



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

Notice of Decision

Decision Date: January 20, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001076

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On November 25, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace August 6, 2014 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).

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[REDACTED]
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Issue

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

Did the Marketplace properly determine that the Medicaid program should not reimburse your COBRA premiums and the out-of-pocket expenses you incurred between November 1, 2013 and February 28, 2014?

Procedural History

The Marketplace initially received your application on October 23, 2013.

On December 23, 2013, the Marketplace issued a notice of eligibility determination stating that you were eligible for an advance premium tax credit of up to \$159.00 per month but ineligible for cost-sharing reductions and Medicaid.

On March 11, 2014, your application was resubmitted.

On March 12, 2014, the Marketplace issued a notice stating that, with a household income of \$4,993.00, you were eligible for Medicaid as of March 1, 2014. That determination also stated: "You indicated that you are enrolled in Third Party Health Insurance. The Medicaid program may be able to pay your health insurance premiums if it is determined to be cost effective."

A March 15, 2014 notice of redetermination stated that your Medicaid coverage began on March 1, 2014 and stated that your enrollment with UnitedHealthcare of New York would begin on April 1, 2014.

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On April 10, 2014, you spoke with the Marketplace's Account Review Unit and submitted an appeal request. Your appeal was filed under with the appeal number AP00000000572, and you were appealing a denial of reimbursement for premium payments you had made for insurance coverage under COBRA. Your hearing was held on May 16, 2014, and that appeal was dismissed in a decision issued by the Appeals Unit.

On July 29, 2014, the Marketplace issued a notice stating that your eligibility had been redetermined on July 28, 2014. It stated that that your Medicaid coverage began on January 1, 2014. It also stated: "You indicated that you are enrolled in Third Party Health Insurance. The Medicaid program may be able to pay your health insurance premiums if it is determined to be cost effective."

On August 6, 2014, the Department of Health's Third Party Resource Unit prepared an analysis of cost effectiveness for Medicaid premium assistance, known as HIPP Cost Analysis. That analysis showed that your COBRA monthly premium of \$868.21, which would cost \$10,418.52 for a 12-month period, was not cost effective because the cost under Medicaid for that same period would have been \$5,282.40 (NYSOH Exhibit 4).

On August 6, 2014, the Department of Health's Third Party Resource Unit issued a notice through the Marketplace that said: "We have determined it is not cost effective for the Medicaid program to pay for health insurance premiums for [you]. If you are currently enrolled in this health insurance plan, you remain responsible for payment of your health insurance premium bills." The notice also provided instructions and additional information on how to appeal the decision (NYSOH Exhibit 3).

On September 3, 2014, the Marketplace received your written appeal request dated August 25, 2014 (Appellant's Exhibit A).

On November 25, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You are single, have no dependents, and reside in Kings County, New York.
- 2) You expect to file your 2014 federal income tax return as single.

- 3) You testified that, after you separated from employment, you elected to continue your health insurance coverage through COBRA.
- 4) According to the February 11, 2014 printout of your Official Record of Benefit Payment History from Unemployment Insurance Benefits Online, your current benefit year ran from August 29, 2013 to August 24, 2014 and your weekly benefit amount was \$403.00. The week ending August 25, 2013 was your waiting week. During 2013 you received the following payments: four during September (three for \$403.00 and one for \$302.25), four during October (each for \$403.00), four during November (each for \$403.00), and five during December (four for \$403.00 and one for \$302.25). During January 2014, you received four payments (each for \$403.00). You received payments on February 4 and 11 at \$403.00 each, and your remaining balance on February 11 was \$1,410.50 (Appellant's Exhibit C).
- 5) You testified during the May 16, 2014 and November 25, 2014 hearings that you are requesting reimbursement of your COBRA premiums and out-of-pocket medical expenses. You provided a written statement making the same request. You indicated in your written statement that, between November 1, 2013 and February 28, 2014, you paid premiums totaling \$3,472.84 and incurred out-of-pocket medical expenses totaling \$408.50. You are seeking reimbursement for a total of \$3,881.34 (Appellant's Exhibit A).
- 6) On February 27, 2014, you uploaded a certificate from United Healthcare – Oxford Health Plans, dated February 27, 2014, which states that the effective coverage dates for your health insurance through this plan are May 1, 2012 through February 28, 2014 (Appellant's Exhibit B).
- 7) The monthly premium for your COBRA coverage was \$868.21. This coverage would cost \$10,418.52 for a 12-month period.
- 8) An August 6, 2014 cost analysis by the Department of Health's Third Party Resource Unit using the HIPPP calculator showed that the Medicaid program could have provided coverage to you for a 12-month period at a cost of \$5,282.40.

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

Applicable Law and Regulations

Medicaid

Effective January 1, 2014, 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 (MAGI) 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)), N.Y. Soc. Serv. Law § 366(1)(b)).

The Marketplace and its Appeals Unit must use MAGI-based income when determining Medicaid eligibility (45 CFR §§ 155.510(b), 435.603(a)). Federal Register commentary related to regulations promulgated with regard to the Affordable Care Act make it clear that “Medicaid eligibility contemplated as part of the Exchange [i.e., Marketplace] appeals process is limited to MAGI-based Medicaid eligibility ... Non-MAGI Medicaid determinations will not be issued by the Exchange” (78 FR 54070, 54090 (2013)). Section 1902(e) of the Social Security Act (42 USC 1936a(e)) was amended to include this requirement effective January 1, 2014.

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). The 2013 FPL is \$11,490.00 for a one-person household (78 Fed. Reg. 5182, 5183). The 2014 FPL, which was published in the Federal Register on January 22, 2014 and took effect that same day, is \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

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 March 19, 2014).

If an applicant for health insurance is determined Medicaid eligible, coverage will begin on the first day of the first month that the applicant was determined eligible (42 CFR § 435.915(b)); 18 NYCRR § 360-2.4(c)). The applicant may be determined retroactively eligible for coverage for up to three months prior to their application, if he or she would have been eligible for Medicaid during the month when the medical care or services were received (18 NYCRR § 360-2.4(c)).

COBRA Continuation Coverage

The state or local agency administering Medicaid programs must take all reasonable measures to ascertain the legal liability of third parties (Social Security Act § 1902(a)(25); 42 USC. § 1396(a)). Third parties include health insurers, self-insured plans, group health plans, service benefit plans, managed care plans, etc., that are legally responsible for payment of a claim for a health care item or service (*id.*).

In New York, payment of the premiums for COBRA continuation coverage may be made by the Medicaid program for services of health care providers (18 NYCRR § 360-7.5(h)(1)(i), (a)(2)).

“The [Medicaid] program will pay the COBRA premiums for a person who meets the following requirements:

- (i) he or she is entitled to elect COBRA continuation coverage;
- (ii) his or her income does not exceed 100 percent of the poverty line, as defined in [18 NYCRR § section 360-1.4(r)], applicable to a household of the same size as the person's household;
- (iii) his or her resources do not exceed twice the maximum amount of resources that a person may have to be eligible for Federal Supplemental Security Income (SSI) benefits; and
- (iv) ... the savings in [Medicaid] expenditures resulting from enrolling the person for COBRA continuation coverage are likely to exceed the amount of payments made for the COBRA premiums”

(18 NYCRR § 360-7.5(h)(2)).

“Poverty line means the federal income official poverty line applicable to a family of the same size as the applicant's/recipient's family” (18 NYCRR § section 360-1.4(r)).

The cost-benefit analysis for COBRA premiums that is to be relied upon by NY State of Health is performed by the Department of Health's Third Party Resource Unit (13 ADM 03 [Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010], Section III, Subsection I). The unit performs this analysis using a programmed calculator known as HIPP calculator (GIS 13 MA/012 (May 1, 2013)). The determinations of cost effectiveness are subject to appeal (13 ADM 03, Section III, Subsection J).

Reimbursement for Out-of-Pocket Expenses

Although Medicaid payments are generally made only to providers, 18 NYCRR § 360-7.5(a) provides two exceptions in which direct reimbursement of paid medical bills may be made to eligible Medicaid recipients or their representatives.

Under one exception, the regulation provides that Medicaid recipients or their representatives may be reimbursed when, through no fault of their own:

- (a) an erroneous Medicaid eligibility determination is reversed (whether the reversal is due to the state or local agency discovering its own error or is the result of a fair hearing decision or court order), or the state or local agency fails to determine Medicaid eligibility within the applicable time periods; and
- (b) an erroneous eligibility determination or the delay in determining eligibility caused the recipient or the recipient's representative to pay for medically necessary services which otherwise would have been paid for by the Medicaid program.

18 NYCRR §360-7.5(a)(3)(i).

Legal Analysis

You are seeking Medicaid reimbursement for COBRA premiums and out-of-pocket expenses from November 1, 2013 to February 28, 2014. To qualify for reimbursement, you must have been Medicaid eligible during those months.

Insurance coverage, including by Medicaid, became available through the Marketplace on January 1, 2014. No Marketplace decision on Medicaid eligibility or reimbursement of COBRA premiums reaches back before that date. The Appeals Unit, which must base its decisions on modified adjusted gross income (MAGI), cannot reach the question of whether you were entitled to Medicaid during November or December 2013.

Since January 1, 2014, Medicaid has been available through the Marketplace to adults who meet the nonfinancial criteria and have a household modified adjusted gross income that is at or below 138% of the federal poverty level (FPL) for the applicable family size.

The 2013 FPL remained in effect until January 22, 2014, when the 2014 FPL was published in the Federal Register. The 2013 FPL for a one-person household was \$11,490.00. Therefore, the financial threshold for Medicaid eligibility was \$15,856.00, or \$1,321.00 per month, until January 22.

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On January 22, 2014, the FPL for a one-person household increased to \$11,670.00, and the financial threshold for Medicaid eligibility increased to \$16,105.00, or \$1,342.00 per month.

Since you were not receiving Medicaid benefits when you applied, your Medicaid eligibility is based on current monthly income. During January 2014, you received four unemployment insurance benefits payments of \$403.00 each, for a total of \$1,612.00. Since your income exceeded the financial threshold of \$1,342.00, you did not qualify for Medicaid during January 2014.

Unemployment insurance benefits were released to you on February 4 and 11 at the weekly benefit rate of \$403.00. Since the remaining balance on your benefits was \$1,410.50 as of February 11, this permits an inference that you received four payments of \$403.00 each during February, giving you an income of \$1,612.00 for the month. Since your income exceeded the financial threshold of \$1,342.00, you did not qualify for Medicaid during February 2014.

Since you did not qualify for Medicaid coverage during January and February 2014, the July 29, 2014 notice is incorrect insofar as it states that your Medicaid coverage began on January 1, 2014. Therefore, the July 29, 2014 notice is modified to state that your Medicaid coverage began on March 1, 2014.

Since your Medicaid coverage took effect on March 1, 2014, you were entitled to be determined retroactively eligible for coverage back to January 1, 2014, but only if you would have been Medicaid eligible for January and February. Since you received unemployment insurance benefits of \$1,612.00 during each of those months, you are not eligible for retroactive Medicaid coverage during those months.

In order to qualify for Medicaid reimbursement of third-party insurance premiums and out-of-pocket expenses, you must be eligible for Medicaid. Since you were not eligible for Medicaid during January and February 2014, you were not eligible to be reimbursed by Medicaid for your COBRA premiums or out-of-pocket expenses for those months.

Decision

The August 6, 2014 denial of reimbursement of COBRA premiums is **AFFIRMED**.

The July 29, 2014 notice is modified to state that your Medicaid coverage began on March 1, 2014.

Effective Date of this Decision: January 20, 2015

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).

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You are not eligible for Medicaid coverage during January and February 2014, nor are you eligible for reimbursement of COBRA premiums or out-of-pocket expenses for those months.

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.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months after the date of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

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.

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

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Summary

The August 6, 2014 denial of reimbursement of COBRA premiums is AFFIRMED.

The July 29, 2014 notice is modified to state that your Medicaid coverage began on March 1, 2014.

This decision does not change your eligibility.

You are not eligible for Medicaid coverage during January and February 2014, and you are not eligible for reimbursement of COBRA premiums or out-of-pocket expenses for those months.

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]