



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

Notice of Decision

Decision Date: August 18, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001583

[REDACTED]

Dear [REDACTED],

On February 20, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 26, 2014 disenrollment notice.

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 18, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001583



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 for Medicaid as of November 3, 2014, effective January 1, 2015?

Did the Marketplace properly determine the date in which your enrollment with Silver Select Silver NS INN Dep25 was effective?

Procedural History

On November 3, 2014 the Marketplace sent you a notice which stated that it was time to renew your health coverage for 2015. It also stated that, based on federal and state sources, you qualify for Medicaid effective January 1, 2015 because your income is between \$0.00 and \$16,105.00. If there was a mistake you were instructed to log into your account and make changes between November 16, 2014 and December 15, 2014.

No changes were made to your account prior to December 15, 2014.

On December 21, 2014, the Marketplace issued a notice confirming your enrollment in Medicaid effective January 1, 2015. It also stated that you must choose a health plan or one will be chosen with you.

On December 23, 2014, the Marketplace mailed you a letter stating that email sent by NY State of Health was returned as undeliverable or "bounced back." It also stated that you must log into your NY State of Health account to update your email address.

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On December 26, 2014, the Marketplace issued a disenrollment notice that stated your insurance coverage with Silver Select will end effective December 31, 2014 because you are no longer eligible to remain enrolled in your current health insurance.

On December 30, 2014, the Marketplace received your modified application for health insurance for 2015 coverage, which included your expected household income for the 2015 tax year.

On December 31, 2014, the Marketplace issued a notice that you are newly eligible to receive an advance premium tax credit (APTC) of up to \$174.00 per month and cost-sharing reductions (CSR) effective February 1, 2015. This eligibility was based in part on an expected household income of \$24,000.00 for the 2015 tax year. The notice also stated that you will continue to receive services through your current health plan, which will end on January 31, 2015.

On December 31, 2014, the Marketplace received your non-financial application for health insurance.

On January 1, 2015, the Marketplace issued an eligibility redetermination that you are newly eligible to purchase a qualified health plan (QHP) at full cost through NY State of Health effective February 1, 2015.

On January 5, 2015, the Marketplace received your modified application for health insurance with financial assistance.

On January 6, 2015, the Marketplace issued an eligibility redetermination that you are eligible to receive APTC of up to \$192.00 per month and CSR effective February 1, 2015 based on an expected household income of \$22,500.00 for the 2015 tax year.

On or around January 23, 2015, you spoke to the Marketplace's Account Review Unit and appealed that determination insofar as your effective date of coverage began on February 1, 2015 rather than January 1, 2015.

On January 24, 2015, the Marketplace issued a notice confirming your enrollment with Silver Select Silver NS INN Dep25 effective March 1, 2015.

Prior to the hearing on February 20, 2015, the Marketplace received your supporting evidence, which included: (1) two copies of the December 23, 2014 letter; (2) a copy of the December 31, 2014 eligibility determination notice; (3) a screenshot of your eligibility determination finding you eligible for a maximum tax credit of \$192.00 per month; (4) handwritten notes regarding your Marketplace account overview dated December 31, 2014; (5) a copy of the HIPAA Privacy and Security Awareness Policy snapshot; (6) a copy of the June 13, 2014 Notice

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of Proposed Premium Rate Change issued by Excellus Health Plan, Inc.; (7) a copy of the Billing Summary for your January 1, 2015 premium payment issued on December 16, 2014; (8) a copy of the premium overpayment reimbursement check issued by Excellus Health Plan, Inc. on January 22, 2015; (9) a copy of your Certificate of Group Health Plan Coverage issued by Excellus Health Plan, Inc. on January 2, 2015; and (10) multiple informational articles regarding Complex Regional Pain Syndrome (CRPS), Central Sleep Apnea (CSA), and the XYREM Success Program for Patients.

On February 20, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to give you an opportunity to submit supporting evidence.

On that same day, the Marketplace's Appeals Unit received your supporting evidence, which included a copy of your handwritten notes regarding the timeline of events for your health insurance through NY State of Health. This evidence was collectively marked as Appellant's Exhibit 2 and incorporated into the record.

The Marketplace's Appeals Unit did not receive any other supporting evidence within 15 days, and the record was closed on March 9, 2015.

Findings of Fact

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

- 1) According to the January 5, 2015 application for health insurance, you are the only person in your household and you expect to file your 2015 federal income tax return as single.
- 2) The record reflects that, as of December 1, 2013, you elected to receive all information from the New York Marketplace electronically.
- 3) The record reflects that you were enrolled in Silver Select through Excellus BlueCross BlueShield effective January 1, 2014 to December 31, 2014.
- 4) You testified that you completed your renewal for 2015 health insurance coverage on November 16, 2014 with the assistance of a healthcare specialist. You further testified that you were told by a Marketplace representative that you did not receive a confirmation number because you updated your expected income for the 2015 tax year.
- 5) You testified, and the record reflects, that you received an invoice from Excellus BlueCross BlueShield on December 16, 2014 for coverage

effective January 1, 2015 (Appellant's Exhibit 1, February 20, 2015). Appellant's Exhibit 1 also reflects that your January 2015 premium was paid for January 1, 2015 coverage.

- 6) You testified that the next correspondence you received from the Marketplace was dated December 21, 2014, which stated that your enrollment with Medicaid was confirmed to begin January 1, 2015 but you must pick a plan.
- 7) You testified that you did not receive the November 3, 2014 renewal notice sent by the Marketplace indicating that you were eligible for Medicaid effective January 1, 2015.
- 8) You testified, and the record reflects, that emails sent to you by the Marketplace regarding your health insurance coverage notices were returned as undeliverable or "bounced back" (Appellant's Exhibit 1, February 20, 2015).
- 9) You testified that you did not receive any other notices concerning your choice of health plans between November 3, 2014 and December 30, 2014, the period during which you were determined eligible for Medicaid effective January 1, 2015.
- 10) You testified that your eligibility for Medicaid was determined based on your income from 2013, which was less than \$16,105.00 for the year.
- 11) You testified, and the record reflects, that you updated your application for health insurance on December 30, 2014. You further testified that you chose the Silver Select Silver NS INN Dep25 plan through Excellus BlueCross BlueShield for coverage effective January 1, 2015.
- 12) The record reflects that the Marketplace's System automatically disenrolled you from your insurance coverage with Excellus BlueCross BlueShield on December 21, 2014 effective December 31, 2014, and enrolled you in Medicaid Fee-for-Service coverage effective January 1, 2015.
- 13) You testified that you believed your insurance renewal was completed on December 30, 2014 and were enrolled in Silver Select Silver NS INN Dep25 for January 1, 2015 coverage. You further testified that you were not aware that you did not have insurance coverage until you went to your doctor's office on January 5, 2015 and were denied treatment. You testified that you called the Marketplace and a representative informed you that your eligibility was redetermined on December 31, 2014 based on an application for health insurance not requesting financial assistance, initiated by User "[REDACTED]". The record reflects that User "[REDACTED]"

modified your application from seeking financial assistance to one no longer seeking financial assistance.

- 14) You testified that you began an “internal appeal” process to backdate your coverage with Silver Select Silver NS INN Dep25 to February 1, 2015. The record reflects that your insurance coverage with Silver Select Silver NS INN Dep25 is effective February 1, 2015.
- 15) You are requesting that your insurance coverage with Silver Select Silver NS INN Dep25 become effective retroactively to January 1, 2015.
- 16) You testified that you have paid approximately \$12,431.00 in out of pocket expenses due to necessary medical treatments and medications.
- 17) According to the January 5, 2015 application, you expect to earn \$22,500.00 for the 2015 tax year.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions (CSR), Medicaid, or Child Health Plus (CHP). In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the projected eligibility determination for the following year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual’s eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, the Marketplace must generally make that redetermination effective on the first day of the month following the date the Marketplace is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, the Marketplace may determine that any change made after the 15th of any month will not be effective until the first of the next following month (45 CFR §155.330 (f)(2)), and it has chosen to do so.

Advance Premium Tax Credit

The advance premium tax credit (APTC) is available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (FPL); (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP; and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

The maximum amount of APTC that can be authorized equals

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2015 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 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).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

Cost-Sharing Reductions

Cost sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through the Marketplace, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

Medicaid

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 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)).

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 still the 2014 FPL, which 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).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for Medicaid effective January 1, 2015.

On November 3, 2014, the Marketplace sent you a renewal notice that you qualify for Medicaid because federal and state data sources show that your income is between \$0.00 and \$16,105.00 and therefore within the allowable income range for Medicaid based on your household size. If this was a mistake

you were instructed to log into your account and make changes between November 16, 2014 and December 15, 2014.

You testified that you completed your renewal for 2015 health insurance coverage on November 16, 2014 with the assistance of a healthcare specialist. However, there is no indication in the record that your account was properly renewed at this time.

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 that is at or below 138% of the federal poverty level (FPL) for the applicable family size.

At the February 20, 2015 hearing, you testified that you were able to distinguish that the November 3, 2014 eligibility determination was made based upon your 2013 federal income tax return, which fell below the Medicaid income threshold of \$16,105.00 for a one person household. However, your income from 2013 is not an accurate representation of your expected annual income for 2015.

You testified that you did not receive the November 3, 2014 renewal notice sent by the Marketplace indicating that you were eligible for Medicaid effective January 1, 2015 and that if this was a mistake you needed to update your account. You further testified, and the record reflects, that emails sent to you by the Marketplace regarding your health insurance coverage notices were returned as undeliverable or “bounced back”.

Since you were not aware that the Marketplace had determined you Medicaid eligible based on income information that is no longer accurate, The November 3, 2014 renewal eligibility determination notice is RESCINDED.

The second issue is whether the Marketplace properly determine the date in which your enrollment with Silver Select Silver NS INN Dep25 was effective.

Your application was last updated on January 5, 2015. On January 6, 2015, the Marketplace issued an eligibility redetermination notice that stated you are eligible to receive an advance premium tax credit of up to \$192.00 per month and cost-sharing reductions effective February 1, 2015 based on an expected household income of \$22,500.00 for the 2015 tax year.

On January 24, 2015, the Marketplace issued a notice confirming your enrollment with Silver Select Silver NS INN Dep25 effective March 1, 2015.

You testified that you began an “internal appeal” process to backdate your coverage with Silver Select Silver NS INN Dep25 to February 1, 2015. The record reflects that your insurance coverage with Silver Select Silver NS INN

Dep25 is effective February 1, 2015. You are now seeking the coverage to be backdated to January 1, 2015.

As discussed above, the record supports a finding that you did not receive the notice informing you that you need to update your account if the Marketplace had made a mistake in determining your eligibility for health insurance for 2015. If you had been properly notified, you could have updated your account before the deadline had expired and your enrollment in a qualified health plan would have been continuous.

Therefore, in order to bring the notices into line with the record as currently established:

The November 3, 2014 renewal eligibility determination notice is RESCINDED.

The December 31, 2014 and the January 1, 2015 eligibility determination notices are RESCINDED.

The January 6, 2015 eligibility redetermination notice is MODIFIED to state that your eligibility is effective January 1, 2015.

The January 24, 2015, enrollment confirmation notice is MODIFIED to state that your enrollment with Silver Select Silver NS INN Dep25 is effective January 1, 2015.

Decision

The November 3, 2014 eligibility determination is RESCINDED.

The December 31, 2014 and the January 1, 2015 eligibility determination notices are RESCINDED.

The January 6, 2015 eligibility redetermination notice is MODIFIED to state that your eligibility is effective January 1, 2015.

The January 24, 2015, enrollment confirmation notice is MODIFIED to state that your enrollment with Silver Select Silver NS INN Dep25 is effective January 1, 2015.

Your case is returned to the Marketplace to effectuate these changes.

Effective Date of this Decision: August 18, 2015

How this Decision Affects Your Eligibility

Your current January 6, 2015 eligibility determination is effective for January 1, 2015 health insurance coverage.

Your 2015 insurance coverage with Silver Select Silver NS INN Dep25 will be effective January 1, 2015.

Please be aware that you are responsible for all premium payments for the month in which your health insurance coverage is retroactively effective.

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
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- By fax: 1-855-900-5557

Summary

The November 3, 2014 eligibility determination is RESCINDED.

The December 31, 2014 and the January 1, 2015 eligibility determination notices are RESCINDED.

The January 6, 2015 eligibility redetermination notice is MODIFIED to state that your eligibility is effective January 1, 2015.

The January 24, 2015, enrollment confirmation notice is MODIFIED to state that your enrollment with Silver Select Silver NS INN Dep25 is effective January 1, 2015.

Your case is returned to the Marketplace to effectuate these changes.

Your current January 6, 2015 eligibility determination is effective for January 1, 2015 health insurance coverage.

Your 2015 insurance coverage with Silver Select Silver NS INN Dep25 will be effective January 1, 2015.

Please be aware that you are responsible for all premium payments for the month in which your health insurance coverage is retroactively effective.

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:

