



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: AP000000001746

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On March 13, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 11, 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).

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).

This page intentionally left blank.



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

Decision

Decision Date: July 30, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001746

[REDACTED]
[REDACTED]
[REDACTED]

Issue

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 an advance premium tax credit of up to \$209.00 per month and eligible for cost-sharing reductions effective March 1, 2015?

Did the Marketplace properly terminate your Medicaid coverage as of January 15, 2015?

Procedural History

The Marketplace received your initial application for health insurance on January 24, 2014 and several modified applications between February 19, 2014 and May 5, 2014.

On May 6, 2014, the Marketplace issued an eligibility redetermination notice that you are eligible for Medicaid effective May 1, 2014. The notice further stated that you have chosen to enroll in a Medicaid Managed Care plan (MMC) and your enrollment with your MMC plan will begin June 1, 2014. This determination was based on a household income of \$26,746.00.

On May 8, 2014, the Marketplace issued an eligibility redetermination notice that you remain eligible for Medicaid effective May 1, 2014. The notice further stated that you have not chosen a health plan but you must choose one soon or one will be chosen for you. This determination was based on a household income of \$26,746.00.

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).

On January 14, 2015, the Marketplace received your modified application for health insurance.

On January 15, 2015, the Marketplace issued an eligibility redetermination notice that you are eligible to receive an advance premium tax credit (APTC) of up to \$209.00 per month and cost-sharing reductions effective February 1, 2015. This determination was based on an expected household income of \$35,768.14.

Also on January 15, 2015, the Marketplace issued a disenrollment notice, which stated that your insurance with your MMC plan will end effective January 31, 2015 because you are no longer eligible to remain enrolled in your current health insurance.

On February 10, 2015, your application for health insurance was reran and the Marketplace prepared a preliminary eligibility determination in your case. It stated that you are eligible to receive an APTC of up to \$209.00 per month and cost-sharing reductions if you enrolled in a silver level health plan. This preliminary determination was based on a household income of \$35,768.14.

Also on February 10, 2015, you spoke with the Marketplace's Account Review Unit and appealed that preliminary determination insofar as it did not approve an APTC of more than \$209.00 per month.

On February 11, 2015 and February 14, 2015, the Marketplace issued eligibility determination notices that reflected the February 10, 2015 preliminary eligibility determination. This eligibility is effective March 1, 2015.

On March 9, 2015, you were scheduled for a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. However, due to technical difficulties, your telephone hearing was rescheduled.

On March 13, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. You were sworn in and waived formal notice to proceed with the hearing. 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 testified, and the record reflects that you currently reside with your adult daughter and your grandson.

- 2) You testified, and the record reflects, that you expect to file your 2015 federal income tax return as Head of Household, and claim your daughter and grandson as dependents.
- 3) You testified that you are currently caring for your mother but do not expect to claim her as a dependent for the 2015 tax year.
- 4) According to the February 10, 2015 application, you expect to earn \$30,000.10 for the 2015 tax year, before taxes are deducted. You testified and provided evidence that this income is an accurate representation of your expected income for the 2015 tax year (Appellant's Exhibit 1, March 13, 2015).
- 5) According to the February 10, 2015 application, your daughter expects to receive \$5,768.04 in Title II Social Security benefits for the 2015 tax year. However, the record reflects that a copy of your daughter's Social Security award letter was uploaded to your Marketplace account on September 3, 2014, which verifies that she is currently receiving Supplemental Security Income (SSI) payments in the amount of \$480.67 per month as of October 1, 2014. You testified that your daughter is currently receiving SSI benefit payments.
- 6) You testified, and the record reflects, that you reside in Kings County, NY.
- 7) You testified that you cannot afford monthly health insurance premiums because you are caring for your ailing mother, your daughter and your grandson. You further testified that you may plan to take family medical leave in order to properly care for your family.

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

Applicable Law and Regulations

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)).

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).

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 \$19,790.00.00 for a three-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).

Modified Adjusted Gross Income

A tax filer's household income includes the modified adjusted gross income (MAGI) of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1)). The MAGI-based income of an individual who is included in the household of his or her natural, adopted, or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return (42 CFR § 435.603(d)(2)(i)).

However, payments received under Social Security Title XVI, Supplemental Security Income (SSI), are not counted as part of MAGI because they are not considered Social Security benefits and, therefore, are not taxable (IRS Pub. 17, Ch. 11 (2014); 26 USC § 86(d)(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 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 the 2015 FPL, which is \$20,090.00 for a three-person household (80 Fed. Reg. 3236, 3237).

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).

People who receive or are eligible for Medicaid are not eligible for 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)).

Medicaid Continuous Coverage

Most adults determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage offered through Medicaid Managed Care, even if the adult loses Medicaid eligibility because of any changes 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 12-month period. This 12-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 (see 42 CFR § 435.916; N.Y. Soc. Serv. Law § 366(4)(c)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$209.00 per month and cost-sharing reductions effective March 1, 2015.

Of the eligibility factors listed above, the only one at issue is the amount of household income the Marketplace should have used to calculate your eligibility.

The record reflects that you expect to file your 2015 federal income tax return as head of household and expect to claim your adult daughter and grandson as dependents; therefore, you are a three-person tax household.

In the application that was submitted on February 10, 2015, you attested to an expected household income of \$35,768.14 before taxes are deducted. This income includes your earned income of \$30,000.10 and your daughter's Title II Social Security income of \$5,768.04. The eligibility determination relied upon that information.

However, the record reflects that your daughter is currently receiving \$480.67 per month in Social Security Title XVI Supplemental Security Income (SSI) payments, not Social Security Title II benefits.

When calculating a household's modified adjusted gross income for eligibility purposes, SSI payments are not included in the household's income because they are not taxable.

Since the February 11, 2015 eligibility determination was improperly based on a household income that included your daughter's SSI payments, it is not supported by the record and is **RESCINDED**.

The second issue under review is whether the Marketplace properly terminated your Medicaid coverage as of January 15, 2015.

The record also reflects that the Marketplace issued an eligibility determination notice on May 6, 2014, that you were eligible for Medicaid effective May 1, 2014 based on a household income of \$26,746.00.

However, on January 15, 2015, the Marketplace issued an eligibility redetermination notice that you are eligible to receive an APTC of up to \$209.00 per month and cost-sharing reductions effective February 1, 2015 based on a household income of \$35,768.14.

Most adults who are determined eligible for Medicaid are guaranteed 12 continuous months of Medicaid Coverage, even if the adult loses Medicaid

eligibility because of changes to their Marketplace, including increased income above the Medicaid limit allowed for the household size.

When the Marketplace issued the January 15, 2015 eligibility redetermination notice, the determination was made 8 months from the effective date of your initial Medicaid coverage. Since the Marketplace terminated your Medicaid coverage prior to the end of your 12 month Medicaid eligibility year, the January 15, 2015 eligibility determination is also RESCINDED.

The January 15, 2015 disenrollment notice is also RESCINDED insofar as it improperly terminated your Medicaid Managed Care plan enrollment on January 31, 2015, prior to the end of your Medicaid eligibility year.

Accordingly, this case is REMANDED to the Marketplace to reinstate your Medicaid coverage and your Medicaid Managed Care plan enrollment effective February 1, 2015 for the remainder of your 12 month Medicaid eligibility year, which ends on April 30, 2015.

Decision

The February 11, 2015 eligibility determination is RESCINDED.

The January 15, 2015 eligibility determination is RESCINDED.

The January 15, 2015 disenrollment notice is RESCINDED.

Your case is REMANDED to the Marketplace to reinstate your Medicaid coverage and your Medicaid Managed Care plan enrollment with EmblemHealth, effective February 1, 2015, for the remainder of your 12 month Medicaid eligibility year, which ends on April 30, 2015.

Effective Date of this Decision: July 30, 2015

How this Decision Affects Your Eligibility

You remain eligible for Medicaid for the remainder of your Medicaid eligibility year, effective May 1, 2014 to April 30, 2015.

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

Summary

The February 11, 2015 eligibility determination is RESCINDED.

The January 15, 2015 eligibility determination is RESCINDED.

The January 15, 2015 disenrollment notice is RESCINDED.

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).

Your case is REMANDED to the Marketplace to reinstate your Medicaid coverage and your Medicaid Managed Care plan enrollment with EmblemHealth, effective February 1, 2015, for the remainder of your 12 month Medicaid eligibility year, which ends on April 30, 2015.

You remain eligible for Medicaid for the remainder of your Medicaid eligibility year, effective May 1, 2014 to April 30, 2015.

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]