



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

Notice of Decision

Decision Date: December 18, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002880

[REDACTED]

Dear [REDACTED],

On November 17, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 5, 2015 eligibility determination regarding your request for retroactive Medicaid.

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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Issues

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

Did the Marketplace properly determine that you were eligible for Medicaid, effective December 1, 2014?

Did the Marketplace timely and properly determine that you were not eligible for retroactive Medicaid as of November 1, 2014?

Procedural History

On December 5, 2014, the Marketplace received your application for health insurance, including your request for help with paying for medical bills from the last three months.

On December 13, 2014, the Marketplace issued an enrollment notice stating that your health insurance under Medicaid would begin December 1, 2014 and your enrollment in Health Insurance Plan of Greater New York would begin January 1, 2015.

On May 5, 2015, the Marketplace issued a notice concerning your request for coverage of medical bills for the three months prior to your December 5, 2014 application for health insurance and your March 21, 2015 updated application for health insurance. That notice stated the Marketplace determined that you were not eligible for Medicaid coverage from November 1, 2014 to December 31, 2014 due to your income during that period.

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On May 5, 2015, the Marketplace issued a second notice that stated you already have Medicaid coverage through the Health Benefit Exchange under Case # [REDACTED] from December 1, 2014 to February 28, 2015.

On May 12, 2015, you spoke with a representative from the Marketplace's Accounts Review Unit and requested that your eligibility for retroactive Medicaid for November 2014 be redetermined.

The dismissal of your appeal due to your failure to appear at the July 10, 2015 telephone hearing as scheduled was later vacated for good cause based on your August 5, 2015 written request.

On October 27, 2015, the Marketplace issued a notice of telephone hearing with the new scheduled hearing date of November 17, 2015.

On November 17, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to 15 days to allow you the opportunity to submit supporting documents.

On December 1, 2015, you uploaded to your Marketplace account a written statement regarding your position. On December 2, 2015, this statement was made part of the record as "Appellant's Exhibit A" and the record was closed.

Findings of Fact

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

- 1) You testified and submitted a written statement that a social worker at the hospital you had been admitted to originally on November 24, 2014 was supposed to apply for health insurance through the Marketplace. You testified that the social worker was assisting you in obtaining emergency Medicaid for that month (Appellant's Exhibit A).
- 2) You testified and submitted a written statement that your medical condition worsened and you were sedated and unconscious such that you did not have any control over your Medicaid application that was being prepared by the hospital social worker (Appellant's Exhibit A).
- 3) You testified that you do not believe your Medicaid application was ever processed by that social worker because you were transported to another hospital on November 29, 2014, so that the original application may have never submitted on your behalf.

- 4) According to your Marketplace applications, on December 5, 2014 and March 21, 2015, you requested help with paying for medical bills from the three months before your application. You testified that you needed help paying for your medical bills from November 1, 2014 onward.
- 5) According to a January 6, 2015 letter from your employer, your gross earnings that you received during November 2014 consisted of two pay periods at \$1,346.15 each, for a total income of \$2,692.15 that month.
- 6) According to the May 5, 2015 notice, based on your March 21, 2015 application, the Marketplace determined you to be ineligible for Medicaid from November 1, 2014 to December 31, 2014 because your household income of \$2,692.30 was over the allowable income limit of \$1,343.00 monthly.
- 7) According to another May 5, 2015 notice, based on your March 21, 2015 application, the Marketplace's records showed that you already have Medicaid coverage through the Health Benefit Exchange from December 1, 2014 to February 28, 2015.
- 8) According to the Enrollment History in your Marketplace account, you had Medicaid Fee-For-Services for the months of December 2014, January 2015, and February 2015.
- 9) According to a July 2, 2015 letter from your employer, your November 2014 income was mistakenly over-reported in the earlier letter, dated January 6, 2015, as consisting of two pay periods of earnings when you only had one pay period on November 11, 2014, with gross earnings in the amount of \$1,346.15 for that pay period and year-to-date earnings of \$11,319.20 (Appellant's Exhibit B). This annual income amount is confirmed on your 2014 W-2 Wage and Tax Statement listing the same annual gross earnings (Appellant's Exhibit C), as well as on your 2014 income tax return (Form 1040EZ) and 2014 NYS tax return (Form IT-201)(Appellant's Exhibit D).
- 10) You indicated in the written statement that you "...uploaded onto the NY market place website the complete 2014 tax returns I have filed which may show any deductions applied" (Appellant's Exhibit A).
- 11) The federal and state tax forms show the standard deductions you took that year.
- 12) You testified that you do not expect to take any deductions on your 2015 tax return for student loan interest, moving expenses, or any other itemized expenses deducted to reach adjusted gross income. You testified that you did incur about \$2,000.00 in tuition and fees that you would like to deduct.

- 13) At the time of your initial and updated applications, you were 30 years old and are now 31 years old. Your application shows you are single, and expect to file your 2015 tax return using the tax filing status of Single and will not be claiming any dependents on that tax return.
- 14) According to the Appeal Summary, dated June 5, 2015, which is part of the Evidence Packet, on May 12, 2015, you “applied for retroactive FFS for three months prior to [your] MA effective date of 12/1/2014-2/28/2015 [and are] requesting retroactive coverage be reconsidered.”

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

Applicable Law and Regulations

Timely Medicaid Notice

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)).

To assess whether an eligibility determination was untimely, the Marketplace must base the time period from the date of application to the date the Marketplace notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for the Marketplace to make an eligibility determination, then the Marketplace must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

The Marketplace must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

Medicaid

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 for the applicable family size (42 CFR §§ 435.119(b), 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).

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On the date of your application, that was the 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593).

A retroactive authorization will be issued for medical expenses incurred during the three months prior to the month of application for Medicaid, *provided* the applicant was eligible for Medicaid in the month in which the medical care and services were received (18 NYCRR 360-2.4(c), 42 CFR § 435.915(a), emphasis added). The Department of Health may make eligibility effective for fee-for-service Medicaid on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b)).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” 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)).

“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 time savings accounts, and deductions attributable to royalties (26 USC § 62(a)). Standard deductions, real property tax credits and earned income credits are not allowable deductions in computing adjusted gross income.

Tuition and Fees Deduction

“Adjusted gross income” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). However, the law that allowed for a deduction from adjusted gross income of up to \$4000.00 in tuition and fees paid by the taxpayer during the tax year to a qualified educational institution has not yet been renewed for the 2015 tax year (26 USC § 222(e)). Therefore, tuition and fees cannot be claimed as deductions from household income to calculate adjusted gross income.

Legal Analysis

The first issue under review is whether the Marketplace failed to provide you timely notice of your eligibility for retroactive Medicaid.

You initially applied for health insurance through the Marketplace on December 5, 2014. This application indicates that you were requesting retroactive Medicaid coverage for yourself for three months prior to your application. However, the record reflects that your request was not acted upon by the Marketplace after you provided the letter from your

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employer, which was dated January 6, 2015, at which time your application became completed.

According to your Marketplace application, you renewed your request on March 21, 2015, and the Marketplace issued two notices regarding your request for retroactive Medicaid on May 5, 2015.

The Marketplace must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of their completed application. To assess whether an eligibility determination was untimely, the Marketplace must base the time period from the date of the completed application to the date the Marketplace notifies the applicant of its decision.

Your application was deemed completed upon you submitting the letter from your employer on January 6, 2015 regarding your November 2014 earnings from employment. The record reflects that the Marketplace did not make an eligibility determination regarding your December 5, 2014 request for retroactive Medicaid within 45 days of January 6, 2015, which was February 20, 2015. Therefore, the Marketplace did not issue a timely eligibility redetermination regarding your initial request for retroactive Medicaid and, as a result, you were not provided with timely notice in the first instance.

Notwithstanding, the Marketplace did issue notices of eligibility redetermination regarding your request for retroactive Medicaid, which you had renewed on March 21, 2015. The May 5, 2015 notices were issued on the 45th day after March 21, 2015, so these notices were timely provided.

As to the second issue, retroactive Medicaid coverage can be authorized for medical expenses incurred during the three months prior to the month of application for Medicaid, ***provided*** the applicant was eligible in the month in which the medical care and services were received (emphasis added). This is so regardless of the inactions of hospital personnel in processing your application for Medicaid during November 2014.

According to your Marketplace account you are single, expected to file your 2015 income tax return using the tax status of Single, and will not be claiming any dependents on that tax return. Therefore, you are in a one-person tax household for purposes of this analysis.

To be eligible for retroactive Medicaid during November 2014, your income could not exceed 138% of the FPL for a one-person household, which was \$1343.00 per month at that time. Although the record demonstrates that the Marketplace initially relied on the inaccurate income information your employer provided when it determined you not eligible for Medicaid during November 2014, the more recent information you provided in the corrected letter from your employer, dated July 2, 2015, shows your income was \$1,346.15 that month.

We note that payments for tuition and fees you made in 2014 that you requested be considered cannot be deducted from your adjusted gross income or pro-rated on a monthly basis because the law allowing this deduction has not yet been renewed in 2015. Similarly, the standard deductions on your 2014 tax returns are not allowable deductions in computing adjusted gross income. For these reasons, the deductions you requested be factored in cannot be under the law.

Therefore, your reported income in November 2014 remains as \$1,346.15, which your income exceeded the allowable monthly income limit of \$1,343.00 in effect and you did not qualify for MAGI-based Medicaid that month. However, the record also shows that you had Medicaid Fee-For-Services beginning December 1, 2014. Therefore, the Marketplace's May 5, 2015 notice of eligibility determination regarding retroactive Medicaid being denied from November 1, 2014 to December 31, 2014 is MODIFIED to state that you are denied retroactive Medicaid from only November 1, 2014 to November 30, 2014.

Decision

The Marketplace failed to provide you timely notice of an eligibility determination regarding your application for retroactive Medicaid coverage in the first instance but, based on your March 21, 2015 renewed request provided you with timely notice thereafter on May 5, 2015.

The Marketplace's May 5, 2015 notice of eligibility determination regarding retroactive Medicaid being denied from November 1, 2014 to December 31, 2014 is MODIFIED to state that you are denied retroactive Medicaid from only November 1, 2014 to November 30, 2014.

Effective Date of this Decision: December 18, 2015

How this Decision Affects Your Eligibility

You were not eligible for retroactive Medicaid as of November 1, 2014 to November 30, 2014 because your monthly income of \$1,346.15 exceeded the monthly allowable income limit of \$1,343.00 for Medicaid that month.

This decision does not change your eligibility for Medicaid as of December 1, 2014.

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 Marketplace failed to provide you timely notice of an eligibility determination regarding your application for retroactive Medicaid coverage in the first instance but, based on your March 21, 2015 renewed request, provided you with timely notice thereafter on May 5, 2015.

The Marketplace's May 5, 2015 notice of eligibility determination regarding retroactive Medicaid being denied from November 1, 2014 to December 31, 2014 is MODIFIED to state that you are denied retroactive Medicaid from only November 1, 2014 to November 30, 2014.

You were not eligible for retroactive Medicaid as of November 1, 2014 to November 30, 2014 because your monthly income of \$1,346.15 exceeded the monthly allowable income limit of \$1,343.00 for Medicaid that month.

This decision does not change your eligibility for Medicaid as of December 1, 2014.

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:

