



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

Notice of Decision

Decision Date: September 3, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002366

[REDACTED]

Dear [REDACTED],

On May 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 2, 2014, February 27, 2015 and April 11, 2015 eligibility determinations.

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).

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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Issues

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

Was the December 2, 2014 eligibility determination subject to appeal as of April 10, 2014?

Did the Marketplace properly determine on February 26, 2015 that you, your spouse, and your son were no longer eligible for Medicaid, but would continue to receive coverage under Medicaid until January 31, 2016?

Did the Marketplace properly determine on April 10, 2015 that you and your spouse were no longer eligible for Medicaid, but would continue to receive coverage under Medicaid until March 31, 2016?

Did the Marketplace properly determine on April 10, 2015 that your son remained eligible for Medicaid, effective April 1, 2015?

Procedural History

On November 6, 2014, the Marketplace issued a notice stating that it was time to renew your health insurance. That notice stated that based on information from federal and state sources, the Marketplace could not make a decision about whether you and your spouse would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015 or you might lose the financial assistance you were currently receiving.

On December 1, 2014, the Marketplace received two applications, in which you attested to expected yearly income, in order, of \$38,773.52 and \$18,773.52.

On December 2, 2014, the Marketplace issued an eligibility determination based on the later December 1, 2014 application, in which you attested to an income of \$18,773.52. The notice stated that you, your spouse, and your son were eligible for Medicaid, effective December 1, 2014.

On February 26, 2015, the Marketplace received three revised applications. In these applications, you attested that your spouse was expecting a child on October 20, 2015. You attested to three different household incomes: \$27,500.00, \$33,000.00, and \$55,000.00.

On February 27, 2015, an eligibility determination notice was issued stating that you, your spouse, and your son were no longer eligible for Medicaid, but would continue to receive coverage under Medicaid until January 31, 2016. This was because certain individuals who have been determined eligible for Medicaid remain eligible for benefits for 12 continuous months from the date that they were determined eligible. This eligibility was effective February 1, 2015.

On April 10, 2015, the Marketplace received several revised applications in which your account was modified to reflect that your spouse was no longer expecting a child, and you provided attested annual incomes of \$30,500.00, \$27,500.00, \$28,000.00, and \$28,500.00.

On April 11, 2015, the Marketplace issued an eligibility determination notice stating that you and your spouse were no longer eligible for Medicaid. However, your Medicaid coverage would continue until March 31, 2016 because certain individuals determined eligible for Medicaid remain eligible for benefits for 12 continuous months from the date that they were determined eligible. This eligibility was effective as of April 1, 2015. Your son was again found eligible for Medicaid, effective April 1, 2015.

You appealed not only this eligibility determination insofar as it determined that you and your spouse were continuously eligible for Medicaid coverage until March 31, 2016 and your son was eligible for Medicaid, but also the December 2, 2014 and February 27, 2015 eligibility determination.

On May 12, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

On June 11, 2015, your application was once again modified. Your income was listed as \$28,500.00.

On June 12, 2015, the Marketplace issued a notice of eligibility determination, stating that you and your spouse were no longer eligible for Medicaid. However, your Medicaid coverage would continue until March 31, 2016 because certain individuals determined eligible for Medicaid remain eligible for benefits for 12 continuous months from the date that they were determined eligible. Your son was again found eligible for Medicaid, effective June 1, 2015.

Findings of Fact

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

- 1) Your application reflects that you expect to file your 2015 federal income tax return as married filing jointly with your spouse, and claim one dependent.
- 2) The Marketplace initially found you, your spouse, and your son eligible for Medicaid as a result of the December 2, 2014 eligibility determination.
- 3) You testified that you contacted the Marketplace in late February and informed them that your spouse was expecting a child on October 20, 2015.
- 4) You testified that you again contacted the Marketplace on April 10, 2015 to update your application to reflect that your spouse was no longer expecting a child at that time.
- 5) You testified that you and your spouse would like your eligibility redetermined to allow you to enroll in a silver-level qualified health plan (QHP) in which you were previously enrolled.

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

Applicable Law and Regulations

Appeal Timeliness

The Marketplace's "appeals entity must allow an applicant or enrollee to request an appeal within (1) 90 days of the date of the notice of eligibility determination; or (2) a timeframe consistent with the state Medicaid agency's requirement for submitting fair hearing requests, provided that timeframe is no less than 30 days, measured from the date of the notice of eligibility determination" (45 CFR § 155.520(b)). In New York State, the Medicaid agency permits submission of fair

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hearing requests within 60 days of the date of the notice of eligibility determination (N.Y. Soc. Serv. Law § 22(4)(a)), and this timeframe has been adopted by the Marketplace.

Medicaid

Medicaid through the Marketplace can be provided 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 federal poverty level (FPL) for the applicable family size (42 CFR §§ 435.119(b), 435.911(b)(1), 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 federal poverty level (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 February 26, 2015 and April 10, 2015 applications, that was the 2015 FPL, which is \$20,090.00 for a three-person household and \$24,250.00 for a four-person household (80 Fed. Reg. 3236, 3237).

For purposes of Medicaid eligibility, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman, but also the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

Most adults determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage even if they lose 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 (N.Y. Soc. Serv. Law § 366(4)(c)).

People who receive or are eligible for Medicaid are not eligible for an Advance Premium Tax Credit (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

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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)).

Legal Analysis

On April 10, 2015, you spoke with the Marketplace's Account Review Unit and appealed the December 2, 2014, February 27, 2015, and April 11, 2015 eligibility determinations.

The first issue is whether your appeal is timely with regard to the December 2, 2014 eligibility determination.

Eligibility determinations may be appealed within 60 days of issue. Your initial eligibility determination was issued on December 2, 2014. Since the December 2, 2014 notice was issued more than 60 days before April 10, 2015, the appeal is untimely and is dismissed with regard to that determination. The December 2, 2014 eligibility determination continues in effect, and the Appeals Unit will not reach the question of your Medicaid eligibility based on your December 1, 2014 application.

The second issue under review is whether the Marketplace properly determined that, although you, your spouse, and your son were no longer eligible for Medicaid, your Medicaid coverage would continue until January 31, 2016.

The record reflects that as of February 26, 2015, you were in a four-person household: yourself, your spouse, your son, and your unborn child. For the purposes of determining eligibility for Medicaid, household size is increased by the number of expected children.

On your February 26, 2015 applications, you attested to three different expected household incomes: \$27,500.00, \$33,000.00, and \$55,000.00. You testified that the income you provided of \$27,500.00 in the February 26, 2015 application was an accurate reflection at that time of your expected 2015 household income due to your fluctuating income. You did not explain why the three applications submitted on February 26, 2015 had such different incomes listed.

However, the Marketplace used the last income submitted on a given day to determine your eligibility; therefore, \$55,000.00 will be deemed your expected household income on February 26, 2015.

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% of the FPL for the applicable family size. On February 26, 2015, the relevant FPL was \$24,250.00 for a four-person household.

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Since \$55,000.00 is 226.80% of the 2015 FPL for a four-person household, the Marketplace properly found that you, your spouse, and your son were no longer eligible for Medicaid. However, once you had been found eligible for Medicaid, your coverage under Medicaid would continue for 12 months. You had last been found eligible for Medicaid effective December 1, 2014. Therefore, you should have been found eligible for continuous coverage under Medicaid until November 30, 2015.

Accordingly, the February 27, 2015 eligibility determination is MODIFIED only to reflect that your family's coverage under Medicaid would end November 30, 2015, one year after the effective date of the last determination that you were eligible for Medicaid.

The third issue is whether the Marketplace properly determined that you and your spouse were no longer eligible for Medicaid, but would continue to receive coverage under Medicaid until March 31, 2016.

On April 10, 2015, the last household income submitted was \$28,500.00, and your household size was three.

Since \$28,500.00 is 141.86% of the 2015 FPL for a three-person household, the Marketplace properly determined on April 11, 2015 that you and your spouse were no longer eligible for Medicaid, but would continue to receive Medicaid coverage. However, again, this coverage would end on November 30, 2015, one year after the effective date of the last determination that you were eligible for Medicaid.

Since 141.86% is less than 154% of the 2015 FPL for a three-person household, the Marketplace also properly found that your son remained eligible for Medicaid.

Decision

The appeal is untimely with regard to the December 2, 2014 eligibility determination; the Appeals Unit will therefore not review that decision.

The February 27, 2015 and April 11, 2015 eligibility determinations are MODIFIED only to reflect that coverage under Medicaid for yourself and your spouse will continue until at least November 30, 2015. Your son remains eligible for Medicaid.

Effective Date of this Decision: September 3, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility other than update the continuous coverage under Medicaid for yourself and your spouse to end on November 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
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- By fax: 1-855-900-5557

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Summary

The appeal is untimely with regard to the December 2, 2014 eligibility determination; the Appeals Unit will therefore not review that decision.

The February 27, 2015 and April 11, 2015 eligibility determinations are MODIFIED only to reflect that coverage under Medicaid for yourself and your spouse will continue until at least November 30, 2015. Your son remains eligible for Medicaid.

This decision does not change your eligibility other than update the continuous coverage under Medicaid for yourself and your spouse to end on November 30, 2015.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

