

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JACQUELINE HALBIG, et al.,**

Plaintiffs,

v.

**KATHLEEN SEBELIUS, in her official capacity  
as U.S. Secretary of Health and Human Services,  
et al.,**

Defendants.

Case No. 1:13-cv-00623-PLF

**THIRD DECLARATION OF DONALD B. MOULDS**

I, Donald B. Moulds, declare as follows:

1. I am the Acting Assistant Secretary for Planning and Evaluation at the U.S. Department of Health and Human Services (HHS). I have held this position since August 2012. In this position, I am responsible for major activities in policy coordination, legislation development, strategic planning, policy research, evaluation, and economic analysis, including analysis of health insurance marketplace premiums. The statements made in this declaration are based on my personal knowledge, information contained in agency files, and information furnished to me in the course of my official duties. I have previously submitted two declarations in this matter.

2. I understand that, according to the August 5, 2013 declaration filed by plaintiff David Klemencic in the above-captioned matter, Mr. Klemencic resides in Cairo, West Virginia (zip code 26337), will be 54 years on January 1, 2014, is not married, and has no dependents. See August 5, 2013 Klemencic Decl., No. 24-1. I also understand from this declaration that Mr. Klemencic projects his modified gross income for 2014 to be \$20,000. See *id.*

3. On September 27, 2013, I submitted a declaration in the above-captioned matter. *See* Moulds Decl., ECF 38-1. That declaration relied on data, current as of September 18, 2013, regarding health insurance marketplace premiums for 2014 of qualified health plans (QHPs or plans) in the 36 states in which HHS will operate the health insurance exchange in 2014 (in some cases, with support from the state). *Id.* These premium data were published in a publicly available databook, which has not been revised since September 18, 2013. *See* [http://aspe.hhs.gov/health/reports/2013/MarketplacePremiums/datasheet\\_home.cfm](http://aspe.hhs.gov/health/reports/2013/MarketplacePremiums/datasheet_home.cfm). As noted in this databook and in my September 27, 2013 declaration, those premium data were “still under review” and remained subject to revision. *See id.*; Moulds Decl. ¶ 2. Using that tentative premium data and using the facts as set forth in paragraph 2 above, I reported that Mr. Klemencic would pay – before the application of premium tax credits – a monthly premium of \$371.28 for the lowest-cost bronze qualified health plan (QHP). *See* Moulds Decl. ¶ 4. I also reported, using the premium data available at that time, that the second-lowest-cost silver QHP would cost Mr. Klemencic \$438.44 per month, which, pursuant to 26 U.S.C. § 36B(b)(2), resulted in his eligibility for a premium tax credit of “at least \$353.32 per month.” *See id.* at ¶ 5. Accordingly, I reported that the lowest-cost bronze QHP “would cost Mr. Klemencic \$17.96/month or less” after application of this premium tax credit. *See id.*

4. On October 18, 2013, I submitted a supplemental declaration in the above-captioned matter. *See* ECF 41. That declaration discussed the subsequent revision of the premium data. *See id.* at ¶ 3. Using then-current premium data and using the facts as set forth in paragraph 2 above, I reported that Mr. Klemencic would still pay – before the application of any premium tax credits – a monthly premium of \$371.28 for the lowest-cost bronze QHP. *See id.* I also reported that because the monthly premium for the second-lowest-cost silver QHP increased to \$463.81, Mr. Klemencic was in turn eligible for an increased premium tax credit of \$378.69 under 26 U.S.C. § 36B(b)(2). *See id.* As a

result, I reported that after applying this revised premium tax credit (\$378.69) to the monthly premium for the lowest-cost bronze QHP (\$371.28), Mr. Klemencic would pay nothing (\$0/month) for the lowest-cost bronze QHP in 2014. *See id.*

5. The amount of the premium tax credit for which Mr. Klemencic is eligible increased from what was reported in my September 27, 2013 declaration because the databook referenced in paragraph 3 had tentatively reported a second-lowest-cost silver plan amount in Mr. Klemencic's rating area that was too low, which in turn resulted in a premium tax credit that was too low. *See <http://aspe.hhs.gov/health/reports/2013/MarketplacePremiums/longdesc/wv.cfm>*. Specifically, in Mr. Klemencic's rating area, the two lowest cost silver plans are priced the same (\$438.44/month), and the databook referenced in paragraph 3 used the monthly premium of one of those plans as the second-lowest-cost silver plan amount. This erroneously resulted in the use of the monthly premium amount of the *lowest* cost silver plan – not the monthly premium amount of the “second lowest cost silver plan” as provided by Section 36B(b)(2). In such situations, IRS policy is to treat the silver plan with the next lowest monthly premium as the “second lowest cost silver plan,” which, in this case, is the silver plan with a monthly premium of \$463.82. We have advised states operating a state-based Exchange of this same IRS policy in response to inquiries pre-dating the open enrollment period for the health insurance Exchanges.

6. My October 18, 2013 declaration accurately reported the cost of the lowest-cost bronze plan available to Mr. Klemencic and the amount of premium tax credits for which he would be eligible.<sup>1</sup> However, further review of the lowest-cost bronze plan available to Mr. Klemencic revealed that this plan offered some non-Essential Health Benefits. As a result, my October 18, 2013 declaration did not account for 45 C.F.R. § 156.470, which prohibits the application of premium tax credits to benefits that

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<sup>1</sup> The monthly premium for the second-lowest-cost silver plan and the resulting premium tax credit available to Mr. Klemencic each have subsequently been rounded up by one cent to \$463.82 and \$378.70 respectively.

are non-Essential Health Benefits. The cost of the non-Essential Health Benefits in the lowest-cost bronze plan in Mr. Klemencic's rating area is \$1.70/month. As a result, Mr. Klemencic would have to pay \$1.70/month for the lowest-cost bronze plan in his rating area.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 12th day of November, 2013, in Washington, District of Columbia.



Donald B. Moulds