



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Charles W. Dent
Member, U.S. House of Representatives
Lehigh Valley District Office
3900 Hamilton Boulevard, Suite 207
Allentown, PA 18103

Attention:

Dear Representative Dent:

I am responding to your inquiry on behalf of _____ about being eligible for a Health Savings Account (HSA).

_____ would like to contribute to an HSA but is unable to find a high deductible health plan (HDHP) on the Marketplace for his area. He chose a Marketplace plan for 2017 with a deductible and out-of-pocket maximum that appears to meet the requirements for an HDHP but the company issuing the health plan informed him that the plan was not an HDHP.

In order to qualify as an HDHP, a health plan must satisfy the minimum annual deductible and maximum out-of-pocket expense requirements for the year. An HDHP may provide certain preventive care benefits below the deductible, but may not provide any other benefits below the minimum annual deductible.

If a company issuing a health plan says that it fails to satisfy the requirements for an HDHP, we would assume that the plan does not satisfy the requirements. We are aware that many plans with deductibles meeting the minimum dollar limit for an HDHP nonetheless fail to be an HDHP because the plan provides benefits that are not preventive care before the deductible is satisfied. An example would be a health plan that provides first dollar prescription drug benefits regardless of whether the deductible was satisfied. Another example would be a plan that provides first dollar coverage for a

limited number of office visits before the deductible is satisfied. Thus, the fact that a health plan has a deductible that meets the dollar amount for an HDHP does not mean the plan is an HDHP.

The provision of the law concerning the deductible for an HDHP required for an HSA is section 223(c)(2) of the Internal Revenue Code, which defines the HDHP. Section 223(c)(2)(C) allows for the exception for the provision of preventive care benefits. I hope this information is helpful.

If you have any questions, please call me at _____ or _____ at _____.

Sincerely,

Christine Ellison, Acting Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)