



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

## Notice of Decision

Decision Date: August 7, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001529

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On February 26, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 7, 2014 preliminary 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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## Issues

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

Did the Marketplace properly determine that you were eligible to receive the correct level of cost-sharing reductions of October 7, 2014?

Were you eligible for reimbursement of qualified health plan premium amounts paid during October and November of 2014 as a result of being subsequently found eligible for Medicaid Fee-For-Service coverage beginning September 1, 2014?

## Procedural History

The Marketplace received your initial application for health insurance on September 12, 2014, in which you attested to an expected yearly income of \$21,484.66.

That same day, the Marketplace prepared a preliminary determination based on your September 12, 2014 application. It stated that you were eligible to receive an advance premium tax credit (APTC) of up to \$228.00 per month and cost-sharing reductions (CSR), effective October 1, 2014. This determination also stated that you were eligible for Maximum Out of Pocket Costs of "\$2,000.00/year for Single \$4,000.00 for Couple or Family." This determination was issued, in part, based on an annual household income of \$21,484.66.

On September 13, 2014, the Marketplace issued a notice of eligibility determination, stating that you were eligible to enroll in a qualified health plan (QHP); eligible to receive an APTC of up to \$228.00 per month; and, if you

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selected a silver-level plan, eligible for CSR. However this notification did not specify what level of CSR you were eligible to receive. You were also found not eligible for Medicaid.

On September 16, 2014, the Marketplace issued a notice confirming your enrollment in the Empire Silver Guided Access w/HSA – cdib as of September 15, 2014 at a premium rate of \$230.56 per month. If you paid your first month's premium, this coverage could begin as early as October 1, 2014.

On October 7, 2014, the Marketplace received a revised application in which you attested to an increase in your expected yearly income to \$26,924.66 as a result of receiving unemployment insurance benefits.

That same day, the Marketplace prepared a preliminary eligibility determination based on the October 7, 2014 application. It stated that you were eligible to receive an APTC of up to \$162.00 per month and CSR, effective November 1, 2014. This determination also stated that you were eligible for Maximum Out of Pocket Costs of "\$4,000.00/year for Single \$8,000.00 for Couple or Family."

On November 5, 2014, the Marketplace received a copy of the plan details reflecting the benefits for the Empire Silver Guided Access w/HSA – cdib plan you selected.

On December 1, 2014, the Marketplace issued a notice of eligibility determination stating that it had reviewed your eligibility on October 31, 2014, and apparently formalizing the findings of the October 7, 2014 preliminary determination. It said that you were eligible to enroll in a QHP; conditionally eligible to receive an APTC of up to \$162.00 per month; and, if you selected a silver-level plan, conditionally eligible for CSR, effective November 1, 2014. Again, this notification did not specify what level of CSR you were eligible to receive. You were also found not eligible for Medicaid. This determination was based, in part, on an annual household income of \$26,924.66. You were requested to provide documentation to confirm your income level by January 7, 2015.

On December 8, 2014, you modified your application, and attested to expected annual earnings of \$5,440.00. In a preliminary determination the Marketplace made at that time, you were found eligible for Medicaid.

However, you modified your account later that day and attested to expected annual earnings of \$24,044.66. In response to the two modifications made this day, the Marketplace issued a notice of eligibility determination on December 9, 2014, stating that you were newly conditionally eligible to receive up to \$232.00 per month in APTC, effective January 1, 2015. You were advised that you would need to provide documentation to confirm your income by March 10, 2015.

On December 12, 2014, the Marketplace received two modifications to your application. In the first you attested to an expected yearly income of \$26,284.66; in the other, you attested to an expected yearly income of \$4,800.00.

That same day, the Marketplace prepared two preliminary eligibility determinations based on your December 12, 2014 applications. In the first, you were preliminarily found eligible for up to \$205.00 per month in APTC; in the second, you were found eligible for Medicaid effective December 1, 2014.

On December 13, 2014, the Marketplace issued a notice of eligibility determination in response to your second December 12, 2014 application, stating that you were found eligible for Medicaid effective December 1, 2014.

On December 15, 2014, the Marketplace issued a notice confirming your enrollment in the Empire Silver Guided Access w/HSA – cdib as of October 7, 2014 at a premium rate of \$296.56 per month, with coverage beginning November 1, 2014, if you paid your first month's premium.

On December 16, 2014 and December 19, 2014, the Marketplace issued notices confirming your enrollment in the UnitedHealthcare of New York, Inc. Medicaid Managed Care (MMC) plan as of December 15, 2014 and December 18, 2014, respectively. Each notice further stated that “[y]our insurance coverage through Medicaid will begin September 1, 2014 and enrollment with UnitedHealthcare of New York, Inc. will begin January 1, 2015.”

On December 29, 2014, the Marketplace issued a notice of disenrollment confirming that your coverage under the Empire Silver Guided Access w/HSA – cdib would terminate effective December 31, 2014.

On January 21, 2015, you spoke with the Marketplace Account Review Unit to appeal (1) the December 1, 2014 eligibility determination insofar as you were found eligible for a lesser level of CSR, and (2) to seek reimbursement of plan premiums paid during October and November of 2014 as a result of your Medicaid coverage start date of September 1, 2014 as reflected in the December 16, 2014 notice confirming your Medicaid enrollment details.

On or about February 14, 2014, the enrollment details in your account indicate that you selected the Hudson Health Plan, Inc. Medicaid Managed Care plan for your coverage beginning March 1, 2015.

On February 26, 2015, 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) On September 13, 2014, the Marketplace issued a notice of eligibility determination stating that you were eligible to receive an advance premium tax credit (APTC) of up to \$228.00 per month and eligible for cost-sharing reductions (CSR), beginning October 1, 2015. However, this notice did not specify which level of CSR you were entitled to receive.
- 2) On September 15, 2014, you enrolled in the Empire Silver Guided Access w/HSA – cdib plan with coverage beginning October 1, 2014.
- 3) You testified that you paid your first month’s premium for coverage under the Empire Silver Guided Access w/HSA – cdib, which was approximately \$296.56.
- 4) You testified that on October 7, 2014, you contacted the Marketplace to advise them that you began receiving unemployment benefits.
- 5) You testified that shortly after October 7, 2014, without notice, your plan was changed to incorporate a different level of CSR. You further testified that while you believed you had met the \$1,100.00 deductible under this plan, this change of plans actually caused the deductible to increase to \$2,250.00, causing you to have not met the required deductible.
- 6) On November 5, 2015, you provided a copy of the Empire Silver Guided Access w/HSA – cdib plan details, which referenced a \$1,100 deductible.
- 7) On December 1, 2014, the Marketplace issued a notice of eligibility determination that stated you were eligible to receive an APTC of up to \$162.00 per month; and, if you selected a silver-level plan, conditionally eligible for CSR, effective November 1, 2014. Again, this notice did not specify which level of CSR you were entitled to receive.
- 8) You testified that you paid your second month’s premium for coverage under the Empire Silver Guided Access w/HSA – cdib plan, which was approximately \$296.56. You further testified that you were refunded a small portion of that premium about by Empire.
- 9) On December 13, 2014, you were found eligible for Medicaid effective December 1, 2014.

10) However, as reflected in the Marketplace's December 16, 2014 and December 19, 2014 notices confirming your enrollment in the UnitedHealthcare of New York, Inc. Medicaid Managed Care (MMC) plan, your coverage under Fee-For-Service Medicaid was backdated to September 1, 2014.

11) You testified that as a result of having been found eligible for Fee-For-Service Medicaid as of September 1, 2014, you were also seeking to be reimbursed for premium amounts paid for plan coverage during the months of October and November 2014.

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

## **Applicable Law and Regulations**

### De Novo Review

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).

### Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

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)).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a qualified health plan (QHP) through the Marketplace, (2) meets the requirements to receive an advance premium tax credit (APTC), (3) is expected to have an annual household income that does not exceed 250% of the federal

poverty level (FPL) for the plan year coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)(1)).

In an analysis of CSR eligibility, the determination is based on the FPL “for the benefit year for which coverage is requested” (45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

### Cost-Sharing Reduction Plan Versions

The Marketplace directs issuers to offer three variations of silver-level plans, which provide varying levels of coverage, using the following categories:

- (1) 94% of expenses covered for a person with an annual household income that is between 100 and 150 percent of the FPL;
- (2) 87% of expenses covered for a person with an annual household income that is between 150 and 200 percent of the FPL; and
- (3) 73% of expenses covered for a person with an annual household income that is between 200 and 250 percent of the FPL.

The Maximum Out of Pocket (MOOP) limit for a single person between 150 and 200 percent of the FPL is \$2,000.00, while the MOOP limit for a single person between 200 and 250 percent of the FPL is \$4,000.00.

(see 45 CFR 155.305(g)(2); 45 CFR 156.420).

### Termination of Coverage

The Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan, including when an enrollee obtains minimum essential coverage, with appropriate notice to the Marketplace or qualified health plan (45 CFR § 155.430(b)(1)(i)).

For enrollee-initiated terminations, the last day of coverage is either:

- The termination date specified by the enrollee, if they provide notice at least 14 days before the requested termination becomes effective;
- Fourteen days after the enrollee requests the termination, if they do not provide 14 days’ notice; or
- On a date on or after the date the enrollee requests the termination, subject to the determination of the enrollee’s qualified health plan issuer, if the enrollee’s qualified health plan issuer agrees to effectuate

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termination in fewer than 14 days, and the enrollee requests and earlier termination effective date

(45 CFR § 155.430(d)(2)(i)-(iii)).

## Legal Analysis

You submitted an application on October 7, 2014, and the Marketplace made a preliminary determination that same day. The Marketplace ultimately issued its written notice of eligibility determination regarding this application on December 1, 2014; however, it did not provide any determination with respect to the specific level of cost-sharing reductions (CSR) for which you were eligible.

Although the Marketplace did not issue a timely notice of eligibility determination with respect to your eligibility for cost-sharing reduction (CSR) version, this does not prevent the Appeals Unit from reaching the merits of your case on your January 21, 2014 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews of Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

In the application that was submitted on October 7, 2014, you attested to an expected yearly income of \$26,924.66, which included (1) \$21,484.66 in income you received from your former employer, [REDACTED], and (2) the anticipated receipt of \$5,440.00 in income from unemployment benefits. The eligibility determination relied upon that information.

According to the record, you are the only person in your tax household.

An annual income of \$26,924.66 is 234.33% of the 2014 federal poverty level (FPL) for a one-person household. Since you met the non-financial requirements and had a household modified adjusted gross income (MAGI) that was at or below 250% of the FPL for the applicable family size, you were correctly found eligible for CSR as of October 7, 2014.

You testified that after having provided the Marketplace with information regarding your additional anticipated income during 2015 through your unemployment benefits, your deductible under your policy increased from \$1,100.00 to \$2,250.00.

Since you were determined to be at 234.33% of the 2014 FPL for a one-person household, you were correctly found to be eligible to enroll in a CSR silver plan which provides coverage at up to 73% of overall expenses and is responsible for

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a Maximum Out Of Pocket (MOOP) limit of up to \$4,000.00, which included a commensurate increase in deductibles to \$2,250.00 applicable to that plan.

Accordingly, the October 7, 2014 preliminary eligibility determination and the corresponding December 1, 2014 eligibility determination finding you eligible to enroll in CSR silver plan, which provides at coverage up to 73% of overall expenses and is responsible for a Maximum Out Of Pocket (MOOP) limit of up to \$4,000.00 for a single person, is correct and is AFFIRMED.

You further testified that since you had subsequently been found eligible for Fee-For-Service Medicaid coverage beginning September 1, 2014, as reflected in your December 16, 2014 and December 19, 2014 notices of enrollment, you were seeking reimbursement for the premium amounts paid for coverage under the Empire Silver Guided Access w/HSA – cdib plan during the months of October and November of 2014.

The Marketplace must permit a qualified health plan enrollee to request disenrollment from coverage provided they provide reasonable notice. However, the record does not support that you requested disenrollment from your plan. Furthermore, by paying the premium amounts for coverage during the months of October and November 2014, you received the benefit of coverage under the terms of the plan in which you enrolled during those months, even though you had subsequently been found simultaneously eligible for Fee-For-Service Medicaid coverage during those same months.

Therefore, the record does not support a reimbursement of your plan premiums during the months of October and November of 2014.

## **Decision**

The October 7, 2014 preliminary determination and the corresponding December 1, 2014 eligibility determination are AFFIRMED.

You are not eligible for reimbursement of your premium amounts paid for coverage during the months of October and November 2014 as a result of you being subsequently found eligible for Fee-For-Service Medicaid coverage effective September 1, 2014.

**Effective Date of this Decision:** August 7, 2015

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

You continue to be eligible to enroll in CSR silver plan which coverage up to 73% of overall expenses and responsible for an Maximum Out Of Pocket (MOOP) limit of up to \$4,000.00 for a single person.

This Decision has no effect any subsequent determination issued by the Marketplace on or after December 1, 2014, including the December 13, 2014 determination finding you eligible for Medicaid beginning December 1, 2014, which was then backdated to September 1, 2014.

## **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:

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- By fax: 1-855-900-5557

## **Summary**

The October 7, 2014 preliminary determination and the corresponding December 1, 2014 eligibility determination is AFFIRMED.

You are not eligible for reimbursement of your premium amounts paid for coverage during the months of October and November 2014 as a result of you being subsequently found eligible for Fee-For-Service Medicaid coverage effective September 1, 2014.

You continue to be eligible to enroll in a cost-sharing reduction silver plan which provides coverage at up to 73% of overall expenses and is responsible for a Maximum Out Of Pocket (MOOP) limit of up to \$4,000.00 for a single person.

This Decision has no effect any subsequent determination issued by the Marketplace on or after December 1, 2014, including the December 13, 2014 determination finding you eligible for Medicaid beginning December 1, 2014, which was then backdated to September 1, 2014.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]