

[REDACTED]

APPELLANT

v.

MARYLAND HEALTH

BENEFIT EXCHANGE

\* BEFORE LORRAINE E. FRASER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No.: MHBE-[REDACTED]-01A-19-24886

\* \* \* \* \*

**DECISION**

STATEMENT OF THE CASE  
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**STATEMENT OF THE CASE**

On November 27, 2017, [REDACTED] (Appellant) applied to Maryland Health Connection to obtain health coverage through the Maryland Health Benefit Exchange (MHBE).<sup>1</sup> On November 27, 2017, Maryland Health Connection notified the Appellant that she was eligible to purchase through the MHBE a qualified health plan (QHP) with tax credits of \$2,953.00 per month. The Appellant enrolled in a [REDACTED] Gold \$1,000 provided by [REDACTED] PPO. Sometime in early 2018, the MHBE sent to the Appellant a Health Insurance Marketplace Statement Form 1095-A. Sometime thereafter, the Appellant filed her tax returns. On July 15, 2019, the Internal Revenue Service notified the Appellant that

<sup>1</sup> The MHBE is an independent State agency that makes initial and continuing eligibility determinations for insurance affordability programs. See Md. Code Ann., Ins. §§ 31-102, 31-108(b) (2017); Code of Maryland Regulations 10.09.24.02-1B(7). It administers Maryland Health Connection, the State-based health insurance marketplace.

she owed \$35,954.64 in taxes. On July 19, 2019, the Appellant requested a hearing<sup>2</sup> seeking an amended IRS 1095-A tax form.<sup>3</sup>

On September 12, 2019, I held a hearing at the [REDACTED] located in [REDACTED] Maryland. 45 C.F.R. § 155.505 (2018).<sup>4</sup> The Appellant represented herself. [REDACTED] Appeals Administrator, represented the MHBE.

Procedure in this case is governed by the Administrative Procedure Act, the MHBE's procedures for Fair Hearings of Individual Exchange Eligibility Determinations, the Rules of Procedure of the Office of Administrative Hearings (OAH), and the federal regulations for Appeals of Eligibility Determinations for Exchange Participation and Insurance Affordability Programs. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 14.35.01.01; COMAR 14.35.11; COMAR 28.02.01; 45 C.F.R. §§ 155.500 through 155.555 (2018).

### ISSUE

Did the MHBE correctly report the amount of advance premium tax credit that the Appellant received in connection with a QHP she enrolled in for 2018?

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<sup>2</sup> A request for fair hearing is to be made within ninety days of the notice of the agency's action and the right to appeal that action. Code of Maryland Regulations 14.35.11.05D. The MHBE did not challenge the timeliness of the appeal in this case. Regulatory timing requirements for filing an administrative appeal are in the nature of a statute of limitations. *Kim v. Comptroller*, 350 Md. 527, 535-36 (1998). Accordingly, failure to abide by the timing requirement may be waived. *Id.*, see also *State v. Sharafeldin*, 382 Md. 129, 141-43 (2004). Here, the MHBE did not object to the timeliness of the appeal and proceeded on the merits; thus, the untimeliness of the appeal was waived.

<sup>3</sup> The 1095-A tax form is furnished by health insurance marketplaces to individuals to take a premium tax credit or reconcile the credits on their return with the advance payments of the premium tax credit. See Internal Revenue Service (IRS), *About Form 1095-A, Health Insurance Marketplace Statement* (2018) < <https://www.irs.gov/forms-pubs/about-form-1095-a>>.

<sup>4</sup> C.F.R. is an abbreviation for Code of Federal Regulations.

## SUMMARY OF THE EVIDENCE

### Exhibits

The MHBE offered the following exhibit, which I admitted into evidence:

MHBE 1 Summary for Appeal Hearing, dated 9/5/19, with the following attachments:

- Application, 11/27/17
- Eligibility Notice, 11/27/17
- Special Enrollment Qualification Notice, 11/27/17
- Successful Enrollment Notice, 11/27/17
- Call center notes, 11/27/17-7/18/19
- 45 C.F.R. §§ 155.300 and 155.305

The Appellant offered the following exhibits, which I admitted into evidence:

App. 1 Check to [REDACTED] from [REDACTED] for \$12,500.00, 10/4/18

App. 2 Premium Tax Credit Form 8962 for 2018

App. 3 Payment Voucher Form 1040-V for \$4,806.00, 4/10/19

### Testimony

Ms. [REDACTED] testified on behalf of the MHBE.

The Appellant testified on her own behalf.

## FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On November 27, 2017, the Appellant applied for health coverage through the MHBE for herself and her husband.
2. On her application, the Appellant stated that her household's total income for 2018 was projected to be \$60,864.00.
3. Based on her application, Maryland Health Connection notified the Appellant that she was eligible to purchase a QHP and receive advance premium tax credits of \$2,953.00 per month to be applied toward her monthly premium.

4. The Appellant enrolled in the QHP for January 1, 2018 through December 31, 2018.

5. The Appellant received advance premium tax credits of \$2,953.00 per month which were applied toward her monthly premium for the QHP.

6. In 2018, the Appellant received premium tax credits in the total amount of \$35,436.00 ( $\$2,953.00 \times 12 = \$35,436.00$ ).

7. On October 4, 2018, the Appellant received a \$12,500.00 commission on the sale of real estate. The Appellant did not anticipate receiving the commission and did not include it in her projected income for 2018 on her application. The Appellant also did not report this change in income to the MHBE when she received it.

8. The Appellant's household's modified adjusted gross income for 2018 was \$68,994.00.

9. The Federal Poverty Level (FPL) for a household of two in 2018 was \$16,460.00.<sup>5</sup>

10. The Appellant was ineligible to receive premium tax credits in 2018 because her income was 400% or greater of the FPL ( $\$16,460.00 \times 400\% = \$65,840.00$  or  $\$16,240.00 \times 400\% = \$64,960.00$ ).<sup>6</sup>

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<sup>5</sup> <https://aspe.hhs.gov/2018-poverty-guidelines>. The IRS instructions for completing Form 8962 say to use \$16,240.00. <https://www.irs.gov/pub/irs-pdf/i8962.pdf>. I do not know why there is a discrepancy between the figures.

<sup>6</sup> I have used both federal poverty figures here for completeness. I do not need to resolve the discrepancy for the purposes of this decision.

## DISCUSSION

### Relevant Law

In accordance with the Patient Protection and Affordable Care Act,<sup>7</sup> Maryland created the MHBE as an independent unit of State government. Md. Code Ann., Ins. § 31-102 (2017).<sup>8</sup> The MHBE's purpose is, in part, to assist individuals in accessing public programs, including the Maryland Medical Assistance Program, the Maryland Children's Health Program, and QHPs offered through the MHBE by private carriers, as well as premium tax credits and cost-sharing reductions. *Id.* §§ 31-102(c), 31-108(b), 31-110. MHBE does not itself provide insurance coverage or financial subsidies; it processes the information provided by an applicant and reports the outcome as dictated by federal law. *See generally*, 45 C.F.R. § 155.200 (2018); Md. Code Ann., Ins. § 31-108.

The premium tax credit is a mechanism designed to make insurance purchased through the MHBE more affordable to eligible individuals. The premium tax credit can be paid on an estimated, advance basis to the insurance company, or it can be paid retrospectively to the individual in connection with the annual income tax return. If an eligible individual receives an advance payment of the premium tax credit, the amount paid in advance and the amount actually available must be reconciled in the annual income tax filing at the end of that year. *See* 45 C.F.R. § 155.20 (2018) (defining "advance payments of the premium tax credit"); COMAR 14.35.01.02(2) (same); *see also* 26 C.F.R. §§ 1.36B-1 (generally), 1.36B-4 (reconciling premium tax credit with advance credit payments), 1.36B-5 (information reporting by state exchanges) (2019).

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<sup>7</sup> The Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, *amended by* the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, *amended by* the Three Percent Withholding Repeal and Job Creation Act, Pub. L. No. 112-56, 125 Stat. 771 (2011) (codified as amended in scattered sections of Titles 26 and 42 of the United States Code Annotated (U.S.C.A.)).

<sup>8</sup> All citations to the Insurance article of the Annotated Code of Maryland are to the 2017 version.

Eligibility for advance payment of the premium tax credit is provided for as follows:

(f) Eligibility for advance payments of the premium tax credit

(1) In general. The Exchange must determine a tax filer eligible for advance payments of the premium tax credit if the Exchange determines that—

(i) He or she is expected to have a household income, as defined in 26 CFR 1.36B-1(e), of greater than or equal to 100 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested; and

(ii) One or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the tax filer and his or her spouse—

(A) Meets the requirements for eligibility for enrollment in a QHP through the Exchange, as specified in paragraph (a) of this section; and

(B) Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 26 CFR 1.36B-2(a)(2) and (c).

. . . .

(5) Calculation of advance payments of the premium tax credit. The Exchange must calculate advance payments of the premium tax credit in accordance with 26 CFR 1.36B-3.

45 C.F.R. § 155.305(f) (2018).

Advance payments of the premium tax credit are calculated as follows:

**(d)(1)** Premium assistance amount. The premium assistance amount for a coverage month is the lesser of—

(i) The premiums for the month, reduced by any amounts that were refunded, for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

(ii) The excess of the adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) over  $\frac{1}{12}$  of the product of a taxpayer's household income and the applicable percentage for the taxable year (the taxpayer's contribution amount).

26 C.F.R. § 1.36B-3 (2019).

Advance payments of the premium tax credit must be reconciled on the taxpayer's income tax return as follows:

**(a) Reconciliation—(1) Coordination of premium tax credit with advance credit payments—(i) In general.** A taxpayer must reconcile the amount of credit allowed under section 36B with advance credit payments on the taxpayer's

income tax return for a taxable year. A taxpayer whose premium tax credit for the taxable year exceeds the taxpayer's advance credit payments may receive the excess as an income tax refund. A taxpayer whose advance credit payments for the taxable year exceed the taxpayer's premium tax credit owes the excess as an additional income tax liability.

26 C.F.R. § 1.36B-4 (2019).

An exchange, such as the MHBE, must report to the IRS and the tax payer the amount of advance premium tax credits paid, among other information. 26 C.F.R. § 1.36B-5 (2019).

The IRS explains the calculation of advance payments of the premium tax credit as follows:

**20. How is the amount of the premium tax credit computed?**

The amount of the premium tax credit is generally equal to the premium for the second lowest cost silver plan available through the Marketplace that applies to the members of your coverage family, minus a certain percentage of your household income. However, the credit cannot be more than the premiums for the Marketplace plan or plans in which you or your family enroll (called your enrollment premiums). Your coverage family consists of the members of your family who are enrolled in coverage through the Marketplace and ineligible for non-Marketplace coverage such as Medicare, Medicaid or affordable employer-sponsored coverage. (See question 6 for information on who is in your family.)

<https://www.irs.gov/affordable-care-act/individuals-and-families/questions-and-answers-on-the-premium-tax-credit>.

The IRS explains the tax credit is refundable:

The credit is “refundable” because, if the amount of the credit is more than the amount of your tax liability, you will receive the difference as a refund. If you owe no tax, you can get the full amount of the credit as a refund. However, if advance credit payments were made to your insurance company and your actual allowable credit on your return is less than your advance credit payments, the difference, subject to certain repayment caps, will be subtracted from your refund or added to your balance due.

*Id.* at question 1.

The IRS explains further that the marketplace through which coverage was obtained sends the tax filer a Health Insurance Marketplace Statement Form 1095-A that shows the advance premium tax credits paid on their behalf. *Id.* at question 25. The tax filer then completes a Premium Tax Credit Form 8962 to reconcile the advance credit payments. If the allowable credit on the tax filer's return is less than the tax credits paid, the difference is subtracted from any refund due or added to any balance due. *Id.* at question 26. Repayments are capped for tax filers whose income is less than 400% of the Federal Poverty Level. *Id.* at question 27. If a tax filer's income is 400% of the Federal Poverty Level or greater, that filer must repay the full amount of the tax credits received. *Id.*

As the moving party, the Appellant has the burden to prove by a preponderance of the evidence that the MHBE incorrectly reported the amount of advance premium tax credit that the Appellant received in 2018. Md. Code Ann., State Gov't § 10-217 (2014); *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

### **The Parties' Positions**

The MHBE asserted that it correctly reported the amount the Appellant received, \$35,436.00, in advance premium tax credits on the Form 1095-A. The MHBE explained that the Appellant could choose whether to receive all or a portion of the tax credits on a monthly basis or she could have waited to receive them after she filed her 2018 taxes. The MHBE explained that if the Appellant had promptly reported the \$12,500.00 commission she received in October 2018, the November and December tax credits would have been removed and reduced the total amount now owed.

The Appellant testified that she did not anticipate receiving the \$12,500.00 commission, which is why she did not include it in her projected income for 2018. She stated her estimated income was only \$8,000.00 less than what she actually received in 2018. She said her adjusted

gross income of \$68,994.00 is 401% of the Federal Poverty Level. She explained that she has been dealing with serious health issues in her family that caused her and her husband to move to [REDACTED] in October 2018. She said she thought there might be an adjustment to her taxes but that she cannot believe that she owes \$35,436.00. She asserted that this result cannot have been the intent of the law. She agreed she received the \$2,953.00 per month tax credit.

### Analysis

The evidence is undisputed that the Appellant received \$35,436.00 in advance premium tax credits. Thus, I find the MHBE correctly reported the \$35,436.00 amount on the Appellant's Health Insurance Marketplace Statement Form 1095-A. The MHBE cannot change the Form 1095-A to identify an amount other than what the Appellant actually received.

The Appellant's real complaint is with the federal tax law and the unforeseen tax consequences of her receiving a \$12,500.00 commission that caused her adjusted gross income to exceed 400% of the Federal Poverty Level. I sympathize with the Appellant. The Appellant has understandably been focused on the health of her family members and moving to [REDACTED]. These are stressful concerns for anyone. Even if the Appellant were not focused on such serious matters, she may not have anticipated the tax consequences of receiving the \$12,500.00 commission. When the Appellant applied for a QHP her projected income for 2018 was less than 400% of the Federal Poverty Level. However, once the Appellant filed her 2018 tax returns her actual income was greater than 400% of the Federal Poverty Level. If the Appellant's income on her tax return had remained less than 400% of the Federal Poverty Level, the amount the Appellant would have had to repay the IRS would have been capped. Unfortunately, the Appellant's 2018 income was greater than 400% of the Federal Poverty Level. Thus, the IRS has notified the Appellant that she must repay the full amount of any tax credits received.

My authority in this case is limited to the review of the actions of the MHBE. I have no jurisdiction over the IRS or federal tax law. The MHBE correctly reported the amount of advance premium tax credit the Appellant received. Therefore, the Appellant's request that the MHBE change the reported amount is without merit.

### **CONCLUSION OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the MHBE correctly reported the amount of advance premium tax credit that the Appellant received in connection with a QHP she enrolled in for 2018. 45 C.F.R. § 155.305(f) (2018); 26 C.F.R. §§ 1.36B-4, 1.36B-5 (2019).

### **ORDER**

I **ORDER** that the Maryland Health Benefit Exchange's determination that the Appellant received \$35,436.00 in advance premium tax credit in 2018 is **AFFIRMED**.

Signature Appears on Original

October 8, 2019  
Date Decision Issued

Lorraine E. Fraser  
Administrative Law Judge

LEF/kdp  
#182301

### **REVIEW RIGHTS**

This is the final decision of the Maryland Health Benefit Exchange. A party aggrieved by this final decision may, within thirty (30) days of the date of this decision, file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222 (Supp. 2018); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. If you do not wish to file a petition for judicial review with the circuit court, you may choose to file an appeal request with the United States Department of Health and Human Services within thirty (30) days of the date of this decision, at Health Insurance Marketplace, 465 Industrial Boulevard, London, KY 40750-0061. 45 C.F.R. § 155.520(c) (2018). The Office of Administrative Hearings is not a party to any review process.

Copies Mailed to:

[REDACTED]

[REDACTED]

[REDACTED]