



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

## Notice of Decision

Decision Date: December 23, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000877

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On October 1, 2014, you appeared by telephone at a hearing on your appeal of the NY State of Health Marketplace's April 16, 2014 eligibility determination.

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).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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## Decision

Decision Date: December 23, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000877

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you did not qualify for a special enrollment period as of June 28, 2014?

## Procedural History

The Marketplace received your application on March 31, 2014, which you modified on April 15, 2014.

On April 16, 2014, the Marketplace issued an eligibility redetermination in your case based on the updated information you provided. It said that you continue to be eligible for advance premium tax credits of up to \$249.00 per month and, provided you select a silver-level qualified health plan, for cost-sharing reductions based on the income you provided of \$22,631.91. It also said you are not eligible for Medicaid because your household income is over the allowable income limit of \$16,105.00.

On June 28, 2014, a written eligibility determination restated the April 16, 2014 findings and added that you did not qualify to select a health plan outside the open enrollment period.

On August 25, 2014, you spoke with a representative in the Marketplace's Account Review Unit and appealed the denial of the special enrollment in that determination.

On October 1, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to fifteen days to allow you the opportunity to submit documents. The record was to be closed after the 15 day period or upon submission of the documents, whichever occurs earlier.

On October 3, 2014, the Marketplace's Appeals Unit received a 4-page fax from you. It consisted of (1) A screen shot of the computer message you received from the Marketplace on April 15, 2014 and (2) A copy of your online unemployment benefits statement. Your 4-page fax was marked as "Appellant's Exhibit B" and made part of the record. The record was closed that same day.

## **Findings of Fact**

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

- 1) You are single, have no dependents, and live in New York County, New York.
- 2) You plan on filing your 2014 tax return as single.
- 3) On your Marketplace Account – My Account portal, you indicated that you did not want paperless notices from the Marketplace (Appellant's Exhibit A).
- 4) You testified that on April 15, 2014, at 5:33 p.m. you logged into your Marketplace online account to change your income amount to \$22,631.91 per your 2013 tax return.
- 5) You testified and provided documentary proof that the Marketplace indicated in your Eligibility portal that, "[It] is experiencing technical difficulties and cannot verify the information that you have told us at this time. The Marketplace will reach out to you if additional information is needed to process your application." (Appellant's Exhibit B at p.2).
- 6) You testified that because the Marketplace was experiencing technical difficulties on April 15, 2014, you could not pick a plan and, further, that no one from the Marketplace called you for additional information.
- 7) You testified that you tried to call the Marketplace several times on April 15, 2014, and got a busy signal each time.
- 8) You testified that you tried to pick a plan at a later date and could not. You were only prompted to indicate why you were enrolling outside the open enrollment period.

- 9) According to your Marketplace Account and your testimony, you requested paper notices and you did not receive paper notices from the Marketplace dated April 16, 2014 and June 28, 2014 (Appellant's Exhibit A).
- 10) On your Marketplace account, these notices and others remained unopened in your Inbox.
- 11) You became unemployed on May 9, 2014 and applied for unemployment benefits during June 2014.
- 12) According to a June 6, 2014 Unemployment Insurance Monetary Benefit Determination, your claim effective date is May 26, 2014, and your weekly benefit rate is \$303.00 (Appellant's Exhibit B at p. 4).
- 13) You testified that you received 1 day of unemployment benefits for the week ending July 14, 2014, received \$303.00 for the weeks ending July 21, 2014, July 28, 2014, and August 3, 2014, and continue to receive unemployment benefits in the weekly amount of \$303.00.

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

## **Applicable Law and Regulations**

The Marketplace must provide an initial open enrollment period and annual open enrollment periods during which time qualified individuals may enroll in qualified health plans (QHPs) and enrollees may change QHPs (45 CFR §155.410(a)). The initial open enrollment period began October 1, 2013 and extended through March 31, 2014 (45 CFR §155.410(b)).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another plan. This is permitted when one of the following triggering events occurs:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage; or
  - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or

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(c) Pregnancy-related coverage; or

(d) Medically needy coverage.

(2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or

(3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or

(5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions; or

(7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or

(8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or

(9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or

(10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

An individual is eligible for enrollment in Medicaid any time during the year when he meets the nonfinancial criteria and has a monthly household income that is at

or below the applicable Medicaid modified adjusted gross income standard (45 CFR § 155.305(c)).

Medicaid can be provided through the Marketplace 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 for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

For a Medicaid eligibility determination made during 2014 for a one-person household, the applicable FPL is \$11,670.00 (79 Fed. Reg. 3593 (2014)).

## **Legal Analysis**

For purposes of this analysis, your tax household consists of yourself so you are in a one-person tax household.

You credibly testified and provided documentary proof that you attempted to choose a health plan on April 15, 2014, but were unable to because of technical difficulties in the Marketplace.

The record as a whole indicates that you first applied on March 31, 2014, the last day of open enrollment, and were unable to enroll in a qualified health plan on April 15, 2014 due to technical difficulties in the Marketplace. As such, a special enrollment period should have been granted under 45 CFR §155.420(d)(4). Therefore, the June 28, 2014 eligibility determination is MODIFIED to rescind the denial of your request for a special enrollment period.

Additionally, during your hearing you testified that the 2014 expected annual household income provided on your applications no longer reflects your current income situation and that you would like your financial eligibility reconsidered.

You credibly testified and provided documentary proof that the only income you are currently receiving is \$303.00 of unemployment insurance benefits every week.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Since the record suggests that the Marketplace has determined your eligibility by expected annual income but not by current monthly income, the case should be returned to the Marketplace for a redetermination of eligibility using your current monthly income, which is \$303.00 per week.

Therefore, the case is returned to the Marketplace to redetermine eligibility for a one-person household with a weekly income of \$303.00 per week.

## **Decision**

The June 28, 2014 determination is MODIFIED to rescind the finding that you did not qualify for a special enrollment period.

Also, your case is returned to the Marketplace to redetermine your eligibility based on a one-person household with an income of \$303.00 per week.

**Effective Date of this Decision:** December 23, 2014

## **How this Decision Affects Your Eligibility**

This decision does not change your eligibility, but it does return your case to the Marketplace for redetermination of your eligibility based on your current income.

## **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

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- 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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The June 28, 2014 determination is MODIFIED to rescind the finding that you did not qualify for a special enrollment period.

Also, your case is returned to the Marketplace to redetermine your eligibility based on a one-person household with an income of \$303.00 per week.

This decision does not change your eligibility, but it does return your case to the Marketplace for redetermination of your eligibility based on your current income.

### **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]