



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

Notice of Decision

Decision Date: April 13, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001087

[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Dear [REDACTED] [REDACTED],

On December 8, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 10, 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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[REDACTED]
[REDACTED] [REDACTED] [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 were not eligible for a special enrollment period to enroll in a qualified health plan?

Procedural History

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

There were several changes to your account between May and July 2014.

On July 18, 2014, you modified your Marketplace application. On July 19, 2014, an eligibility determination notice was issued stating that you are eligible to enroll in a qualified health plan, receive up to \$271.00 monthly of advanced premium tax credit, and eligible to get cost-sharing reductions. You also qualify to select a health plan outside of the open enrollment period until September 16, 2014.

On that same day the Marketplace issued a notice confirming that on July 18, 2014, you selected the EmblemHealth Select Care Silver plan with a premium responsibility of \$164.31.

On October 6, 2014, you modified your Marketplace application. The Marketplace responded with a message on the computer screen: "The information you provided does not match what the Marketplace obtained from State and Federal data sources. We will not be able to make an eligibility determination until you provide or the Marketplace is able to confirm additional information. In order for your eligibility to be determined, you must submit documents by the date below to confirm that the

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information you provided in your application is accurate.” No response date appeared below the message.

On October 8, 2014, the Marketplace issued a disenrollment notice. It stated that your 2014 health insurance coverage in EmblemHealth Select Care Silver will end effective October 31, 2014, because you are no longer eligible to enroll in your current health plan through the Marketplace.

On November 6, 2014, you uploaded income documentation from [REDACTED] to your Marketplace application (Appellant’s Exhibit D).

On November 10, 2014, the Marketplace redetermined your eligibility and made a preliminary determination that you are eligible to enroll in a qualified health plan, receive up to \$221.00 monthly of advance premium tax credit, and eligible to get cost-sharing reductions.

On November 12, 2014, the Marketplace issued a notice stating that more information was needed to make a determination. It further stated that in order for you eligibility to be determined you must submit income documentation by November 29, 2014.

On November 14, 2014, you spoke to the Marketplace’s Account Review Unit and appealed the denial of your request for another special enrollment period.

On November 16, 2014, the Marketplace issued a notice confirming that you requested an appeal to review your Denial of Special Enrollment Period (SEP).

On November 30, 2014, the Marketplace issued a notice of eligibility determination stating that you are eligible to enroll in a qualified health plan, receive up to \$221.00 monthly of advanced premium tax credit, and eligible to get cost-sharing reductions. It also stated that you qualify to select a health plan outside of the open enrollment period.

On December 8, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit. The record was developed during the hearing and was left open for 15 days because you were directed to provide income documentation.

On December 17, 2014, you uploaded income documentation to your Marketplace account. The uploaded documentation was made part of the record as “Appellant Exhibit E.” The record was closed that same day.

Findings of Fact

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

1. You are applying for health insurance through New York State of Health for yourself only.

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2. You plan on filing your 2014 federal income tax return with the tax status of head of household with a qualifying individual and claim two dependents on that return.
3. Your Medicaid coverage with NYC Human Resources Administration was discontinued effective June 10, 2014 (Appellant Exhibit B).
4. You enrolled in EmblemHealth Select Care Silver plan on July 11, 2014.
5. On October 8, 2014, the Marketplace issued a disenrollment notice. It stated that your 2014 health insurance coverage in EmblemHealth Select Care Silver will end effective October 31, 2014, because you are no longer eligible to enroll in your current health plan through the Marketplace.
6. You testified that you were never told the reason you were disenrolled from the EmblemHealth Select Care Silver plan.
7. You testified that you are seeking health insurance coverage beginning November 2014 to cover outstanding medical expenses that were accrued during that month.
8. You have been employed at [REDACTED] for the last eight years and that was your only source of income in 2014.
9. On November 6, 2014, you uploaded paystubs from October 2014 and November 2014 to your Marketplace account. On November 7, 2014, you received a paycheck with a gross income amount of \$432.00 and year-to-date of 31,392.00 (Appellant's Exhibit D).
10. On December 17, 2014, you uploaded paystubs from November 2014 and December 2014. On November 21, 2014, you received a paycheck in the gross amount of \$432.00 and year-to-date \$32,256.00. On November 28, 2014, you received a paycheck in the gross amount of \$432.00 and year-to-date \$32,688.00 (Appellant's Exhibit E).

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

Applicable Law and Regulations

Special Enrollment Period:

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR §

155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

The Marketplace must provide an initial open enrollment period and annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) 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. (45 CFR § 155.420(d)).

Medicaid:

The Marketplace must permit an applicant to request only an eligibility determination for enrollment in a QHP through the Marketplace. However, the Marketplace may not permit an applicant to request an eligibility determination for less than all insurance affordability programs. They must accept an application and make an eligibility determination for an applicant seeking an eligibility determination at any point during the year (45 CFR § 155.310(b), (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 level (FPL) for the applicable family size (42 CFR §§ 435.119(b), 435.603(d)(4)); N.Y. Soc. Serv. Law § 366(1)(b)).

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 \$19,790.00 for a three-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 §

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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).

Medicaid Retroactive Coverage:

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. However, the applicant may be determined retroactively eligible for coverage for up to three months prior to their application, if they would have been eligible for during the month when medical care or services were received (18 NYCRR § 360-2.4(c))

Legal Analysis

On or about November 14, 2014, you spoke with the Marketplace Customer Service Unit and requested that you be reenrolled in the EmblemHealth Select Care Silver insurance plan. The ability to enroll in a plan outside of the open enrollment window is known as a request for a special enrollment period (SEP). At the time of your phone call, the record did not contain a notice of eligibility determination or redetermination on the issue of SEP. It does contain a November 16, 2014, notice in which the Marketplace acknowledges receipt of an appeal request on November 14, 2014 and identifies the issue on appeal as “Denial of Special Enrollment Period.”

This lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. First, under 45 CFR § 155.505(b), you are as entitled to appeal the Marketplace’s failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the November 14, 2014 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request.

Additionally, since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination even had it been issued.

The Marketplace provided a special enrollment period from June 10, 2014, until August 9, 2014. The record indicates that you were enrolled in the EmblemHealth Select Care Silver insurance plan until October 31, 2014.

On October 8, 2014, the Marketplace issued a disenrollment notice. It stated your 2014 health insurance coverage in EmblemHealth Select Care Silver will end effective October 31, 2014, because you are no longer eligible to enroll in your current health plan through the Marketplace.

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You testified that you were never told the reason why you were disenrolled from the EmblemHealth Select Care Silver plan. You testified that you are seeking health insurance coverage beginning November 2014 to cover outstanding medical expenses that were accrued during that month.

The facts as set out in the record do not suggest that any other triggering event described in 45 CFR §155.420(d) had occurred.

However, on November 30, 2014, the Marketplace did issue a notice which states that you do qualify to select a health plan outside of the open enrollment period.

Therefore, the special enrollment period issue has been resolved and will not be addressed.

However, on December 20, 2014, the Marketplace issued a notice of eligibility determination that found you to be eligible for Medicaid effective December 1, 2014. Because you testified that you are seeking health insurance coverage beginning in November 2014 to cover outstanding medical expenses that were accrued during that month, the issue of retroactive Medicaid coverage will also be addressed.

An applicant may be determined retroactively eligible for Medicaid coverage for up to three months prior to their application, if they would have been eligible for Medicaid during the month when medical care or services were received (18 NYCRR § 360-2.4(c)).

Medicaid can be provided through the Marketplace to adults between the ages of 19 and 65 who meet the non-financial requirements and 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. On the date of your application, the relevant FPL was \$19,530.00 for a three-person household.

The credible evidence of record shows that on November 6, 2014, you uploaded paystubs from October 2014 and November 2014 to your Marketplace account (Appellant's Exhibit D). On November 7, 2014, you received a paycheck with a gross income amount of \$432.00 and a year-to-date amount of \$31,392.00 (Appellant's Exhibit D).

On December 17, 2014, you uploaded paystubs for November 2014 and December 2014. On November 21, 2014, you received a paycheck in the gross amount of \$432.00 and a year-to-date amount of \$32,256.00. On November 28, 2014, you received a paycheck in the gross amount of \$432.00 and a year-to-date amount of \$32,688.00. Based on the year-to-date earnings on the paystubs, you received \$1,728.00 in November 2014 (Appellant's Exhibit E).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. To be eligible

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for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$2,276.00 per month for a three-person household.

Since the evidence of record supports the finding that your monthly income for a three person household for November 2014 was \$1,728.00, your case is returned to the Marketplace for a determination your eligibility for retroactive Medicaid coverage for the month of November 2014.

Decision

The November 10, 2014 eligibility determination is AFFIRMED.

Your case is returned to the Marketplace for a determination of your eligibility for retroactive Medicaid coverage for the month of November 2014 based on a three person household with a November 2014 monthly income of \$1,728.00.

Effective Date of this Decision: April 13, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility for health insurance through New York State of Health.

However, your case is being returned to the Marketplace for a determination of your eligibility for retroactive Medicaid coverage for the month of November 2014 based on a three person household with a November 2014 monthly income of \$1,728.00.

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

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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

Summary

The November 10, 2014 eligibility determination is AFFIRMED.

This decision does not change your eligibility for health insurance through New York State of Health.

Your case is being returned to the Marketplace for a determination of your eligibility for retroactive Medicaid coverage for the month of November 2014 based on a three person household with a November 2014 monthly income of \$1,728.00.

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] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]