entity within thirty (30) days of the mailing date of this decision. The act of filing an appeal with HHS does not prevent or delay the enforcement of this final order.

You can file an appeal with HHS at <https://www.healthcare.gov/downloads/marketplace-appeal-request-form-a.pdf> or by calling 1-800-318-2596.