



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

Notice of Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001838

[REDACTED]

Dear [REDACTED],

On April 8, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 29, 2014 eligibility determination, December 27, 2014 disenrollment notice, and February 12, 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 Code of Federal Regulation (CFR) 45 CFR § 155.545(b).

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Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001838

[REDACTED]

Issues

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

Did the Marketplace properly terminate health insurance through Child Health Plus coverage for your son, [REDACTED], effective December 31, 2014?

Did the Marketplace properly terminate health insurance through Child Health Plus coverage for your daughter, [REDACTED], effective January 31, 2015?

Did the Marketplace properly that find you, [REDACTED], and your son [REDACTED] were eligible for up to \$197.00 per month in advance premium tax credits, eligible for cost-sharing reductions, and ineligible for Medicaid, effective March 1, 2015?

Procedural History

On January 17, 2014, the Marketplace issued a notice of eligibility determination, stating that your children [REDACTED] and [REDACTED] were eligible to enroll in health insurance through Child Health Plus. Their coverage would start after a plan was selected for them.

On March 22, 2014, the Marketplace issued a confirmation of your children's enrollment in a CHP plan; our records indicate that their enrollment was effective February 1, 2015.

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On November 29, 2014, the Marketplace issued a notice, stating that your family's eligibility had been redetermined. You and your son [REDACTED] were eligible to enroll in a qualified health plan (QHP); to receive up to \$341.00 per month in advance premium tax credits (APTC); and, if you and your son enrolled in a silver-level plan, eligible for cost-sharing reductions (CSR). This eligibility was effective January 1, 2015. The notice further stated that [REDACTED] was no longer eligible for Child Health Plus (CHP) because he was going to turn 19 years old on [REDACTED]. Finally, the notice stated that your daughter, [REDACTED], was eligible to enroll through CHP at a reduced premium rate of \$9.00 per month, effective January 1, 2015.

On December 11, 2014, the Marketplace issued a notice confirming your daughter's enrollment in her CHP plan on December 3, 2014, and that coverage could begin as of February 1, 2014 if you paid the first month's premium. The notice also stated that you and your son still needed to select a plan.

On December 27, 2014, the Marketplace issued a disenrollment notice confirming that your son's CHP coverage would be terminated effective December 31, 2014, because he was no longer eligible to remain enrolled in that plan.

On February 9, 2015, the Marketplace issued a notice confirming your daughter's enrollment in her CHP plan on February 8, 2015, and that coverage could begin as of February 1, 2014 provided your first month's premium was received. The notice also stated that you and your son still needed to select a plan.

On February 11, 2015, the Marketplace received several revised applications. In each case, the Marketplace responded by preparing preliminary determinations finding you and your son eligible for up to \$341.00 in APTC and CSR. It also stated that your daughter was eligible for CHP at a reduced premium rate of \$9.00 per month. In each case, eligibility was effective March 1, 2015.

On February 12, 2015, the Marketplace issued a notice of eligibility determination which formalized the findings of the February 11, 2015 preliminary eligibility determinations.

On February 13, 2015, the Marketplace issued a disenrollment notice stating that your request to terminate your daughter's CHP coverage was received on February 12, 2015, and that coverage would terminate effective February 28, 2015.

On February 13, 2015 and February 14, 2015, the Marketplace issued notices confirming your daughter's re-enrollment in her CHP plan on February 12, 2015 and February 13, 2015, respectively. The premium rate was \$9.00 per month. The notice also confirmed your selection of a Fidelis Care plan for you and your son, with a premium of \$304.64 per month. In each case, the notice stated that

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coverage could begin as soon as March 1, 2015 provided your first month's premium was received.

On February 18, 2015, the Marketplace received a revised application in which you attested to an increase in your household income to \$77,940.00.

On February 19, 2015, the Marketplace issued a notice that stated that you and your son, [REDACTED], were eligible to enroll in a QHP; receive an APTC of up to \$197.00 per month; and, if you and your son enrolled in a silver-level plan, eligible for CSR, effective April 1, 2015. The notice also stated that your daughter continued to be eligible to enroll through CHP at a reduced premium rate of \$9.00 per month, effective April 1, 2015.

That same day, the Marketplace issued a notice confirming your daughter's enrollment in her CHP plan on February 18, 2015 at a premium rate of \$9.00 per month. It also confirmed your selection of a Fidelis Care plan for you and your son's coverage at a premium rate of \$448.64 per month. In each case, the notice stated that coverage could begin as soon as April 1, 2015 provided your first month's premium was received.

On February 20, 2015, you spoke with the Marketplace's Account Review Unit and appealed (1) the February 19, 2015 determination, and (2) your daughter's disenrollment from her CHP plan coverage as of January 31, 2015.

On April 8, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony copies of earning statements received during February and March 2015 for you and your spouse. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On April 18, 2015, you provided the above referenced documents to the Appeals Unit through your Marketplace online account. As a result, the record was closed on April 18, 2015.

Findings of Fact

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

- 1) You testified that both your son and your daughter had been enrolled in a CHP program beginning February 1, 2014.
- 2) You testified that you were informed that your daughter had been disenrolled from her CHP plan as of January 31, 2015 when you

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- contacted the Marketplace in February 2015. You also testified that you had received no written or electronic notification from the Marketplace that your daughter had been disenrolled from her CHP plan effective January 31, 2015.
- 3) You testified, and your application indicates, that you elected to receive all notifications from the Marketplace electronically.
 - 4) On November 29, 2014, the Marketplace issued a notice stating that your son was no longer eligible to enroll in a CHP plan because he had turned 19 on [REDACTED]. This notice also stated that he was eligible to select a qualified plan to go into effect January 1, 2015.
 - 5) You testified that you were also told by a Marketplace representative that your son had been disenrolled from his CHP plan as of December 31, 2014 because he had aged out of the program.
 - 6) Your application reflects that your son turned 19 on [REDACTED].
 - 7) The Marketplace issued a notice on February 13, 2015, stating that your request to terminate your daughter's CHP coverage was received on February 12, 2015, and that coverage would terminate effective February 28, 2015.
 - 8) Your enrollment details, as reflected in your application submitted on November 16, 2014, indicate that while her eligibility was originally terminated as of January 31, 2015, it was thereafter extended to February 28, 2015.
 - 9) You testified that it was critical that your daughter have insurance since she had been in a mental institution and would need to see a therapist and receive the necessary medication. You further testified that you had already paid for out-of-pocket costs during the month of February 2015 and would need CHP coverage for both your children for that month.
 - 10) You enrolled you and your son in a qualified health plan on February 12, 2015 with coverage beginning March 1, 2015.
 - 11) You testified that you live with your spouse and five children.
 - 12) You testified that you expect to file your 2015 taxes jointly with your spouse and claim all five children as dependents.
 - 13) Your February 18, 2015 application indicated that only you and your son, [REDACTED], were seeking QHP plan coverage through the Marketplace since your daughter had already been found eligible for CHP coverage.

- 14) You attested in your February 18, 2015 application that your household's expected yearly income would be \$77,940.00. In this application, you indicated that you would be receiving \$690.00 once every two weeks from the [REDACTED] and that your spouse expected to receive approximately \$60,000.00 for the year from his employer, [REDACTED]
- 15) You testified that your spouse lost his position with [REDACTED] as of March 6, 2015, but that he was then employed by [REDACTED] on March 9, 2015.
- 16) You testified that both you and your spouse are paid once every two weeks.
- 17) You provided earnings statements you received from [REDACTED] reflecting that you had received (1) \$690.00 on or about February 6, 2015, (2) \$552.00 on February 20, 2015, (3) \$414.00 on March 6, 2015, and (4) \$612.38 on or about March 20, 2015.
- 18) You provided earnings statements your spouse had received from [REDACTED] reflecting that he received (1) \$1,801.73 on February 6, 2015, (2) \$2,057.45 on February 20, 2015, (3) \$2,400.00 on March 6, 2015, and (4) \$2,366.77 on March 20, 2015.
- 19) You provided a signed letter from [REDACTED] stating that your spouse's employment had ended on March 6, 2015. This letter also stated that the sum paid on March 20, 2014 was remitted as part of a severance package.
- 20) You also provided a banking transfer statement reflecting that your spouse received \$1,475.00 from [REDACTED] on April 3, 2015.

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

Applicable Law and Regulations

Child Health Plus

A child may be eligible for coverage through Child Health Plus (CHP) provided (1) he or she lives in a household having a household income at or below 400% of the federal poverty level (FPL) and (2) is not eligible for medical assistance (Medicaid), except that a child who becomes eligible for Medicaid after becoming eligible for CHP, may be eligible for a subsidy payment for a period of three

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months after becoming eligible for such medical assistance (NY Public Health Law § 2511(2)(b) and (3)).

The “period of eligibility” for CHP is “that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date,” unless the CHP premiums are not timely paid or child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law [PHL] § 2510(6)).

Electronic Notice

The Marketplace must permit individuals a choice to receive notices and information in electronic format or by regular mail and must be permitted to change such election (45 CFR § 155.230(d); 42 CFR § 435.918(a)).

If the individual elects electronic communications, the Marketplace must send “an email or other electronic communication alerting the individual that a notice has been posted to his or her account” and send a notice by regular mail within three business days if the electronic communication cannot be delivered (42 CFR § 435.918(b)(4), (5)).

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).

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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 \$36,030.00 for a seven-person household (79 Fed. Reg. 3593).

For annual household income in the range of at least 200% but less than 300% of the 2014 FPL, the expected contribution is between 6.34% and 8.10% 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)).

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if his or her household's modified adjusted gross income falls at or below 154% of the FPL (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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 \$36,730.00 for a seven-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).

Legal Analysis

The first issue raised on appeal is whether the Marketplace properly terminated Child Health Plus (CHP) coverage for [REDACTED] and [REDACTED] effective December 31, 2014 and January 31, 2015, respectively.

Both your son and your daughter were enrolled in a CHP plan with coverage beginning February 1, 2014.

On November 29, 2014, the Marketplace issued a notice that stated, in relevant part, that your son was newly eligible to enroll in a qualified health plan (QHP) and receive an advance premium tax credit (APTC) and cost-sharing reductions (CSR), effective January 1, 2015. It further stated that he was no longer eligible to enroll in a CHP plan since he would be 19 years old as [REDACTED].

Since the period of your son's CHP eligibility began on February 1, 2014, it would have continued until January 31, 2015, except an event occurred to disqualify him from CHP eligibility before that time. The record indicates your son, as a result of having turned 19 years old, became ineligible for CHP and instead became eligible to enroll in a QHP, effective January 1, 2015. However, you credibly testified that you had not received any notices of eligibility reflecting this result, or notices of termination indicating that your son's CHP policy had been cancelled as of December 31, 2014.

These notices were uploaded to your account and e-mails was sent advising you of the notices.

Since you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within one business day of notice generation. It was also required to send an email or other electronic communication alerting you that a notice has been posted to your account.

If the electronic communication failed, the Marketplace was required to send a notice by regular mail within three business days of the date of the failed electronic communication if the electronic communication was undeliverable.

The record does not contain any evidence on behalf of the Marketplace as to whether or not the electronic communications were undeliverable. The record also does not contain evidence that the notices were sent by regular mail within

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three business days of the date of a failed electronic communication. Without evidence on behalf of the Marketplace, it must be presumed that you were not given proper notice of the actions planned or contemplated by the Marketplace.

Since you were not given proper notice of the end of your son [REDACTED] eligibility for CHP, the December 27, 2014 disenrollment notice stating that his CHP coverage would end effective December 31, 2014 is MODIFIED to reflect that his coverage termination date is February 28, 2015.

While the record does not contain a notice reflecting that your daughter's CHP coverage was cancelled effective January 31, 2015, you credibly testified that you were told by a Marketplace representative that it was in fact terminated on that date. Furthermore, your enrollment details reflect a termination date of January 31, 2015 as well. However, it is also noted that on February 12, 2015, a Marketplace representative revised your daughter's CHP termination date to February 28, 2015. A notice issued on February 13, 2015 also reflects a termination date of February 28, 2015.

Accordingly, we find the issue of your daughter's disenrollment is moot, and need not be further addressed.

The second issue is whether you and your son were properly determined eligible for an APTC of up to \$197.00 per month.

In the application that was submitted on February 18, 2015, you attested to an expected yearly income of \$77,940.00, and the eligibility determination relied upon that information.

According to the record you are in a seven-person tax household.

You reside in Suffolk County, where the second lowest cost silver plan available for an individual and a single dependent through the Marketplace costs \$645.88 per month.

An annual income of \$77,940.00 is 216.32% of the 2014 FPL for a seven-person household. At 216.32% of the FPL, the expected contribution to the cost of the health insurance premium is 6.91% of income, or \$449.09 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual plus one dependent in your county (\$645.88 per month) minus your expected contribution (\$449.09 per month), which equals \$196.79 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined your APTC to be \$197.00 per month.

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The third issue is whether the Marketplace properly determined that you and your son were eligible for cost-sharing reductions (CSRs).

CSRs are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$77,940.00 is 216.32% of the 2014 FPL, the Marketplace correctly found you to be eligible for CSRs.

The final issue is whether the Marketplace properly determined that you, your son, and your daughter were ineligible for Medicaid.

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% (154% in the case of children between the ages of 1 and 19) of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$36,730.00 for a seven-person household. Since \$36,730.00 is 212.20% of the 2015 FPL, the Marketplace properly found that you, your son, and your daughter were ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the February 19, 2015 eligibility determination properly stated that, based on the information you provided, you and your son were eligible for APTC of up to \$197.00 per month, eligible for cost-sharing reductions and ineligible for Medicaid, and that your daughter was eligible for CHP, but also ineligible for Medicaid, it is correct and is AFFIRMED.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. For an adult to be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$4,223.95 per month for a seven-person household.

In the case of your daughter, who is 17 years old, she would need to meet the non-financial criteria and have an income no greater than 154% of the FPL, which is \$4,713.68 for a seven-person household.

You testified that your financial situation has changed since your February 18, 2015 application inasmuch as your spouse lost his position. You further testified that your spouse was now seeking health insurance since he had lost his position. At the request of the Hearing Officer, you provided documentation reflecting your income for the months of February and March of 2015.

Since your income was \$5,101.18 for February 2015 and \$5,793.15 for March 2015, you did not qualify for Medicaid on the basis of monthly income when you submitted your applications in either February or March.

Decision

The December 27, 2014 disenrollment notice stating that your son's CHP coverage would end effective December 31, 2014 is MODIFIED solely to the extent that such termination date is now February 28, 2015.

The February 19, 2015 eligibility determination is AFFIRMED.

Effective Date of this Decision: August 21, 2015

How this Decision Affects Your Eligibility

Both your son's and your daughter's CHP enrollment terminated effective February 28, 2015.

You and your son remain eligible to receive an advance premium tax credit (APTC) of \$197.00 per month and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR), beginning March 1, 2015.

Your family is not eligible for Medicaid.

Please note that this Decision has no effect on any determinations issued on or after February 19, 2015, including the April 28, 2015 determination finding you, your spouse, your son, [REDACTED] and your daughter, [REDACTED], eligible for Medicaid.

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)).

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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):

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- By calling the Customer Service Center at 1-855-355-5777
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- By fax: 1-855-900-5557

Summary

The December 27, 2014 disenrollment notice stating that your son's CHP coverage would end effective December 31, 2014 is MODIFIED solely to the extent that such termination date is now February 28, 2015.

The February 19, 2015 eligibility determination is AFFIRMED.

Both your son's and your daughter's CHP enrollment terminated effective February 28, 2015.

You and your son remain eligible to receive an advance premium tax credit (APTC) of \$197.00 per month and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR), beginning March 1, 2015.

Your family is not eligible for Medicaid.

Please note that this Decision has no effect on any determinations issued on or after February 19, 2015, including the April 28, 2015 determination finding you, your spouse, your son, [REDACTED] and your daughter, [REDACTED], eligible for Medicaid.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(a).

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