



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

Notice of Decision

Decision Date: July 30, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001606

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On February 25, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 4, 2014 renewal notice and January 28, 2015 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).

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Issue

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

Did the Marketplace properly give you notice that you and your spouse were potentially eligible for Medicaid, effective January 1, 2015?

Did the Marketplace properly determine that you and your spouse were eligible for Medicaid under the "continuous coverage" policy, effective January 1, 2015?

Procedural History

On January 21, 2014, you applied for insurance through the Marketplace for yourself, your spouse, and your two children. Later that day, you modified your application to apply for insurance only for yourself and your spouse.

On January 22, 2014, the Marketplace issued a notice, stating that you and your spouse were eligible to enroll in a health insurance plan through the Marketplace, but that you were not eligible for financial assistance because your income was in excess of that allowed by such programs. Your children's eligibility for coverage was not referenced in this notice.

Although there are no written notices in your account to verify this, you and your husband were enrolled in a plan, effective March 1, 2014 to December 31, 2014.

No further actions were documented in your account until November 4, 2014, when the Marketplace sent you a notice stating it was time to renew your health

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insurance coverage for 2015 (See Exhibit #1). The notice further stated that, based on federal and state data sources, you and your spouse qualified for healthcare coverage under Medicaid, effective January 1, 2015, based on an income between \$0 and \$32,913.00. The notice stated that if there were any corrections that needed to be made, they must be made to your account between November 16, 2014 and December 15, 2014, in order for the corrections your new plan to be effective January 1, 2015, and that your “re-enrollment in a plan for your next year of coverage may be cancelled.”

Your account was updated on January 27, 2015 with regard to your income, and the Marketplace prepared a preliminary eligibility determination in your case. It stated that you and your spouse were no longer eligible for Medicaid, but would continue to receive Medicaid coverage “because certain individuals determined eligible for Medicaid remain eligible for benefits for twelve continuous months from the date that they were determined eligible.” This is referred to as the “continuous coverage” policy. This new determination was based on an expected household income of \$61,992.00.

Also on January 27, 2015, you spoke with the Marketplace’s Account Review Unit and appealed that preliminary determination insofar as it continued your Medicaid eligibility instead of determining you and your spouse’s eligibility for a different insurance affordability program.

On January 28, 2015, the Marketplace issued a notice of eligibility determination stating that you and your spouse were no longer eligible for Medicaid, but that you would continue to receive Medicaid coverage until December 31, 2015.

On February 25, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit.

Findings of Fact

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

- 1) The record reflects that you currently reside with your spouse and your two children.
- 2) The record reflects that you expect to file your 2015 federal income tax return as married filing jointly, and claim your two children as dependents.
- 3) You testified that you and your spouse are self-employed.

- 4) You testified, and the record reflects, that you attested to an expected household income of \$97,200.00 for the 2014 tax year based on expected projections from your businesses.
- 5) The record reflects that you and your spouse's eligibility for health insurance was reviewed by the Marketplace on November 2, 2014, which resulted in a determination of Medicaid eligibility. The record further reflects that the income used to make this eligibility determination was between \$0 and \$32,913.00.
- 6) According to the January 27, 2015 application, you attested to an expected household income of \$61,992.00. You testified that this is an accurate representation of your expected household income for the 2015 tax year.
- 7) The record reflects that you and your spouse were enrolled in the MVP Premier Plus HDHP Bronze 3 ("MVP Premier") plan effective March 1, 2014 to December 31, 2014. You testified that you paid the January 2015 MVP Premier premium for yourself and your spouse because you believed that you had until January 2015 to change your plan.
- 8) You testified that you received a letter from your health plan, MVP Health Care, in November 2014, which stated that if you were happy with your current plan, then your enrollment would be renewed for the following year. You testified that you relied upon this notice.
- 9) You testified that you received notices from the Marketplace but did not open them until January 2015 because you believed that you had already been renewed in your current plan for 2015 coverage.
- 10) You testified that you received another letter from MVP Health Care on January 20, 2015, stating that your payment for January 2015 coverage was being returned because you no longer had coverage through the carrier.
- 11) You testified that you believed you and your spouse were improperly determined eligible for Medicaid and requested that your eligibility be determined based on your correct expected household income of \$61,992.00 for the 2015 tax year.
- 12) You reside in Saratoga County, New York.

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, Medicaid, or Child Health Plus. 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 individual's projected eligibility for that year, including any expected eligibility for financial assistance (45 CFR § 155.335(c)(3)). The notice must allow a reasonable amount of time for the qualified individual to respond and for the Marketplace to implement any changes that the individual has elected (45 CFR § 155.335(d)(2)(ii)). If a qualified individual does not respond to the notice within a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice, and any reported changes (45 CFR § 155.335(h)(i)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year (45 CFR § 155.335(i)).

QHP coverage takes effect on January 1, 2015 for plans selected in the Marketplace on or before December 20, 2014 (45 CFR § 155.410(f)(1); NY State of Health Extends December 15 Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-extends-december-15-enrollment-deadline> [last updated December 12, 2014]).

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 \$23,850.00 for a four-person household (79 Fed. Reg. 3593, 3593).

Most adults determined eligible for Medicaid are guaranteed twelve months of Medicaid coverage even if they lose Medicaid eligibility because of any changes

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or updates they make to their Marketplace account. For example, even if income increases above the Medicaid limit allowed for the household size, the insured will remain covered under Medicaid for a twelve-month period. This twelve-month period is referred to as “continuous coverage” and is set based on the start date of the original Medicaid eligibility determination or the date of a subsequent Medicaid eligibility determination based on modified adjusted gross income (N.Y. Soc. Serv. Law § 366(4)(c)).

People who receive or are eligible for Medicaid are not eligible for an Advance Premium Tax Credit (APTC) since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid social security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

Legal Analysis

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

The Marketplace must redetermine a qualified individual’s eligibility for health insurance and financial assistance to help pay for that health insurance annually. The Marketplace must issue a renewal notice that contains the information by which the Marketplace will use to determine an individual’s eligibility. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On November 4, 2014, the Marketplace issued an annual eligibility redetermination notice in your case. That notice stated that based on information from federal and state sources, the Marketplace found you would be eligible for Medicaid effective January 1, 2015. You were notified that if you thought this was incorrect, you should update your account between November 16, 2014 and December 15, 2014, in order for the corrections to be effective January 1, 2015, or your re-enrollment for your next year of coverage might be cancelled.

The Marketplace extended the December 15, 2014 deadline to December 20, 2014.

When there was no activity in your account by December 20, 2014, the Marketplace was required to use the information that was contained in the November 4, 2014 renewal notice in order to determine your eligibility for coverage beginning January 1, 2015, and a notice should have been sent to you on approximately December 21, 2014 to advise you of the change in your eligibility and/or enrollment documenting this change.

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However, there is no record that any such notice was sent to you. Instead, the Marketplace failed to send any such notices to you advising you that your coverage had changed, until after you updated your account (see Exhibit #1).

Moreover, you reasonably relied on the letters you received from your insurance carrier that said if you wished your coverage to continue in 2015, there was nothing else you needed to do. Additionally, the November 4, 2014 notice only stated that your re-enrollment might be canceled, not that it would be cancelled.

Therefore, it is determined that you should not have been found eligible for Medicaid effective January 1, 2015, and the November 4, 2014 renewal notice is **RESCINDED**.

Since the finding of Medicaid eligibility has been rescinded, the continuous coverage policy should not have been applied to you and your spouse. Therefore, the January 28, 2015 notice of eligibility determination is also **RESCINDED**.

You credibly testified, and the record reflects, that you expect a household income of \$61,992.00 for the 2015 tax year. Therefore, your case is **REMANDED** to the Marketplace for a redetermination of you and your spouse's eligibility for financial assistance based on a household size of four people, an expected annual household income of \$61,992.00, and a county residence of Saratoga County, New York.

Decision

The November 4, 2014 eligibility determination is **RESCINDED**.

The January 28, 2015 eligibility determination is **RESCINDED**.

Your case is **REMANDED** to the Marketplace to redetermine your and your spouse's eligibility for financial assistance based on a household size of four people, an expected household income of \$61,992.00, and a county residence of Saratoga County, New York.

Effective Date of this Decision: July 30, 2015

How this Decision Affects Your Eligibility

This is not a final determination of your eligibility for financial assistance.

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It returns your case to the Marketplace for a redetermination of your and your spouse's eligibility for financial assistance based on a household size of four people, an expected household income of \$61,992.00, and a county residence of Saratoga County, New York.

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 November 4, 2014 eligibility determination is **RESCINDED**.

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The January 28, 2015 eligibility determination is RESCINDED.

Your case is REMANDED to the Marketplace to redetermine your and your spouse's eligibility for financial assistance based on a household size of four people, an expected household income of \$61,992.00, and a county residence of Saratoga County, New York.

This is not a final determination of your eligibility for financial assistance.

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]