



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: December 22, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000853

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On September 22, 2014, you appeared by telephone at a hearing on your appeal of the NY State of Health Marketplace's August 14, 2014 eligibility determinations.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b)

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Decision

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[REDACTED]
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Issue

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that, as of August 14, 2014, you, your spouse, and your eldest child were eligible to share advance premium tax credit of up to \$661.00 per month, eligible for cost-sharing reductions provided you enrolled in silver level qualified health plans, and ineligible for Medicaid?

Did the Marketplace properly determine that, as of August 14, 2014, your two youngest children were eligible for coverage through Child Health Plus at a total premium cost of \$18.00 per month?

Procedural History

The Marketplace received your initial application for health insurance on April 15, 2014.

On June 9, 2014, you submitted a modified application to the Marketplace that included a reduced income of \$10,530.00.

That same day, the Marketplace made a preliminary determination that your spouse and your three children were eligible for Medicaid and directed you to submit documentation of your household income in order for the determination to be finalized.

Later that day, you uploaded your own June 4, 2014 Unemployment Insurance Monetary Benefit Determination letter and your spouse's June 3, 2014 Unemployment Insurance Monetary Benefit Determination letter.

On June 11, 2014, the Marketplace issued a notice of eligibility redetermination. It said that you, your spouse, and your three children were eligible for Medicaid with a coverage start date of June 1, 2014. This eligibility determination was based on a household income of \$10,530.00. The Marketplace requested additional information to verify your income in the event that you were seeking Medicaid coverage for medical bills within the three months prior to your application.

The expected household income on your application was modified during July and August of 2014. The household income was given as \$47,985.00 on July 11, 2014; \$47,175.00 on August 11, 2014; and \$60,416.80 on August 12, 2014.

On August 14, 2014, the Marketplace issued notices of eligibility determination based on the August 12, 2014 application. It found you, your spouse, and your son collectively eligible to receive up to \$661.00 per month of advance premium tax credit and, if you selected a silver-level plan, eligible to receive cost-sharing reductions, but ineligible for Medicaid coverage. It also found your two daughters eligible for coverage through Child Health Plus at a reduced premium rate, but similarly ineligible for Medicaid coverage. This eligibility determination was based on a household income of \$60,416.80.

On August 20, 2014, you spoke with the Marketplace's Account Review unit and appealed that determination.

On September 22, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open for the sole purpose of providing you an opportunity to submit as additional evidence: (1) the last paycheck your spouse received before the June 2014 layoff by his employer, [REDACTED], (2) a photo of your spouse's unemployment insurance claim payment history during June 2014, (3) the first paycheck your spouse received when he returned to work at the end of June 2014, (4) the last paystub you received from your former employer, [REDACTED], and (5) the first paystub received by your 19-year-old son from [REDACTED]. The record was to be closed 15 days after the hearing date or upon the receipt of requested documents, whichever occurred earlier.

That same day, you provided all of the above documents to the Appeals Unit through your Marketplace online account. As a result, the record was closed on September 22, 2014.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You are married and have three children: a 19-year-old son, a 17-year-old daughter, and an 11-year-old daughter.
- 2) You testified that as of June 9, 2014, you anticipated filing a U.S. Income Tax return for 2014, filing as “married filing jointly,” and claiming your three children as dependents.
- 3) You further testified that your son was a full-time student on June 9, 2014, but has since graduated and now works full time at [REDACTED] (NYSOH Exhibit A, p. 3; Appellant testimony 9/22/14).
- 4) You are seeking insurance for all members in your household (NYSOH Exhibit A, pp.1-6).
- 5) According to your February 28, 2014 paystub, you were hired by [REDACTED] on January 1, 2014, and your year-to-date earnings as of February 23, 2014 were \$2,438.33.
- 6) You testified that you were not employed after February 23, 2014 (Appellant testimony 9/22/14).
- 7) During the first week of June 2014, you filed an unemployment insurance claim against an employer for whom you last worked during the first quarter of 2013. You earned base period wages of \$112.90 during that quarter. In a Monetary Benefit Determination dated June 4, 2014, the Department of Labor set your weekly benefit rate for that employer at \$0.00 because you did not work and earn wages in at least two calendar quarters and were not paid at least \$1,600.00 in at least one quarter.
- 8) The record does not include a Department of Labor Monetary Benefit Determination based on your 2014 earnings with [REDACTED]
- 9) Your spouse was hired by [REDACTED] on May 24, 1999. He was laid off in early June 2014 and returned to work on June 30, 2014.
- 10) The paycheck immediately before your spouse’s layoff is for the pay period from May 26, 2014 to June 1, 2014. The pay date is June 6, 2014. He earned \$620.50 during that pay period, and his year-to-date earnings were \$23,152.50.

- 11) On June 9, 2014, you modified your Marketplace application to attest to a 2014 expected household income of \$10,530.00.
- 12) According to a June 3, 2014 Unemployment Insurance Monetary Benefit Determination, your spouse's claim effective date is June 2, 2014 and his weekly benefit rate is \$405.00.
- 13) According to a printout of the Official Record of Benefit Payment History, during June 2014, your spouse received a total of \$1,215.00 in unemployment benefits, which consisted of payments of \$405.00 on June 16, 2014; June 23, 2014; and June 30, 2014.
- 14) On June 11, 2014, the Marketplace issued a notice of determination stating that all five family members were Medicaid eligible, with a coverage start date of June 1, 2014.
- 15) You revised your application on June 27, 2014 and July 11, 2014 to update your spouse's expected income for 2014 to \$32,810.00 and \$47,985.00, respectively, which was based upon, in part, his expectation of additional earnings after being told he would resume his employment with [REDACTED] beginning on June 30, 2014 (NYSOH Exhibit B, pg. 3; NYSOH Exhibit C, pg. 3).
- 16) You testified that after you received the Marketplace's July 12, 2014 notice of eligibility redetermination notifying you that your family was no longer Medicaid eligible, you contacted a Customer Service Representative to request that the Medicaid determination made on June 11, 2014 be upheld.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Medicaid through the Marketplace can be provided to adults who: (1) are age 19 or older and under age 65; (2) are not pregnant; (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act; (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and (5) have a household modified adjusted gross income that is at or below 138% of the federal poverty level (FPL) for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if his or her household's modified adjusted gross income falls at or

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below 154% of the FPL (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13 ADM-03).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2014 FPL, which is \$27,910.00, or \$2,325.83 per month, for a five-person household (79 Fed. Reg. 3593, 3593).

When determining Medicaid eligibility for new applicants, financial eligibility may be based upon current monthly income and family size (42 CFR § 35.603(h)(1)).

Most adults determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage even if the adult loses Medicaid eligibility because of any changes or updates they make to their Marketplace account. For example, even if income increases above the Medicaid limit allowed for the household size, the insured will remain covered under Medicaid for a twelve month period. Coverage during this 12-month period is referred to as “continuous coverage” and it begins on the start date of the original Medicaid eligibility determination, or the date of a subsequent Medicaid eligibility determination, based on modified adjusted gross income (see 42 CFR § 435.916; N.Y. Soc. Serv. Law § 366(4)(c)).

Children under the age of nineteen who are determined eligible for Medicaid remain eligible for Medicaid until the earlier of: (1) the last day of the month which is twelve months following the determination of eligibility for Medicaid or (2) the last day of the month in which the child reaches the age of nineteen (N.Y. Soc. Serv. Law § 366(4)(b)(3)).

A person who is eligible for minimum essential health insurance coverage through certain government-sponsored programs, including Medicaid, is not eligible for APTC (see 45 CFR 155.305(f), 26 CFR 1.36B-2(c)).

To be eligible to enroll in Child Health Plus (CHP), a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

Legal Analysis

According to the record as of June 9, 2014, there are five people in your household. At that time, you expected to file a U.S. Income Tax return for 2014, file as “married filing jointly” and claim your three children as dependents.

Of the eligibility requirements listed above for Medicaid, the only requirement currently at issue is the income requirement.

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In your June 9, 2014 application for health insurance, you attested to having an expected annual income in 2014 of only your spouse's unemployment benefits in the amount of \$10,530.00 (\$405 per week x 26 weeks). However, based upon the complete record, including your sworn testimony during the telephone hearing, this expected annual income provided within your June 9, 2014 application was not based upon an accurate figure. You credibly testified, and the documentary evidence you provided immediately after the hearing, confirm that in addition to your spouse's unemployment benefits award of \$405.00 per week beginning on June 2, 2014, he had already earned \$23,152.50 from [REDACTED], and you had already earned \$2,438.33 from [REDACTED]. Accordingly, the annual expected income for 2014 at that time would more reasonably be based on a figure of \$36,120.83.

However, you credibly testified, and the record fully supports, that your household's income during June 2014, the month you applied, was \$1,835.50. This included your spouse's last paycheck from [REDACTED] on June 6, 2014 in the amount of \$620.50 plus \$1,215.00 in your spouse's unemployment benefits received between June 16, 2014 and June 30, 2014. As of your June 9, 2014 application, your actual household income received during June 2014 of \$1,835.50 was less than the \$2,325.83 per month limit for Medicaid eligibility for a five-person household. Therefore, the Marketplace correctly determined you and your family eligible for Medicaid, albeit based on erroneous expected income data for 2014; it should have found you eligible for Medicaid on the basis of your monthly income in June 2014.

Moreover, pursuant to N.Y. Soc. Serv. Law § 366(4)(b)(3) and (4)(c), you, your spouse, and your children remain eligible for Medicaid under continuous coverage until May 31, 2015.

Since you, your spouse, and your children are Medicaid eligible until May 31, 2015, you are not eligible for advance premium tax credit, cost-sharing reductions, or Child Health Plus coverage during that period.

Therefore, the August 14, 2014 determination notices currently on appeal, and all other determinations that, after June 11, 2014, authorize advance premium tax credit, cost-sharing reductions, or Child Health Plus coverage and deny Medicaid coverage lack support in the record and are RESCINDED.

Decision

All eligibility redetermination notices issued after June 11, 2014 that you, your spouse, and your children are ineligible for Medicaid but qualify for advance premium tax credit, cost-sharing reductions, and/or Child Health Plus coverage are RESCINDED.

Effective Date of this Decision: December 22, 2014

How this Decision Affects Your Eligibility

You and your family remain eligible to receive Medicaid, with a coverage start date of June 1, 2014. This eligibility continues until May 31, 2015.

You, your spouse, and your son remain eligible to enroll in a qualified health plan if you choose to do so, but without a subsidy.

Your daughters are not eligible for Child Health Plus coverage.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Make an appeal request to the U.S. Department of Health and Human Services appeals entity within 30 days of the date of the Decision Date, which appears on the first page of the Decision (45 CFR § 155.520(c)).

AND/OR

- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which appears on the first page of the Decision.

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services for assistance.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

All eligibility redetermination notices issued after June 11, 2014 that you, your spouse, and your children are ineligible for Medicaid but qualify for advance premium tax credit, cost-sharing reductions, and/or Child Health Plus coverage are RESCINDED.

You and your family remain eligible to receive Medicaid, with a coverage start date of June 1, 2014. This eligibility continues until May 31, 2015.

You, your spouse, and your son remain eligible to enroll in a qualified health plan if you choose to do so, but without a subsidy.

Your daughters are not eligible for Child Health Plus coverage.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]