

[ Relevant Portions of Position Statement I submitted for Appeal  
hearing of August 13, 2015 ]

In November, I applied to renew our health insurance coverage through Covered CA and chose the Kaiser Permanente Silver 87 HMO plan. On or about December 5, 2014, I received a Covered CA letter, dated November 25, 2014, indicating on page 1 thereof, that I "also qualify for up to \$1,201 per month in premium assistance." We, once again, were required to submit financial information to be approved for a federal subsidy. A copy of this letter is attached as Exhibit 7.

On December 10, 2014, I faxed the requested financial information to Covered CA. My cover letter, dated December 8, 2014, explains the enclosures and our financial status. A copy of that "faxed" package is attached as Exhibit 8.

Covered CA then approved federal Premium Assistance for our 2015 Kaiser Permanente Silver 87 HMO policy with a monthly premium of \$145.38 and a monthly credit of \$1,201.00.

The instant issue and dispute did not become apparent until April 7, 2015 - as I was finalizing my 2014 1040 Tax Return with our accountant.

Discovery of Misrepresentations

On April 7, 2015, my accountant informed me that I was responsible to repay **substantially** all of my federally subsidized Premium Assistance credits for 2014-due to incorporation of a new line 46 on the 2014 Form 1040 Tax Return (which ostensibly reconciles new Forms 1095A and 8962). Apparently, the IRS utilizes a "Modified Adjustable Gross Income" figure, which includes tax exempt income, as the basis for federal Premium Assistance - **not the line 37, AGI number apparently used by Covered California.**

I immediately called Covered CA to reconfirm that indeed it had received, reviewed and approved our financial documents with respect to both 2014 and 2015 subsidized coverages. A Covered CA agent, Leslie 1/, reviewed my account and confirmed the following: "we [Covered CA] received both financial packages," "you should qualify," "we [Covered CA] look at Line 37 for income verification "and you [me] need to call the IRS on your problem." She further explained that "It doesn't make sense that since we accepted you, you would be taxed...this is an IRS issue." Leslie then gave me an IRS Free Tax Advise number of (800) 906-9887.

On April 7, 2015, at approximately 12:50 p.m., I called the suggested IRS number and was ultimately redirected to Tax Department Specialist, Ms. Clemens (ID# 1002963067). 2/ Ms. Clemens clearly understood my problem but "did not understand why you[i] would be taxed on an approved subsidy." She then went through an IRS Questionnaire with me for 10 minutes-ostensibly to determine if any changes in my financial situation could have prompted the excess tax credit liability. Based upon my responses to the Questionnaire, she could not determine why I was liable for the \$13,230.43 tax bill.

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1/ The comments that are in quotes (" ") within this Paragraph are relevant excerpts from contemporaneously written notes taken by me at the time of this Leslie conversation on April 7, 2015.

2/ The comments that are in quotes (" ") within this Paragraph are relevant excerpts from contemporaneously written notes taken by me at the time of this Clemens conversation on April 7, 2015.

I suggested to Ms. Clemens that the problem may be that Covered CA and the IRS use different income figures in determining whether I qualified for federally subsidized Premium Assistance. Ms. Clemens reviewed the applicable IRS regulations, Code sections and Worksheets for Forms 1095A and 8962 with me on the phone in an effort to define and/or determine if I qualified for the Premium Assistance based upon the IRS "Modified Adjusted Gross Income" standard for federal subsidies. By the end of our 1 hour 5 minute conversation/research session (call ended at 2:01 p.m. on April 7, 2015), I was confident that Covered CA did not use the IRS required Modified Adjusted Gross Income figure for my 2014 and 2015 coverages.

On June 10, 2015, I received a Notice from the IRS, requiring the payment of \$13,230.43 for Excess Advance Payment of the Premium Tax Credit for 2014. See attached 2014 Forms 1095A and 8962, marked collectively as Exhibit 9.

Later that afternoon, at 1:45 p.m., I spoke to Mr. Reed (ID# 1000704877) at the IRS Tax Law Department. He indicated that the Modified Adjusted Gross Income definition was new to the ACA and there still is some confusion regarding its application. He concluded that unless I paid the \$13,230.43 obligation, interest and penalties would continue to accrue and that there is no moratorium exception available to me.

On June 10, 2015, at 2:30 p.m., I spoke with Jamie Placencia at the California State Hearings Division ACA Bureau Customer Service regarding my efforts with the IRS. She suggested that I file the instant Appeal in order to seek a resolution to my problem.

On or about June 18, 2015, the current Appeal was filed on my behalf.

On June 18, 2015, I paid the above-referenced \$13,230.43 to the IRS. See attached Exhibit 10.

#### Argument

The facts are simple. My wife and I were forced to abandon our previous health insurance with Anthem Blue Cross (at the end of 2013) due to implementation of the ACA. At the time our monthly insurance premiums were approximately \$775.00. I was wrongfully induced into accepting subsidized policy coverage through Covered CA. If we had not been wrongfully approved, twice, for Premium Assistance, we would not have accepted health insurance coverage at a monthly premium of \$1,262.28 for 2014 (Anthem Blue Cross Silver 87 PPO) nor \$1,351.12 for 2015 (Kaiser Permanente Silver 87 HMO).

After an incredible amount of time, effort and conversations with Covered CA and IRS personnel, it is patently clear that Covered CA **did not** follow IRS requirements in approving my coverage subsidies. Any and all income figures necessary to determine my qualifications were contained in the 1040 Tax Returns furnished to Covered CA. Whether Covered CA personnel did not look at the correct income figures thereon or were told to only consider AGI, it is currently unclear. What is clear is that Covered CA engaged in at least unfair, deceptive, untrue and misleading actions relating to my "subsidized" health insurance coverage. California Business and Professions Code, Sections 17200 et. seq. My Alleged federal Premium Assistance subsidy for 2014 was not a subsidy at all. It was a belated invitation to a 2014 federal tax obligation of \$13,230.43 and a retroactive monthly policy premium adjustment to \$1,262.28.

If in fact Covered CA personnel knew that my AGI figures were not going to be accepted by the IRS, there are violations of California Business and Professions Code, Section 17500 et. seq. as well. These statutes relate to inducing the public to enter into agreements through representations which are "untrue or misleading and which is known, or which by the exercise of reasonable care should be known..."(CB & P Code, Section 17500). Reasonable care would undoubtedly include review of 1040 Tax Returns for any Modified Adjusted Gross Income figures which would prohibit Premium Assistance subsidies.

#### Conclusion

Clearly, in the haste to implement the ACA, there was a major disconnect between Covered CA and the IRS. Proper policies, procedures and/or training on federally subsidized qualifications either do not exist or were ignored in my case.

Based upon the foregoing and the attached Exhibits, incorporated herein by reference, my wife and I seek an Order requiring Covered CA to pay for my \$13,230.43 tax obligation for 2014 and the corresponding "excess tax credit" liability I will undoubtedly have for the 2015 tax year.

In the alternative, I seek an Order stating that we have complied with the Notice and Claim requirements under California Government Code Section 910 et. seq. and are free to pursue a further judicial determination in a court of competent jurisdiction.

Respectfully submitted, this 4<sup>th</sup> day of August, 2015 at Moorpark, California,



Michael S. Polk