



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

## Notice of Decision

Decision Date: July 24, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002142

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

On May 5, 2015, you appeared by telephone at a hearing on the NY State of Health Marketplace's March 17, 2015 denial of retroactive Medicaid.

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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## Decision

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Appeal Identification Number: AP000000002142

[REDACTED]  
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## Issue

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

Did the Marketplace properly determine that you are not eligible for retroactive Medicaid during August 2014, September 2014, and October 2014?

## Procedural History

On October 2, 2014, November 20, 2014 and November 21, 2014, you uploaded several income documents to your Marketplace account.

On November 20, 2014 and November 21, 2014, you updated your Marketplace application and requested help paying for your medical bills from the last three months.

On November 27, 2014, the Marketplace issued a notice of eligibility determination that you were eligible for Medicaid November 1, 2014, and needed to pick a plan.

On December 3, 2014, the Marketplace uploaded a hand-written letter from you wherein you indicated that you lost your health insurance coverage as of September 1, 2014, and renewed your request to be considered for retroactive Medicaid.

According to your Marketplace enrollment history, you were enrolled in Medicaid Fee For Service (FFS) effective November 1, 2014 and New York State Catholic Health Plan, Inc., a Medicaid Managed Care (MMC) plan, effective January 1, 2015.

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According to your Marketplace account, on March 17, 2015, the Marketplace declined retroactive Medicaid for the months of August 2014, September 2014, and October 2014 because the monthly income you provided via your earning statements for each of these months exceeded the maximum monthly allowable limit of \$1,343.00 for Medicaid.

On March 23, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed being denied retroactive Medicaid for the months of August, September, and October 2014.

On May 5, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and held open for up to fifteen days to afford you the opportunity to submit proof of income in 2014.

On May 18, 2015, the Appeals Unit received a thirty page fax from you. It consisted of (1) A cover page; (2) A statement from your accountant regarding your medical premiums and co-pays for 2014; (3) Statements from you regarding your monthly business expenses for September, 2014 and October, 2014; and (4) A copy of your complete 2014 tax return. This thirty page fax was made part of the record as "Appellant's Exhibit E" and the record was closed that same day.

## Findings of Fact

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

- 1) You are single, have no dependents, work for an employer, and are also self-employed in a small home business.
- 2) You provided the Marketplace with earning statements for earnings received during the month of August 2014 as follows:

| <u>Check Date</u> | <u>Gross Earnings</u> |
|-------------------|-----------------------|
| 08/01/2014        | \$576.32              |
| 08/08/2014        | \$611.19              |
| 08/15/2014        | \$626.51              |
| 08/22/2014        | \$581.36              |
| 08/29/2014        | \$492.65              |

These checks total \$2,888.03 received in August 2014 (Appellant's Exhibit A).

- 3) You provided the Marketplace with earning statements for earnings received during the month of September 2014 as follows:

| <u>Check Date</u> | <u>Gross Earnings</u> |
|-------------------|-----------------------|
| 09/05/2014        | \$579.20              |
| 09/12/2014        | \$454.92              |
| 09/19/2014        | \$519.46              |
| 09/26/2014        | \$586.17              |

These checks total \$2,139.75 in earned income received in September 2014 (Appellant's Exhibit B).

- 4) You provided the Marketplace with earning statements for earnings received during the month of October 2014 as follows:

| <u>Check Date</u> | <u>Gross Earnings</u> |
|-------------------|-----------------------|
| 10/03/2014        | \$374.02              |
| 10/10/2014        | \$492.10              |
| 10/17/2004        | \$579.91              |
| 10/24/2014        | \$465.41              |
| 10/31/2014        | \$121.58              |

These checks total \$2,033.02 in earned income received in October 2014 (Appellant's Exhibit C).

- 5) You provided a copy of your 2014 Form 1040, U.S. Individual Income Tax Return, which shows your adjusted gross income for that year was \$20,510.00 after a business loss of \$3,315.00, as stated on Schedule C, was deducted (Appellant's Exhibit E).
- 6) You also provide copies of your September 2014 and October 2014 business expenses, including your medical out-of-pocket expenses.
- 7) You testified that you want your business loss and monthly expenses used to offset the amount of earnings you made for September 2014 and October 2014 so that your income will be within the allowable income limits for Medicaid each of these months.

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

## **Applicable Law and Regulations**

### De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

### Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

### Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). 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 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“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 time savings accounts, and deductions attributable to royalties (26 USC § 62(a)). Subject to some limitations, deductions that are attributable to a trade or business may be deductions from a taxpayers adjusted gross income (26 USC § 62 (a)(1)).

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## Medicaid Retroactive Coverage

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).

If an applicant for health insurance is determined Medicaid eligible, coverage will begin on the first day of the first month that the applicant was determined eligible (18 NYCRR § 360-2.4(c)). The applicant may be determined retroactively eligible for coverage for up to three months prior to their application, if they would have been eligible for during the month when medical care or services were received (*Id.*).

## **Legal Analysis**

You submitted applications on November 20 and 21, 2014, and on both applications requested help with paying your medical bills for the last three months. You uploaded partial proof of income to your Marketplace account on October 2, 2014, November 20, 2014 and November 21, 2014 that were sufficient for the Marketplace to determine your eligibility for retroactive Medicaid coverage. Also, on December 3, 2014, the Marketplace received your hand-written letter wherein you renewed your request for retroactive Medicaid and stated that you no longer had insurance as of September 1, 2014.

The Marketplace reviewed these documents on March 17, 2015 and denied your request for retroactive Medicaid coverage for August 2014, September 2014, and October 2014 on the basis that your monthly income exceeded that maximum monthly amount of \$1,343.00 for each of those months.

However, no notice regarding its determination for retroactive Medicaid was issued.

Although the Marketplace did not issue a timely notice of eligibility determination regarding retroactive Medicaid coverage, this does not prevent the Appeals Unit from reaching the merits of your case on your March 23, 2015 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

The matter under review is whether you were entitled to Medicaid retroactive coverage based on monthly income for the three months before the month in which you were found eligible.

Since you were initially determined Medicaid eligible on November 27, 2014, you would generally be entitled to begin your Medicaid coverage on November 1, 2014. Since you were determined eligible to receive Medicaid coverage on November 1, 2014, you might also be entitled to receive retroactive coverage beginning no earlier than three months prior to that determination, or August 1, 2014, provided however, that you would have been eligible for Medicaid had an application been made on your behalf at that earlier time.

The Marketplace looks at the income that you *received* during each of the three prior months to determine if you would have been eligible for Medicaid in those months. Based on the record, you received earnings of \$2,888.03 in August 2014; \$2,139.75 in September 2014; and \$2,033.02 in October 2014 such that your income for each of these months exceeds the maximum allowable monthly income of \$1,343.00 to be eligible for Medicaid. Notwithstanding that you were not eligible for Medicaid in August 2014 because you still had minimum essential coverage, the Marketplace correctly determined that you were not eligible for Medicaid in any of those months on a monthly income basis.

You requested that your monthly business expenses be considered in determining your monthly income for these months, which when offset against your earnings would reduce your monthly income substantially. However, business expenses are not one of the itemized categories consider to reach modified adjusted gross income (MAGI) for purposes of determining Medicaid eligibility. Therefore, your monthly business expenses were not considered in this decision.

Further, you provided your 2014 tax return that, in part, showed you had a business loss of -\$3,315.00 in 2014. Assuming that you lost 1/12 of that amount (\$276.25) in each September 2014 and October 2014, your income for these two months would still be over the maximum allowable monthly income of \$1,343 each month.

## **Decision**

The Marketplace did not issue a timely notice of eligibility determination in connection with your November 20, 2014 and November 21, 2014 applications insofar as your requested retroactive Medicaid coverage was not considered.

The Marketplace did not issue a timely notice that your renewed request on March 17, 2015 for retroactive Medicaid coverage was denied.

However, the lack of such notices does not change your eligibility for retroactive Medicaid. The March 17, 2015 denial of retroactive eligibility was correct and is, therefore, **AFFIRMED**.



**Effective Date of this Decision:** July 24, 2015

### **How this Decision Affects Eligibility**

You are not eligible for Medicaid retroactive coverage for the months of August 2014, September 2014 and October 2014.

This decision does not affect any subsequent decision issued by the Marketplace.

### **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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P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The Marketplace did not issue a timely notice of eligibility determination in connection with your November 20, 2014 and November 21, 2014 applications insofar as your requested retroactive Medicaid coverage was not considered.

The Marketplace did not issue a timely notice that your renewed request on March 17, 2015 for retroactive Medicaid coverage was denied.

However, the lack of such notices does not change your eligibility for retroactive Medicaid. The March 17, 2015 denial of retroactive Medicaid coverage was correct and is, therefore, AFFIRMED.

This decision does not affect any subsequent decision issued by the Marketplace.

## **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]