COVERED CALIFORNIA
DEPARTMENT OF HEALTH CARE SERVICES

Hearing No. ACA-[redacted]042

In the Matter of Claimant(s)/Appellant(s):

[redacted]

PROPOSED DECISION

Adopted by the Director
August 17, 2015
Covered California
Department of Health Care Services

I submit the attached proposed decision for review and recommend its adoption.

Edward Barnes

Edward Barnes
Administrative Law Judge

Cert Date: August 17, 2015

State Hearing Record

Hearing Date:	August 13, 2015	*Release Date:*	September 16, 2015
Aid Pending:	Not applicable	*Issue Codes:*	[1510-3]
Agency:	Covered California	*Agency Representative:*	Fernando Valencia-Huarte
Agency:		*Agency Representative:*	
Authorized Rep. Organization:		*Authorized Rep:*	
SSN:		*SSN:*	
AKA:		*AKA:*	
Case Name:		*Language:*	
LA District/Case:		*Other Claimant(s):*	

Appeal Rights

You may ask for a rehearing of this decision with regard to California Medical Assistance (Medi-Cal) by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-97, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may request an appeal from this decision regarding Covered California, including Qualified Health Plans, Advanced Payments of Premium Tax Credit and/or Cost Sharing Reductions by making a written request to US Department of Health and Human Services (HHS), within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing or an appeal to HHS. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

Covered California shall give the appellant an option to cancel as never effective the 2014 enrollment of the appellant and his spouse in a Qualified Health Plan (QHP). [1510-3]

FACTS

On June 18, 2015, the appellant requested this hearing. He stated that Covered California misled him concerning his subsidy credit for 2014, resulting in the appellant owing taxes on his subsidy. He requested a recalculation of the Advance Payment of Premium Tax Credit (APTC) that he received for 2014.

On August 13, 2015, the appellant and a representative from Covered California appeared telephonically at the hearing on this matter. The issue was determined to be the remedy available to the appellant, if any, for a possible overpayment of APTC for health care coverage for 2014.

At the hearing, in a Statement of Position, and by testimony, the representative from Covered California stated that on November 26, 2013, the appellant submitted an on-line application for health care coverage through Covered California for himself and his spouse. Effective January 1, 2014, based on the appellant's report of annual income of $28,830, the appellant was enrolled in an Anthem 87 PPO QHP with a gross premium of $1,262.28 a month, $1114 in APTC, and a resulting net premium of $148.28. However, appellant's report of income was incorrect, and he was not entitled to any APTC. Covered California could not comply with the appellant's request to re-determine eligibility for APTC, because its determination was based on the income provided by the appellant.

At the hearing, in a Statement of Position, and by testimony, the appellant stated that in October 2013, his private health insurance carrier informed him that, due to implementation of the Affordable Care Act, his then current policy would be terminated. On October 15, 2013, the appellant spoke by telephone to Mark, a representative of Covered California. They discussed various plan options available through the exchange. Mark told the appellant that, for income purposes, the appellant should use his 1040 Federal Tax return line 37, adjusted gross income, as the basis for subsidy consideration. The appellant then applied for an Anthem Blue Cross Silver 87 PPO QHP.

On or about December 7, 2013, Covered California requested additional proof of income. On December 10, 2013, the appellant faxed the requested information, which included his jointly filed 2012 Federal Tax return, and verification that the appellant had retired and had started to receive Social Security payments. Thereafter, effective January 1, 2014, the appellant and his spouse were approved for an Anthem Blue Cross PPO QHP with APTC. The appellant made all of the net premium payments for 2014.

On April 7, 2015, the appellant's tax accountant informed him that he was liable for all of the premium assistance he received in 2014. The Internal Revenue Service used "Modified Adjusted Gross Income," which includes tax-exempt income, to compute premium assistance, not line 37 "adjusted gross income." The appellant thereupon telephoned to Leslie, a representative at Covered California. She looked at his financial documents for his coverage for 2014, and also for 2015, for which he had also been approved for APTC. She told the appellant that Covered California used line 37 for income verification. She said it didn't make sense that he would be taxed on a Covered California benefit. She concluded by telling the appellant he had an IRS issue, and gave him a toll-free number to call them.

On June 10, 2015, the appellant received a notice from the IRS requiring him to make a payment of $13,320.43 due to receipt of excess premium assistance during 2014. That day, the appellant telephoned the IRS and spoke to a Mr. Reed in the tax law department. Mr. Reed stated that the "Modified Adjusted Gross Income" was new, and that there was still some confusion concerning its application. However, unless the appellant paid the $13,320.43, interest and penalties would accrue. There was no moratorium. On June 18, 2015, the appellant made the payment.

The appellant submitted into evidence his 1040 tax return for 2012, which he testified he gave to Covered California when he applied for coverage in late 2013, as well as his 1040 for his 2013 taxes, which he testified he gave to Covered California is late 2014. Line 8(a) of the 2012 return disclosed $15,254 in tax-exempt interest. Line 8(a) of the 2013 return disclosed $43,361 in tax-exempt interest; line 20 disclosed $2,835 tax-exempt social security. In accordance with the requirements of the form 1040, none of these amounts were included on line 37.

The appellant also submitted into evidence his form 8962 (Premium Tax Credit) for his 2014 tax return. It showed that the appellant had a Modified Adjusted Gross Income of $71,584 for a household of two. The appellant testified that that amount was calculated as follows:

$26,781	Adjusted Gross Income (form 1040, line 37)
$41,482	Tax-exempt interest from municipal bonds (form 1040, line 8b)
+ $ 3,321	Untaxed Social Security (form 1040, line 20a minus line 20b)
$71,584	Modified Adjusted Gross Income (form 8962, line 2a)

Calculations on form 8962 determined that $71,584 was 462% of poverty, which determined that the appellant owed back all of the $13,368 in APTC he received in 2014.

The appellant testified that, if he had known he was not eligible for a premium tax credit when he enrolled for 2014, he would not have accepted the insurance through Covered California, because without the credit the premium for the insurance was $1,262 a month, which was too costly. He would have been able to obtain cheaper coverage elsewhere, he testified, because the policy that was terminating in 2013 was significantly less expensive. He relied on the statements of the representatives from Covered California that he should use line 37, adjusted gross income, in reporting his income for 2014. He did not realize at the time he accepted the insurance that premium assistance was based, not on adjusted gross income, but on Modified Adjusted Gross Income.

The appellant requested that Covered California pay his $13,230.43 tax obligation. In the alternative, he requested an order stating that he had complied with the Notice and Claim requirements of Government Code Section 910 et seq., and that he was free to pursue a further judicial determination in a court of competent jurisdiction.

Upon being asked, the representative from Covered California declined to terminate coverage for 2014 as never effective. The appellant was also uncertain whether he wanted termination. Although his spouse did not access coverage during 2014, he did use the coverage and accessed services perhaps four or five times during 2014. He was concerned about the possibility that, if coverage were terminated, he would be liable out-of-pocket to the QHP for the services he used. He was also concerned about incurring a tax penalty for not having coverage during 2014.

Furthermore, it is found that, at the time Covered California approved the appellant's application for coverage for 2014, it also knew that the appellant's Modified Adjusted Gross Income was going to be significantly higher than his adjusted gross income. It knew, as a result of the 2012 tax return that the appellant submitted, that the appellant had tax-free income. It knew, as a result of the verification that the appellant submitted, that he had income from Social Security. Part or all of these sources of income are added to adjusted gross income when calculating the Modified Adjusted Gross Income on which APTC is based. (10 CCR § 6410) Thus, Covered California knew or should have known that APTC based on adjusted gross income was going to be incorrect.

Thus, Covered California, the party to be estopped, was apprised of the true facts.

2) The party must intend that its conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended.

Based on the appellant's testimony, it is found that Covered California advised him several times that his assistance was based on his line 37 adjusted gross income. It officially approved him for premium assistance in the amount of $1114, resulting in a net premium of $148.28. The appellant had a right to believe that Covered California intended that its conduct was to be relied upon.

(3) The other party must be ignorant of the true state of facts.

It is found that the appellant was ignorant of the true state of facts. He did not know that his APTC eligibility would be based on Modified Adjusted Gross Income, not adjusted gross income. His testimony to that effect was credible, in part because he was twice told by Covered California representatives that eligibility is based on line 37 adjusted gross income. He credibly testified that it was only when his accountant advised him otherwise in April of 2015 that he learned the truth, and learned that he was ineligible for APTC.

(4) The other party must rely on the conduct to his injury.

It is found that the appellant relied on the conduct of Covered California. He accepted health care coverage based on the information he received concerning its cost. He credibly testified that, if he had known the true cost, he would have sought other coverage. It is found that he has been injured, in that he now owes taxes he did not anticipate, and has incurred costs for medical coverage that he would not have otherwise accepted.

In addition to meeting the four required elements, it is found that justice and right require the application of estoppel in this case. The appellant was without fault in creating the error that occurred; the error was caused by misinformation on the part of Covered California representatives. Providing relief to the appellant is consistent with the public policy behind the Affordable Care Act, which includes providing consumers accurate information so that they can make informed choices concerning health care coverage.

This tribunal does not have jurisdiction to require Covered California to pay the appellant's taxes, or otherwise award damages. It does not have the authority to issue an order concerning Government Code Section 910. However, it does have jurisdiction over eligibility determinations of Covered California, including retroactive terminations of coverage, at the option of an appellant. (10 CCR §§ 6602, 6618.)

In this case, the appellant should have been given accurate information on the net cost of health care enrollment so that he could have made an informed health coverage decision. Equity requires that he be allowed to make that decision now. By operation of equitable estoppel, Covered California is barred from contesting the appellant's election, if he should so choose, to decline 2014 health care enrollment for himself and his spouse, and to have 2014 coverage terminated as never effective.

In making a decision on whether to exercise this election, the appellant may wish to consider the extent to which terminating his family's health care coverage might result in a tax penalty for having no coverage for 2014. He may also wish to consider the extent to which he would have to pay out of pocket for the health care services he received in 2014. The appellant would have to raise directly with the health care provider the issue of credit for net premiums he paid to the provider in 2014, as this tribunal has no jurisdiction over billing disputes between consumers and health plans. After exercising this election, the appellant can request an amended form 1095-A, Health Insurance Market Place Statement, using it to file an amended 2014 income tax return. The request for the 1095-A form must be made directly to Covered California, as this tribunal does not have jurisdiction over its issuance.

To give the appellant time to review these considerations, he shall have a window of 60 days from the date of the release of this decision to decide whether to exercise his option to terminate coverage for himself and his spouse.

ORDER

The claim is granted in part, and denied in part.

At the election of the appellant, Covered California shall terminate as never effective the health care coverage of the appellant and his spouse for calendar year 2014. The appellant must exercise this election within 60 days of release of this decision. If the appellant exercises this election, Covered California shall send notice of its action to both the appellant and the QHP.

In all other respects, the claim is denied.