



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

## Notice of Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002643

[REDACTED]

Dear [REDACTED],

On June 15, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 25, 2015 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 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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NY State of Health Number: [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 your child was eligible for Medicaid?

## Procedural History

On February 27, 2015 the Marketplace issued a notice of eligibility determination stating that your child was eligible for Medicaid effective February 1, 2015. This determination was based on an expected household income of \$21,600.00.

On March 18, 2015, March 19, 2015, March 24, 2015, and March 25, 2015, the Marketplace issued notices of eligibility determination stating that your child remained eligible for Medicaid effective as of April 1, 2015. These determinations was based on an expected household income of \$21,600.00.

On April 28, 2015, you spoke with the Marketplace's Account Review Unit and appealed the determinations that found your child was eligible for Medicaid, and not Child Health Plus.

On June 15, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence.

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On June 15, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included a letter issued by Excellus Health Plan on May 28, 2015 confirming that your child's application for Child Health Plus was approved, and a notice issued by the Marketplace on May 21, 2015 confirming your child's Child Health Plus enrollment with Excellus BCBS as of May 20, 2015. These documents were collectively marked as Appellant's Exhibit 2 and incorporated into the record. The record was closed on June 15, 2015.

## **Findings of Fact**

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

- 1) You currently reside with your spouse, your child, and your two grandchildren. You testified that you have custody of your grandchildren but have not adopted them.
- 2) You expect to file your 2015 federal income tax return jointly with your spouse, and claim your child and two grandchildren as dependents. Your child does not expect to file a federal income tax return for the 2015 tax year.
- 3) According to your Marketplace account, you attested to an expected income of \$32,833.58 and your spouse attested to an expected income of \$14,400.00 in Title II Social Security Benefits. You attested to your child's expected income of \$7,200.00 in Title II Social Security benefits. Evidence confirming your spouse and child's monthly Social Security income was uploaded to your Marketplace account on February 23, 2015 (Appellant's Exhibit 1).
- 4) Your child's only source of income is Title II Social Security benefit income.
- 5) On February 27, 2015, March 18, 2015, March 19, 2015, March 24, 2015, and March 25, 2015 the Marketplace issued notices of eligibility determination stating that your child was eligible for Medicaid based on a household income of \$21,600.00, which is the sum of your spouse and child's Title II Social Security income.
- 6) You testified that the Marketplace should have included your expected income as part of your child's household income.
- 7) On February 23, 2015, a copy of your paystubs issued on January 22, 2015 and February 5, 2015 were uploaded to your Marketplace account (Appellant's Exhibit 1). On May 20, 2015, your account was adjusted to reflect your expected income of \$29,848.00. The

Marketplace's system reflects that this income was verified on May 22, 2015. You testified that this is an accurate reflection of your expected income for the 2015 tax year.

- 8) Your child is the only individual in your household seeking health insurance through the Marketplace.
- 9) Your family resides in Otsego County, New York

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

## **Applicable Law and Regulations**

### Medicaid for Children between One Year of Age and Nineteen Years of Age

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 FPL (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

Generally, in the case of an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year, the household is the household of the taxpayer claiming the individual as a tax dependent (42 CFR § 435.603(f)(2)). The taxpayer's household therefore consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1)).

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 \$28,410.00 for a five-person household (80 Fed. Reg. 3236, 3237).

### Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through the Marketplace, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

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A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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)).

### Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

"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 savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

## Legal Analysis

The only issue is whether the Marketplace properly determined that your child was eligible for Medicaid.

Of the eligibility requirements for Medicaid, the only one relevant here is the amount of household income the Marketplace should consider when determining your child's eligibility.

You testified that you are in a household of five people. You expect to file your 2015 taxes as married filing jointly and will claim three dependents on that tax return.

In the eligibility determination notices issued on February 27, 2015, March 18, 2015, March 19, 2015, March 24, 2015, and March 25, 2015, the Marketplace relied on a household income of \$21,600.00 to calculate your child's eligibility.

In the applications that were submitted in conjunction with those notices, you attested to an expected income of \$32,833.58, your spouse attested to an expected income of \$14,400.00 in Title II Social Security benefits, and you attested to your child's expected income of \$7,200.00. However, the Marketplace's eligibility determinations only relied upon your child and your spouse's combined attested income of \$21,600.00.

Generally, a tax filer's household income includes the modified adjusted gross income of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year. You attested to your intent to file a 2015 return when you requested financial support on the Marketplace application, and there is nothing in your account that would indicate that you would not be required by law to do so. Therefore, the Marketplace improperly excluded your income when calculating your household's income.

Furthermore, in 2015 a dependent does not have to file a tax return unless his earned income is greater than \$6,300.00 or his yearly gross unearned income is greater than \$1,050.00. Unearned income is generally all income other than what is earned, including the *taxable* part of social security and pension payments. To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

The record reflects that your child's only source of income for 2015 is \$7,200.00 from Social Security benefits. Since \$3,600.00 (one-half the amount of Social Security he receives) is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

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Therefore, his income should not have been included in household income and the Marketplace improperly relied upon your child's income when calculating your household's income.

Since the February 27, 2015, March 18, 2015, March 19, 2015, March 24, 2015, and March 25, 2015 eligibility determinations improperly excluded your expected income and improperly relied upon your child's income, they are RESCINDED, as they should have been based upon a household income of \$47,233.58.00 for a household of five people residing in Otsego County for the 2015 benefit year.

However, you credibly testified, and provided evidence on February 23, 2015, that you individually expect to earn \$29,848.00 for the 2015 tax year.

Therefore, your case is RETURNED to the Marketplace for redetermination of your child's eligibility as of February 23, 2015 based on a five-person household living in Otsego County with a household income of \$44,248.00, which is the sum of your expected income (\$29,848.00) and your spouse's Title II Social Security income (\$14,400.00).

## **Decision**

The February 27, 2015, March 18, 2015, March 19, 2015, March 24, 2015 and March 25, 2015 eligibility determinations are RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your child's eligibility for financial assistance based on a five-person household living in Otsego County with a household income of \$44,248.00.

**Effective Date of this Decision:** August 21, 2015

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

This is not a final determination of your child's eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your child's eligibility based on your corrected household income.



## **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 February 27, 2015, March 18, 2015, March 19, 2015, March 24, 2015 and March 25, 2015 eligibility determinations are RESCINDED.

Your case is RETURNED to the Marketplace for a redetermination of your child's eligibility for financial assistance based on a five-person household living in Otsego County with a household income of \$44,248.00.

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This is not a final determination of your child's eligibility for financial assistance.

It returns your case to the Marketplace for redetermination of your child's eligibility based on your corrected household income.

### **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:**

