



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

Notice of Decision

Decision Date: November 09, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002687

[REDACTED]

Dear Ms. [REDACTED]

On June 25, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 28, 2014 and December 23, 2014 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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[REDACTED]

Issues

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

Did the Marketplace properly determine in account [REDACTED] that you and your spouse were no longer eligible to receive financial assistance, effective December 1, 2014?

Did the Marketplace properly determine in account [REDACTED] that your eligibility for advance premium tax credits and cost-sharing reductions was effective February 1, 2015?

Did you have or should you have had coverage through Excellus BlueCross BlueShield, as of March 1, 2015?

Procedural History

On February 21, 2014, the Marketplace issued a notice in account [REDACTED] stating that you had elected to receive information from the Marketplace electronically to alert you that notices had been sent to your Marketplace account.

On November 6, 2014 and November 16, 2014 in account [REDACTED], the Marketplace issued notices stating that it was time for you to renew your health insurance for 2015. Those notices stated that based on information from federal and state sources, the Marketplace could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you

needed to update your account by December 15, 2014 or you might lose the financial assistance you were currently receiving.

On November 28, 2014, the Marketplace issued a notice of eligibility redetermination stating that you and your spouse were newly eligible to purchase a qualified health plan at full cost through NY State of Health, effective December 1, 2014. The notice further stated that you and your spouse were not eligible for Medicaid or to receive advance premium tax credits because you were qualified for coverage on another NY State of Health account. You and your spouse were not eligible for cost-sharing reductions because you were ineligible to receive an advance premium tax credit. This eligibility was effective December 1, 2014.

On December 12, 2014, the Marketplace issued a letter confirming enrollment in a qualified health plan for you and your spouse, with a full cost premium responsibility of \$903.11 per month. The letter also informed you that your coverage could start as early as "March 1, 2014" (*sic*) provided you paid your first month's premium.

On December 22, 2014, the Marketplace issued a notice of eligibility redetermination stating that you and your spouse were eligible to purchase a qualified health plan at full cost through NY State of Health effective January 1, 2015. The notice further stated that you and your spouse were not eligible to receive advance premium tax credits because renewal period and income data was not available. You and your spouse were also determined ineligible for cost-sharing reductions because you were ineligible to receive an advance premium tax credit.

Also on December 22, 2014, the Marketplace received your updated application for health insurance.

On December 23, 2014, the Marketplace issued a notice of eligibility redetermination that you were newly eligible to receive advance premium tax credits of up to \$213.00 per month and, if you select a silver-level qualified health plan, eligible for cost-sharing reductions. The notice further stated that your spouse was eligible to purchase a qualified health plan at full cost through NY State of Health because, based on information from federal and state data sources, it was determined that he was already enrolled in or eligible for a public insurance program such as Medicare. This eligibility was effective February 1, 2015.

Also on December 23, 2014, the Marketplace issued a letter confirming your enrollment in a qualified health plan with a monthly premium responsibility of \$283.72 after your advance premium tax credit of \$213.00 was applied, effective February 1, 2015. Your husband had not yet selected a plan.

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).

On December 27, 2014, the Marketplace issued a disenrollment notice stating that enrollment in the qualified health plan for both you and your spouse would end effective January 31, 2015 because your spouse was no longer eligible to remain enrolled in his current health insurance.

On February 21, 2015, the Marketplace issued a letter confirming your enrollment in a qualified health plan with a monthly premium responsibility of \$283.72 after your advance premium tax credit of \$213.00 was applied, effective January 1, 2015. The notice also stated that your husband had not yet selected a plan.

On May 1, 2015, you spoke to the Marketplace's Account Review Unit and appealed the termination of insurance coverage for you and your spouse as of March 1, 2015.

On May 22, 2015, the Marketplace issued a notice stating that your husband's eligibility would end effective June 30, 2015, because he was already enrolled in or eligible for a public insurance program such as Medicare.

Also on May 22, 2015, the Marketplace issued a notice of eligibility redetermination, stating that you, [REDACTED] were eligible to receive up to \$213.00 per month in advance premium tax credits, effective July 1, 2015.

On June 25, 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.

On July 3, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included a written statement detailing your conversation with Excellus BlueCross BlueShield; a copy of your April 27, 2015 refund invoice due to a premium overpayment; a copy of your premium invoices from December 2014 to February 2015; a copy of the February 21, 2015 enrollment confirmation notice issued by the Marketplace; and a money order receipt of your January 2015 premium payment. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record.

The record was closed on July 3, 2015.

Findings of Fact

- 1) The Marketplace's system reflects that you and your spouse have a separate active NY State of Health account under account number [REDACTED]. The system further reflects that your spouse is the primary account holder in that account.

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- 2) According to a notice issued on January 25, 2014, under account number [REDACTED] you and your spouse were determined eligible to receive \$588.00 in advance premium tax credits per month, and cost-sharing reductions. As of May 21, 2015, you and your spouse were listed as not seeking health insurance through this account.
- 3) The record reflects that all determinations under appeal arose from Marketplace account number [REDACTED]
- 4) You testified that you did not receive the November 28, 2014 notice that you and your spouse were not eligible for financial assistance as of December 1, 2014. You further testified that you were not aware that your advance premium tax credit was not applied to your December 2014 insurance premium.
- 5) Your Marketplace account [REDACTED] indicates that you elected to receive notifications via electronic mail.
- 6) You testified that you did not receive any notices from the Marketplace, sent electronically or by regular mail, telling you that you needed to update the information in your Marketplace to ensure that your financial assistance would continue.
- 7) You testified that you did not know you needed to renew your application until you received a reimbursement for your December 2014 premium payment.
- 8) You testified, and your account shows, that you updated the information in your Marketplace account [REDACTED] on December 22, 2014. You further testified that you received the Marketplace's December 23, 2014 determination notice that your financial assistance eligibility would begin February 1, 2015.
- 9) You testified that you received a notice from Excellus BlueCross BlueShield (Excellus) stating that your coverage would end as of March 1, 2015 due to non-payment of premiums. You provided evidence after the hearing that you did not receive this letter from Excellus, but were told over the phone that your coverage was cancelled due to non-payment (Appellant's Exhibit 1, July 3, 2015).
- 10) According to the evidence provided, an Excellus representative informed you that NY State of Health should have been notified that your insurance coverage was cancelled (Appellant's Exhibit 1, July 3, 2015).

11) There is no evidence that your insurance coverage with Excellus has been cancelled. The Marketplace's system reflects that your health insurance coverage with Silver Standard Silver ST INN Dep25 through Excellus is effective from January 1, 2015 to December 31, 2015.

12) You testified that you want your coverage through Excellus to be reinstated.

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 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 individual's projected eligibility for the upcoming 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.

In order for coverage to have been effective January 1, 2015, changes must have been made on or before December 20, 2014 (45 CFR § 155.410(f)(1); NY State of Health Extends December 15 Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-extends-december-15-enrollment-deadline> [last updated December 12, 2014]).

Termination of Coverage

The Marketplace may initiate termination of an enrollee's coverage in a qualified health plan and must permit a qualified health plan issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the Marketplace; or (2) The enrollee's coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i) and (ii)).

Electronic Notices

Applicants may choose to receive notices and information from the Marketplace by either electronic or regular mail. If the applicant elects to receive electronic notices, the Marketplace must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that you and your spouse were no longer eligible to receive financial assistance, effective December 1, 2014, as determined in the notice of eligibility determination issued on November 28, 2014.

First, 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 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.

The Marketplace issued two renewal notices in your case in November 2014, both of which stated that based on information from federal and state sources, the Marketplace could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2014 or you might lose the financial assistance you were currently receiving.

Instead of waiting until this deadline had passed, the Marketplace issued a notice on November 28, 2014, finding you ineligible for financial assistance. Because you had been given until December 15, 2014 in which to respond, it was improper for the Marketplace to do anything to your account until that deadline had passed. Moreover, it was impermissible to provide you with only a two-day notice that your coverage was about to end.

Finally, you testified that you did not receive electronic alerts from the Marketplace, and there is no evidence in your Marketplace account to show these notices were sent to you. Since you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within one business day of notice generation. It was also required to send an email or other electronic communication alerting you that a notice has been posted to your account.

The record does not contain any evidence on behalf of the Marketplace as to whether or not the electronic communications were undeliverable. Without evidence on behalf of the Marketplace, that you were given proper electronic notice or proper written notice, the notices in question must be Rescinded and/or Modified.

Since there is insufficient evidence to show that you were sent proper notice that there was a problem in your Marketplace account, you were not provided an opportunity to respond and the November 28, 2014 and December 22, 2014 notices of eligibility determination are RESCINDED.

The December 12, 2014 confirmation of enrollment, which stated that you were no longer eligible for APTC, is MODIFIED to reflect that your eligibility for APTC remained at \$697 per month.

The second issue is whether the Marketplace properly determined that your renewed eligibility for advance premium tax credits and cost-sharing reductions was effective February 1, 2015.

As noted above, you did not receive proper notice that you needed to update your account. You did update your account on December 22, 2014, at which time you, individually, were found eligible for APTC up to \$213.00 per month, effective February 1, 2015.

If you had been timely and properly notified of the need to update your account, and had you updated your account before December 20, 2014, your individual eligibility for APTC would have been effective January 1, 2015.

Therefore, the December 23, 2014 notice of eligibility redetermination is MODIFIED to state you are newly eligible to receive up to \$213.00 in APTC per month, and, if you enrolled in a silver-level health plan, to receive cost-sharing reductions, effective January 1, 2015.

The third issue under review is whether you had insurance coverage with Excellus as of March 1, 2015.

The record contains a disenrollment notice dated December 27, 2014 stating that you and your spouse's Excellus coverage would end effective January 31, 2015 because your spouse was no longer eligible to remain enrolled in this plan. Additionally, on February 21, 2015, the Marketplace issued a letter confirming your enrollment with Excellus as of January 1, 2015. There is nothing in the record that supports a finding that you were properly terminated from your Excellus plan as of March 1, 2015.

Therefore, your case is RETURNED to the Marketplace to facilitate with your insurance provider a correction of any outstanding issues of your enrollment in the appropriate health plan, including effective dates of coverage in accordance with this decision and the appropriate level of APTC.

Decision

The November 28, 2014 and December 22, 2014 notices of eligibility determination are RESCINDED.

The December 12, 2014 confirmation of enrollment, which stated that you were no longer eligible for APTC, is MODIFIED to reflect that your eligibility for APTC remained at \$697 per month.

The December 23, 2014 notice of eligibility redetermination is MODIFIED to state you are newly eligible to receive up to \$213.00 in APTC per month, and, if you enrolled in a silver-level health plan, to receive cost-sharing reductions, effective January 1, 2015.

Your case is RETURNED to the Marketplace to facilitate with your insurance provider a correction of any outstanding issues of your enrollment in the appropriate health plan, including effective dates of coverage in accordance with this decision and the appropriate level of APTC.

Effective Date of this Decision: November 09, 2015

How this Decision Affects Your Eligibility

You are eligible to receive up to \$213.00 per month in advance premium tax credits and cost-sharing reductions effective January 1, 2015.

Your case is being sent back to the Marketplace to facilitate with your insurance provider a correction of any outstanding issues of your enrollment in the appropriate health plan, including effective dates of coverage in accordance with this decision and the appropriate level of APTC.

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).

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 November 28, 2014 and December 22, 2014 notices of eligibility determination are RESCINDED.

The December 12, 2014 confirmation of enrollment, which stated that you were no longer eligible for APTC, is MODIFIED to reflect that your eligibility for APTC remained \$697.

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).

The December 23, 2014 notice of eligibility redetermination is MODIFIED to state you are newly eligible to receive up to \$213.00 in APTC per month, and, if you enrolled in a silver-level health plan, to receive cost-sharing reductions, effective January 1, 2015.

Your case is RETURNED to the Marketplace to facilitate with your insurance provider a correction of any outstanding issues of your enrollment with Silver Standard Silver ST INN Dep25 through Excellus as of March 1, 2015, with an APTC amount of \$213.00 per month.

You are eligible to receive up to \$213.00 per month in advance premium tax credits and cost-sharing reductions effective January 1, 2015.

Your case is being sent back to the Marketplace to facilitate with your insurance provider a correction of any outstanding issues of your enrollment in the appropriate health plan, including effective dates of coverage in accordance with this decision and the appropriate level of APTC.

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:

