



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

Notice of Decision

Decision Date: June 18, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002422

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On May 21, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 10, 2015 preliminary eligibility determination and the April 14, 2015 and April 15, 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 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]
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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 spouse were eligible for Medicaid in the April 10, 2015 preliminary determination?

Did the Marketplace properly determine that you and your spouse were eligible for Medicaid under "continuous coverage," effective April 14, 2015?

Procedural History

You and your spouse were enrolled in a health insurance plan through the Marketplace, effective January 1, 2014.

You updated the information contained in your application for health insurance on March 28, 2015 and indicated on your application that you expected income of \$0.00. You indicated that the change in your spouse's income was because he had exhausted his unemployment benefits.

On March 29, 2015, the Marketplace issued a notice stating that you and your spouse might be eligible for health insurance through NY State of Health but more information is needed to make a determination because the information you provided did not match information obtained from state and federal data sources. You were requested to submit income documentation for your household by April 14, 2015 to confirm that the information you provided in your application was accurate.

That same day, the Marketplace issued a notice of disenrollment, stating that your coverage would end effective April 30, 2015.

On April 10, 2015, the Marketplace received a revised application in which you attested to a greater expected yearly income of \$26,546.40.

That same day, the Marketplace prepared a preliminary eligibility determination based on your April 10, 2015 application. It stated that you and your spouse were eligible for Medicaid effective April 1, 2015. This preliminary determination was based, in part, on an annual household income of \$14,846.40, although this is not the income stated in your application.

No written determination was issued by the Marketplace in connection with your April 10, 2015 application or the preliminary eligibility determination.

On April 13, 2015, the Marketplace received a further revised application in which you again attested to an increase in income to \$43,348.08.

On April 14, 2015 and April 15, 2015, the Marketplace issued notices of eligibility determination; both stated that while you and your spouse were no longer eligible for Medicaid, your coverage would continue until March 31, 2016, because “certain individuals who have been determined eligible for Medicaid remain eligible for benefits for twelve continuous months from the date that they were determined eligible.”

On April 15, 2015, you spoke with the Marketplace’s Account Review Unit and appealed the April 10, 2015 preliminary determination, as well as the April 14, 2015 and April 15, 2015 eligibility determinations, insofar as you were found eligible for Medicaid coverage.

On May 21, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit. Your spouse also attended the hearing as a witness. 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 are married, have no dependents, and reside in ██████ County, New York.
- 2) You testified that you expect to file your federal income tax return as “married filing jointly” and to claim no dependents.

- 3) On March 28, 2015, you submitted your initial application for the 2015 plan year in which you and your spouse attested to an expected annual income of \$0.00. In this application, your spouse indicated that he had had experienced a change in income because he had “Exhausted Unemployment Insurance Benefits.” While no preliminary determination or notice of eligibility determination was issued in connection with this application, your “Ineligible Program Result Reasons” stated that you were not eligible for an advance premium tax credit since you were eligible for Medicaid.
- 4) On March 29, 2015, the Marketplace issued a notice requesting additional income documentation for your household by April 14, 2015.
- 5) You submitted a revised additional application to the Marketplace on April 10, 2014. In this application, you reported your household’s earnings and expenses relating to you and your spouse’s business, [REDACTED], during the months of January, February and March of 2015. The average net income during these months for you and your spouse was \$2,062.20. In particular, you reported receiving \$4,351.80 in business income and incurring \$1,664.06 in business expenses during the month of March 2015. You also reported in this application that you and your spouse intended to claim IRA deductions of \$5,500.00 and \$6,500.00, respectively. You further testified that your spouse receives rental income from your business in the amount \$800.00 per month, and you each receive \$175.00 per month in income from a separate rental property.
- 6) You testified that you and your spouse are equal partners in your joint business, [REDACTED].
- 7) You testified that January, February and March are typically very low income months for your business, which is [REDACTED], and the industry in general.
- 8) You testified that when you found out you were determined eligible for Medicaid, you immediately revised your application on April 13, 2015 with your business’s earnings and expenses during the months of April, May and June of 2014. The average net income during these months for you and your spouse was \$3,462.34. The IRA deductions and rental income you and your spouse previously reported in the April 10, 2015 application remained consistent.
- 9) On April 13, 2015 and April 14, 2015, the Marketplace issued notices of eligibility determination stating that while you were no longer eligible for Medicaid, you and your spouse would remain under Medicaid coverage until March 31, 2016.

10) You testified that you and your spouse should not have been found eligible for Medicaid, and that your eligibility was based on a three month sample of income that wasn't indicative of your typical business earnings.

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)).

Medicaid

Individuals are eligible for enrollment in Medicaid through the Marketplace when they meet the nonfinancial criteria and have a monthly household income that is at or below the applicable Medicaid modified adjusted gross income standard (45 CFR § 155.305(c)).

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 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)).

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 \$15,930.00 for a two-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).

Most adults determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage, unless the adult loses Medicaid eligibility because of citizenship status, lack of state residence, or failure to provide a valid social security number, before the end of 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 (see 42 CFR § 435.916; N.Y. Soc. Serv. Law § 366(4)(c)).

Legal Analysis

You submitted an application on April 10, 2015 and the Marketplace made a preliminary determination that same day. The Marketplace did not issue a written notice of eligibility determination based on your April 10, 2015 application.

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 with regard to the April 10, 2015 preliminary determination. Under 45 CFR § 155.505(b), you are as entitled to appeal the Marketplace’s 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 even if it had been issued before you filed your appeal.

Therefore, the Appeals Unit will review the merits of the April 10, 2015 preliminary determination.

In the application that was submitted on April 10, 2015, your eligibility was determined on an annual household income of \$14,846.40. Based on this figure, you and your spouse were found eligible for Medicaid coverage beginning April 1, 2015. However, you attested in your application that your expected yearly

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income was actually \$26,546.40, which was comprised of (1) a projected net business income of \$24,746.40, (2) \$13,800.00 in total rental income, and (3) \$12,000.00 in anticipated deduction for IRA contributions. Since the April 10, 2015 preliminary eligibility determination was prepared on an annual household income that was inconsistent with your attested income, and is not supported by the record, it is RESCINDED.

Additionally, the April 14, 2015 and April 15, 2015 notices of eligibility determination finding you and your spouse eligible for Medicaid were based, in part, on the findings of the April 10, 2015 preliminary eligibility determination which found you eligible for Medicaid under the policy of continuous coverage. Since the April 10, 2015 preliminary determination has been rescinded, there is no longer support in the record for the April 14, 2015 and April 15, 2015 eligibility determinations and they are RESCINDED.

You testified during the hearing that the income received during the winter months, as attested in your April 10, 2015 application, is typically very low for your business (), and the industry in general. You further testified that the application you submitted on April 14, 2015 is a much better approximation of your anticipated income for 2015 based on the trends of your business. In the application that was submitted on April 14, 2015, you attested to (1) a projected net business income of \$41,548.08, (2) \$13,800.00 in total rental income and (3) \$12,000.00 in anticipated deductions for IRA contributions.

Since your eligibility for financial support was not properly determined on your April 14, 2014 application, your case is returned to the Marketplace for a redetermination using a two-person household in County, with an expected 2015 income of \$43,348.08.

Decision

The April 10, 2015 preliminary eligibility determination and the April 14, 2015 and April 15, 2015 eligibility determinations are RESCINDED.

Your case is returned to the Marketplace for a redetermination of your eligibility using a two-person household in County, with an expected 2015 income of \$43,348.08, and verification of this claimed income.

Effective Date of this Decision: June 18, 2015

How this Decision Affects Your Eligibility

You and your spouse were not eligible for Medicaid effective April 1, 2015.

This decision does not make a final determination of your eligibility.

Your case is returned to the Marketplace for a redetermination of your eligibility using a two-person household in ██████ County, with an expected 2015 income of \$43,348.08.

Once a redetermination has been made, the Marketplace will issue a redetermination notice with 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 April 10, 2015 preliminary eligibility determination and the April 14, 2015 eligibility determination are **RESCINDED**.

You and your spouse were not eligible for Medicaid effective April 1, 2015.

This decision does not make a final determination of your eligibility.

Your case is returned to the Marketplace for a redetermination of your eligibility using a two-person household in ██████ County, with an expected 2015 income of \$43,348.08, and verification of this claimed income.

Once a redetermination has been made, the Marketplace will issue a redetermination notice with further information.

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:

[REDACTED]
[REDACTED]
[REDACTED]