



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

Notice of Decision

Decision Date: October 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002208

[REDACTED]

Dear [REDACTED],

On May 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 17, 2015 and March 27, 2015 eligibility determinations.

The attached 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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Decision Date: October 10, 2015

NY State of Health Number: [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 disenroll you from your Medicaid coverage effective March 31, 2015?

Were you entitled to receive Medicaid Premium Assistance Payments to reimburse you for your Medicare coverage?

Procedural History

On July 6, 2014, the Marketplace issued a notice confirming that your insurance coverage through Medicaid would begin April 1, 2014, and that your enrollment with the New York State Catholic Health Plan, Inc., Medicaid Managed Care (MMC) plan would begin August 1, 2014.

On February 10, 2015, the Marketplace issued a notice that stated it was time to renew your health insurance coverage. The notice further stated that based on information from federal and state sources, the Marketplace could not make a decision about whether you qualified for continuing financial help in paying for your health coverage for the upcoming year. You were directed to update the information in your NY State of Health account by March 15, 2015, or the financial help you were receiving might end.

No updates were made to your account before March 15, 2015.

On March 17, 2015, the Marketplace issued an eligibility redetermination notice that stated you were not eligible for Medicaid, Child Health Plus, tax credits, or

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cost-sharing reductions (CSR). It further stated that you were not eligible to enroll in qualified health plan (QHP) at full cost. This determination was issued because “[y]ou did not complete your renewal within the required timeframe.” Your eligibility would end effective March 31, 2015.

On March 19, 2015, the Marketplace issued a disenrollment notice stating that your Medicaid fee-for-service coverage will be discontinued as of March 31, 2015.

On March 26, 2015, the Marketplace received an application in which you attested to an expected yearly income of \$0.00.

On March 27, 2015, the Marketplace issued an eligibility determination notice stating that you were eligible to enroll in a QHP; eligible to receive an advance premium tax credit (APTC) of up to \$372.00 per month; and, if you selected a silver-level plan, eligible for CSR, effective May 1, 2015. It did not make a determination on your eligibility for Medicaid.

You appealed not only this determination, but the March 17, 2015 eligibility determination insofar as you were found ineligible for Medicaid and, by extension, Medicaid Premium Assistance Payments to cover the cost of your Medicare premiums.

On May 12, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit. A Russian-language interpreter also attended the hearing at your request. 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 that you are unmarried and live alone.
- 2) Your application indicates that you expect to file your 2015 U.S. Income Tax return as “single” and claim no dependents.
- 3) You testified, and your application reflects, that your expected yearly income for 2015 is \$0.00. You further testified that you receive all of your financial support from your son and granddaughter while you await receipt of your Social Security benefits from the Social Security Administration (SSA).

- 4) You testified, and your application reflects, that you are currently receiving your Medicaid coverage through your Local Department of Social Services.
- 5) Your application indicates that you were enrolled in Medicaid outside of the Marketplace between April 1, 2015 and May 31, 2015.
- 6) You testified that you never received the renewal notice from the Marketplace.
- 7) Your application indicates that you requested to receive all correspondence from the Marketplace by U.S. Mail.
- 8) On March 19, 2015, the Marketplace issued a disenrollment notice stating that your Medicaid fee-for-service coverage would end effective March 31, 2015.
- 9) You testified that you are seeking Medicaid through the Marketplace in order to receive Medicaid Premium Assistance Payments in order to cover the cost of your Medicare premiums, which you indicated are approximately \$104.00 per month.
- 10) You testified that you received a letter stating that you were responsible for \$900.00 to get Medicare through SSA for the period up to August 2015, and that once you had paid such an amount your monthly cost for Medicare would be \$104.00 per month after August 2015.
- 11) You reside in Queens County, New York.
- 12) Your application indicates that you turned 65 on [REDACTED].
- 13) You testified that you have not received a determination from the Marketplace regarding your eligibility for Medicaid Premium Assistance Payments.

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

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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 information by which the Marketplace will use to redetermine a qualified individual's eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

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)).

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

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household modified adjusted gross income (MAGI) that is at or below 138% of the federal poverty level (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)).

There are two primary places to apply for Medicaid in New York State, the New York State of Health Marketplace and your Local Department of Social Services (LDSS) or, if you live in one of New York City's five boroughs, the New York City Human Resources Administration (HRA). Generally, adults aged 19 to 64 apply for Medicaid through the Marketplace, and adults over the age of 65 who are not parents or caretaker relatives apply for Medicaid through their LDSS or the HRA.

An individual is eligible for enrollment in Medicaid through the Marketplace (called MAGI-based Medicaid) when he or she meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard (45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

The first step in identifying whether an applicant is eligible for MAGI-based Medicaid through the Marketplace is to determine if he or she meets certain nonfinancial criteria. In general, to qualify for MAGI-based Medicaid through the Marketplace, you must either be one of the following:

- An adult aged 19-64 who is not eligible for Medicare Part A or Part B
- A pregnant woman or infant
- A child aged 1-18
- A parent or caretaker relative

If you fall into one of these categories, the Marketplace must determine your eligibility for Medicaid using MAGI rules (45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

If you do not fall into one of these categories you may be eligible for non-MAGI-based Medicaid coverage through your LDSS or the HRA (N.Y. Soc. Serv. Law § 366(1)(c)).

Medicare Premium Reimbursement

The state or local agency administering Medicaid programs must take all reasonable measures to ascertain the legal liability of third parties (42 USC § 1396a(a)(25)). Third parties include health insurers, self-insured plans, group health plans, service benefit plans, managed care plans, etc., that are legally responsible for payment of a claim for a health care item or service (*id.*).

“The [Medicaid] program will pay on behalf of qualified Medicare beneficiaries ... the full amount of any deductible and coinsurance costs incurred under Part A or B of Title XVIII of the Social Security Act (Medicare)” (18 NYCRR § 360-7.7(a)).

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“Medicare Advantage Plans (sometimes referred to as Medicare Part C or Medicare Managed Care, or Medicare HMOs) are health plan options available to Medicare beneficiaries... If a Medicaid recipient is enrolled in a Medicare Advantage Plan that charges a premium that is higher than the traditional Part B premium, the local district should pay the difference as a health insurance premium, if it is determined to be cost effective” (NYS Department of Health, Office of Health Insurance Programs, “Medicare Advantage Plans and Medicaid Advantage Plans,” 09 OHIP/INF-1, March 2, 2009; see also NY Social Services Law § 367-a(1)(b), 18 NYCRR § 360-7.4(g)(3)).

Legal Analysis

The first issue is whether the Marketplace properly disenrolled you from your Medicaid coverage effective March 31, 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 February 10, 2015, 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 could not make a decision about whether or not you qualify for financial help paying for your health coverage. You were asked to update the information in your NY State of Health account by March 15, 2015 or the financial help you were receiving might end.

Although you stated that you had not received this notice, our records indicate that the notices were issued, and that there is no indication that any mail was returned as undeliverable.

On December 15, 2014 the Marketplace had not received any updated information from you. Therefore, the Marketplace was required to use the information that was contained in the February 10, 2015 notice in order to determine your eligibility for coverage beginning April 1, 2015. On March 19, 2015, the Marketplace issued a notice that stated, among other things, that you were no longer eligible for Medicaid. This finding was necessitated by the federal regulations noted above and, therefore, the Marketplace’s March 17, 2015 eligibility determination is **AFFIRMED**.

You submitted your revised application on March 26, 2015 and the Marketplace made a preliminary determination that same day. While the Marketplace issued its written notice of eligibility determination on March 27, 2015, it did not make a determination on your eligibility for Medicaid.

Although the Marketplace did not issue a timely notice of eligibility determination, this does not prevent the Appeals Unit from reaching the merits of your case on your case. 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 of Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it contained a decision on your eligibility for Medicaid.

In the application submitted on March 26, 2015, you attested to an expected yearly income of \$0.00, and the eligibility determination relied on that information.

According to the record, you expect to file as “single” on your tax return for 2015 and claim no dependents. Therefore, for purposes of this decision, you are in a one-person household.

However, you also attested to not only receiving Medicaid outside of the Marketplace between April 1, 2015 and May 31, 2015, but also attested to being 65 years old at the time of your March 26, 2015 application.

Since you were receiving Medicaid outside of the Marketplace and were over 64 years old at the time of your application, you were ineligible for Medicaid through the Marketplace. Accordingly, the Marketplace’s March 27, 2015 eligibility determination is AFFIRMED.

The final issue is whether you were eligible for Medicaid Premium Assistance Payments.

You testified that that you qualified to begin receiving Medicare coverage through the SSA when you turned 65 years old. You further stated that you received a letter stating that the premium due for your Medicare coverage up to August 2015 was approximately \$900.00, and that you would be responsible for a premium of \$104.00 per month thereafter.

In order for a Medicare recipient to qualify for premium reimbursement payments, you must also qualify for Medicaid through the Marketplace. Since the credible evidence of record indicates that you are receiving Medicaid benefits through your Local Department of Social Services, you are not eligible for Medicaid through the Marketplace, and accordingly, are not eligible for Medicaid premium reimbursement payments through the Marketplace.

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Decision

The March 17, 2015 and March 27, 2015 eligibility determinations are AFFIRMED.

You are ineligible for Medicaid premium assistance payments.

Effective Date of this Decision: October 10, 2015

How this Decision Affects Your Eligibility

Your eligibility has not changed. Your eligibility for Medicaid through the Marketplace was properly terminated effective March 31, 2014.

You are not eligible for Medicaid premium assistance payments to help pay for your Medicare coverage.

Please note that this Decision neither affects your current Medicare coverage, if any, nor precludes you from applying for Medicaid through your Local Department of Social Services.

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.

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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 March 17, 2015 and March 27, 2015 eligibility determinations are **AFFIRMED**.

Your eligibility has not changed. Your eligibility for Medicaid through the Marketplace was properly terminated effective March 31, 2014.

You are not eligible for Medicaid premium assistance payments to help pay for your Medicare coverage.

Please note that this Decision neither affects your current Medicare coverage, if any, nor precludes you from applying for Medicaid through your Local Department of Social Services.

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:

