



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

## Notice of Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002451

[REDACTED]

Dear [REDACTED],

On May 21, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 2, 2013 preliminary 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 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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## Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002451

[REDACTED]

## Issues

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

Was your April 17, 2015 appeal request timely with regard to the Marketplace's December 2, 2013 preliminary determination?

If the appeal was timely and the substantive issue can be addressed, did the Marketplace properly determine that you were prospectively eligible for Medicaid?

Did the Marketplace improperly fail to update your Medicaid eligibility once your proof of income had been submitted and verified?

## Procedural History

You initially applied for health insurance through the Marketplace on October 17, 2013. On November 6, 2013, the Marketplace issued a notice of eligibility determination stating that you were eligible to enroll in a health plan and to receive advance premium tax credits (APTC) to help pay for such coverage.

Your application was modified on December 2, 2013, and the Marketplace prepared a preliminary eligibility determination in your case ([REDACTED]), stating that you were eligible for Medicaid effective January 1, 2014. The preliminary determination also stated that, "In order for your eligibility to be finalized, you must submit documents by the date below to confirm that the information you provided in your application is accurate." This preliminary

determination was based on an expected household income of \$22,880.00 and a household of two people, including yourself and your expected child.

No written determination was issued to formalize the change in your eligibility from receiving tax credits to being eligible for Medicaid. However, your account shows that you were enrolled in Medicaid fee-for-service effective January 1, 2014 to December 31, 2014.

After December 2, 2013, your application was rerun several times by Marketplace representatives; no changes were made to your account or eligibility as a result of those actions.

On April 20, 2014, the Marketplace issued a notice of eligibility determination stating that you remained eligible for an advance premium tax credit of up to \$305.00 per month and, if you selected a silver-level plan, for cost-sharing reductions. It further stated that you remained conditionally eligible for the advance premium tax credit premium assistance program.

On April 17, 2015, you spoke with the Marketplace's Account Review Unit and appealed the December 2, 2013 preliminary eligibility determination insofar as your medical expenses were not covered by the Medicaid coverage with which you were provided at the time of your daughter's birth.

On May 21, 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.

## **Findings of Fact**

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

- 1) The application that was submitted on December 2, 2013 indicated that you had an annual household income of \$22,880.00, that you expected to file your 2014 federal income tax return as single, and that you would not be taking any deductions on that tax return.
- 2) At the time of your December 2, 2013 application, you were pregnant with one child, who was due January 17, 2014.
- 3) You live in Suffolk County.
- 4) The Marketplace's system reflects that your Medicaid fee-for-service coverage was effective January 1, 2014.

- 5) You testified that you were pregnant at the time of your December 2013 application, and that you spoke to a Marketplace representative on December 31, 2013, at which time you were informed that you could go to any State University hospital. You further testified that you asked if you could go to [REDACTED] to deliver your child, and you were informed that this hospital would accept the type of Medicaid coverage you had.
- 6) Your daughter was born on January 27, 2014.
- 7) You testified that, at the time of your daughter's birth, you gave [REDACTED] [REDACTED] your Medicaid card.
- 8) You testified that you have incurred medical bills from [REDACTED] [REDACTED] resulting from the hospital stay associated with your labor, because they did not accept the type of Medicaid coverage you had.
- 9) You called the Marketplace as early as April 2014 regarding the bills associated with the birth of your child.
- 10) You testified that you are seeking reimbursement of your medical bills.
- 11) Copies of your paystubs for January 2014 have been submitted to the Marketplace; on January 3, 2014 you received gross pay of \$282.36, on January 9, 2014 you earned \$422.40, on January 16, 2014 you received \$383.64, and on January 23, 2014 you received \$390.36.
- 12) You submitted a letter from your employer stating that your last day of work was January 16, 2014.

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

## **Applicable Law and Regulations**

### Appeal Requests

“The [Marketplace] and the 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)).

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

### 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 CFR § 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 to enroll in Medicaid through the Marketplace when they meet the nonfinancial criteria and have a household income that is at or below the applicable Medicaid modified adjusted gross income (MAGI) standard (45 CFR § 155.305(c)). In New York, a pregnant woman is presumptively eligible for Medicaid at a household income of 223% of the federal poverty level (FPL), even before the Medicaid application is approved (42 CFR § 435.116 (c)(2); NY Department of Social Services Administrative Directive 13ADM-03).

“Family size” means the number of persons counted as members of an individual’s household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

For purposes of Medicaid eligibility, the family size of a pregnant woman includes the pregnant woman and 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).

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 December 2, 2013 application, that was the 2013 FPL, which is \$15,510.00 for a two-person household (78 Fed Reg 5182, 5183 (2013)).

## **Legal Analysis**

The first issue is whether your April 17, 2015, appeal request was timely with regard to the Marketplace’s December 2, 2013 preliminary determination, which found that you were presumptively eligible for Medicaid. No written notice of an eligibility determination was ever issued with regard to that preliminary determination, despite the fact that you were enrolled in Medicaid, on a fee-for-service basis.

The timeliness of an appeal request is calculated from the date on which the notice of eligibility determination is issued. Here, the Marketplace promptly made and implemented a preliminary determination on the December 2, 2013 application, but the record does not contain a written, dated notice of eligibility determination.

Since no written determination was issued, the 90-day deadline has not been triggered pursuant to 45 CFR § 155.520(b), and the appeal must be considered to be timely. Therefore, because under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination, the issues relating to the December 18, 2013 preliminary determination will be addressed by this decision.

The next issue is whether the Marketplace properly determined that you were presumptively eligible for Medicaid.

The application that was submitted on December 2, 2013 listed an annual household income of \$22,880.00 and the eligibility determination relied upon that information.

For purposes of determining Medicaid eligibility, there were two people in your household, which included yourself and your unborn child. Your unborn child is counted for Medicaid purposes in accordance with the New York State Plan Amendment.

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).

Medicaid can be provided through the Marketplace to pregnant women who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 223% of the federal poverty level (FPL) for the applicable family size. On the date of your application, the relevant FPL was the 2013 FPL, which is \$15,510.00 for a two-person household. Since \$22,880.00 is 147.52% of the 2013 FPL, the Marketplace properly found you to be presumptively eligible for Medicaid on an expected annual income basis, using the information provided in your application.

Your eligibility was deemed “presumptive,” because the Marketplace required verification of your household income.

Therefore, the December 2, 2013 preliminary eligibility determination was correct and is AFFIRMED.

However, since that time, documentation regarding your earnings for January 2014 has been submitted.

In order to be eligible for Medicaid based on monthly earnings, you would have had to earn less than 223% of \$15,510.00, divided by 12, or \$2,882.28 per month. The four paychecks you received that month total \$1,478.76 for work between December 29, 2013 and January 19, 2014, and your employer confirmed that your last day of work before your maternity leave was January 16, 2014.

Therefore, your household earnings for January 2014 were \$1,478.76, and you qualified for Medicaid based on these earnings, effective at least as early as January 1, 2014, the first day of the month in which you qualified.

Once this proof of your income was submitted, the Marketplace should have removed the “presumptive eligibility” from your account, and found you eligible without conditions. It failed to do so.

Therefore, it is determined that you qualified for Medicaid, without conditions, effective January 1, 2014.

Your case is RETURNED to the Marketplace to effect this change in eligibility and to ensure that any outstanding medical bills are addressed.

## **Decision**

The December 2, 2013 preliminary eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace to effect this change in eligibility and to ensure that any outstanding medical bills are addressed.

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).



**Effective Date of this Decision:** October 27, 2015

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

You are eligible for Medicaid, without conditions, effective January 1, 2014. If your health care providers resubmit any outstanding bills, they will be reviewed.

The matter is returned to the Marketplace to address any outstanding problems with your account.

### **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

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- By fax: 1-855-900-5557

## **Summary**

The December 2, 2013 preliminary eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace to effect this change in eligibility and to ensure that any outstanding medical bills are addressed.

You are eligible for Medicaid, without conditions, effective January 1, 2014. If your health care providers resubmit any outstanding bills, they will be reviewed.

The matter is returned to the Marketplace to address any outstanding problems with your account.

## **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:**

