



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

Notice of Decision

Decision Date: June 30, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001936

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Dear [REDACTED],

On March 31, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 5, 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).

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[REDACTED]
[REDACTED] [REDACTED] [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 and your 2 sons are not eligible for Medicaid?

Did the Marketplace properly determine that you are eligible to receive an advance premium tax credit of up to \$114.00 per month and cost-sharing reductions?

Did the Marketplace properly determine that your 2 sons are eligible to receive Child Health Plus with a \$9.00 monthly premium?

Procedural History

On March 4, 2015, the Marketplace received your application for health insurance.

On March 4, 2015, the Marketplace prepared a preliminary eligibility determination stating that you are eligible for up to \$114.00 of advance premium tax credits per month and cost-sharing reductions. Your daughter was determined not eligible for financial assistance. Your 2 sons were determined eligible for Child Health Plus with a \$9.00 monthly premium.

On the same day you spoke with the Marketplace's Account Review Unit and appealed the amount of financial assistance you were determined eligible to receive.

On March 5, 2015, the Marketplace issued an eligibility determination notice stating that you are conditionally eligible to receive up to \$141.00 of advance premium tax credits and cost-sharing reductions, and if you select a silver level qualified health plan; your daughter is eligible to purchase a qualified health plan at full cost; and your 2 sons are eligible to enroll through Child Health Plus with a \$9.00 premium per month.

On March 31, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit with the assistance of Spanish Interpreter [REDACTED]. 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. According to your March 4, 2015 Marketplace Application, you are applying for yourself, your [REDACTED] daughter, [REDACTED] and [REDACTED] sons.
2. You testified that you are only applying for yourself, your seventeen-year-old and fifteen-year-old sons.
3. Your daughter has qualified for health insurance coverage on another Marketplace Account (3/5/2015 Marketplace notice).
4. According to your March 4, 2015 Marketplace Application, you expected to file your 2015 federal income tax return with the tax status of Head of Household (with qualifying individual) and claim your two sons as dependents.
5. You testified that you plan on filing your 2015 federal income tax return with the tax status of Head of Household (with qualifying individual) and will claim all three of your children as dependents.
6. You reside in [REDACTED] County, New York.
7. According to your March 4, 2015 Marketplace application, your annual household income is \$43,761.60. This amount included: (1) \$14,587.20 in Social Security Benefits you expected to receive in 2015; (2) \$29,174.40 (14,587.20 X 2) in Social Security Benefits your sons expected to receive in 2015; and (3) your daughter has an expected yearly income of \$0.00.
8. You and your sons expect to receive \$1,215.60 per month in Social Security Benefits (3/4/2015 Marketplace Application).

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

Applicable Law and Regulations

Household Income for Medicaid:

Generally, the household income is the sum of the MAGI-based income of every individual included in the individual's household. However, the MAGI-based income of an individual who is included in the household of their natural, adopted or step parent and is not expected to be required to file a tax return 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 return (see 42 CFR § 435.603(d)(1), 42 CFR § 435.603(d)(2)).

For the purposes of determining a person's eligibility for financial assistance for health insurance, the term 'modified adjusted gross income' means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) social security benefits that were excluded from gross income under 26 USC § 86 (see 42 CFR 435.603(e), 26 USC § 36B(d)(2)(B)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(a)(1)(A)(i)). A dependent who has a yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 must file a tax return (see IRS Rev. Proc. 2014-61). Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the *taxable* part of social security and pension payments (IRS publication IR 2014-929, pg 15).

For the purposes of determining the amount of taxable income a person receives from Social Security Benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income" (26 USC § 86(b)(2)). Please note that this definition is different than the definition the Marketplace uses.

"Adjusted gross income" means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

"Gross income" is defined as all income from whatever source it is derived from. (26 USC § 61(a)). For the purposes of determining when a person's income from

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Social Security is included in their gross income, a person's IRS defined 'modified adjusted gross income' is added to one-half of their social security benefit and if it is greater than \$25,000.00, any amount in excess of \$25,000.00 is considered taxable gross income for purposes of filing a tax return. (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

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 that is at or below 138% of the federal poverty 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 federal poverty level (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 by the US Department of Health and Human Services, March 19, 2014).

Advance Premium Tax Credit:

The advance premium tax credit is available to a person who is eligible to enroll in a qualified health plan and (1) expects to have a household income between 138% and 400% of the 2013 federal poverty level; (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 qualified health plan; 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)).

Minimum Essential Coverage

Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f); 45 CFR § 155.305(f)(1)(B)).

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According to 26 USC § 5000A, which is part of the Internal Revenue Code, these government-sponsored plans provide minimum essential coverage:

- 1) the Medicare program under part A of title XVIII of the Social Security Act [26 USCS §§ 1395c et seq.]
- 2) the Medicaid program under title XIX of the Social Security Act [26 USCS §§ 1396 et seq.]
- 3) the CHIP program under title XXI of the Social Security Act [26 USCS §§ 1397aa et seq.]
- 4) medical coverage under chapter 55 of title 10, United States Code [10 USCS §§ 1071 et seq.], including coverage under the TRICARE program
- 5) a health care program under chapter 17 or 18 of title 38, United States Code [38 USCS §§ 1701 et seq. or 1801 et seq.], as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary
- 6) a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers)
- 7) the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 1587 note)

(26 USC § 5000A(F)(1)(A)).

Child Health Plus

To be eligible for Child Health Plus, the child:

- Must be under 19 years of age;
- Must be a New York State Resident;
- Must not have other health insurance coverage; and
- Must not be eligible for, or enrolled in, Medicaid

(N.Y. Pub.Health L. § 2511(2)(a)-(e))

Legal Analysis

Of the eligibility requirements listed above, the only one at issue is the amount of household income the Marketplace should consider when calculating your family's eligibility for financial assistance.

The March 5, 2015 eligibility determination used a household income of \$43,761.60 to determine your household's eligibility for financial assistance. According to your application, this amount included the \$14,587.20 in Social Security Benefits you expected to receive in 2015, and the \$29,174.40 (14,587.20 X 2) in Social Security Benefits your sons expected to receive in 2015.

Generally, the household income for the purposes of calculating a person's eligibility for financial assistance through the Marketplace consists of the sum of income of every individual included in the individual's household. However, the income of an individual who is included in the household of their natural, adopted or step parent and is not expected to be required to file a tax return 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 return.

You testified that you will be filing your 2015 tax return with the tax status Head of Household (with qualifying individual) and will be claiming all three of your children as dependents on that tax return. Therefore you have a household of four for purposes of this analysis.

A dependent is required to file a tax return when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security Benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives and then subtracts that amount from \$25,000.00. Any excess amount is considered taxable income.

At the time of your application, your [REDACTED] and [REDACTED] sons each expected to receive \$14,587.29 (1,215.60 X 12) in income from Social Security Benefits. One-half the amount of Social Security they each will receive (\$7,293.60) is less than \$25,000.00. Therefore, your sons have no taxable income from Social Security and are not required to file a tax return on the basis of his unearned income.

Since your children are not required to file a tax return based on their incomes, the amount of income they receive from Social Security Benefits should not have been added back into the household's income for the purposes of determining

the household's eligibility for financial assistance to help pay for the costs of health insurance.

Therefore, the March 5, 2015 eligibility determination notice that lists a household income of \$43,761.60 is RESCINDED.

Based on the credible evidence in the record, you expect to receive \$1,215.60 per month in Social Security Benefits. Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. 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 \$2,789.00 per month for a four-person household.

You credibly testified that you are only applying for health insurance through the Marketplace for yourself and your 2 sons. Therefore, the Marketplace will not redetermine your daughter's eligibility for financial assistance.

Therefore, your case is RETURNED to the Marketplace of your and your sons' eligibility for financial assistance based on a four-person household with a March 2015 household income of \$1,215.60

Decision

The March 5, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your and your sons' eligibility for financial assistance based on a four-person household with a March 2015 household income of \$1,215.60.00.

Effective Date of this Decision: June 30, 2015

How this Decision Affects Your Eligibility

This decision is not a final determination of your eligibility.

Your case is being sent back to the Marketplace for a redetermination of your and your sons' eligibility for financial assistance based on a four-person household with a March 2015 household income of \$1,215.60.

Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

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 March 5, 2015 eligibility determination is RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your and your sons' eligibility for financial assistance based on a four-person household with a February 2015 household income of \$1,215.60.

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Once a redetermination has been made, the Marketplace will issue you a redetermination notice which will contain further information.

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] [REDACTED]
[REDACTED]