



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

Notice of Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003223

[REDACTED]

Dear [REDACTED],

On July 21, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 30, 2015 eligibility redetermination.

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).

This page intentionally left blank.



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

Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003223



Issues

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

Did the Marketplace properly determined that your coverage with Emblem Health, a Medicaid Managed Care plan, ended January 31, 2015 and not March 31, 2015?

Did the Marketplace properly determine that you were eligible to receive up to \$278.00 per month in advance premium tax credit and, if you select a silver-level qualified health plan, eligible for cost sharing reductions, effective July 1, 2015?

Did the Marketplace properly determine on May 30, 2015 that you were not eligible for Medicaid?

Did the Marketplace properly determine that you were not entitled to a special enrollment period to enroll in a qualified health plan through the Marketplace?

Procedural History

In 2014, you were determined eligible for Medicaid and had coverage through Medicaid Fee-For-Service as of February 1, 2014 and with Emblem Health, a Medicaid Managed Care (MMC) plan, as of April 1, 2014.

On December 16, 2014, the Marketplace issued a renewal notice that stated, based on information from federal and state data sources, it could not make a decision about whether or not you qualify for financial help paying for your health coverage on renewal.

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 notice instructed you to update the information on your Marketplace account by January 15, 2015 and that, if you miss the deadline, the financial assistance you were getting may end.

As of January 15, 2015, your Marketplace account was not updated.

On January 17, 2015, the Marketplace issued a notice of eligibility redetermination that you were not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost sharing reductions and cannot enroll in a qualified health plan at full cost through the Marketplace because you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

On January 18, 2015, the Marketplace issued a disenrollment notice that your coverage through Emblem Health, an MMC plan, will end effective January 31, 2015.

On March 6, 2015, your Marketplace account was updated.

On March 7, 2015 and March 8, 2015, the Marketplace issued notices of eligibility redetermination that stated, based on a household income of \$25,953.00, you were eligible to receive up to \$270.00 per month of advance premium tax credits (APTC) and eligible for cost sharing reductions (CSR), effective April 1, 2015.

On May 8, 2015, your Marketplace account was updated again.

On May 9, 2015, the Marketplace issued a letter that it had reviewed your application for health insurance dated May 8, 2015, and needed more information regarding your income.

That same day, you uploaded income documents to your Marketplace account.

Thereafter, the Marketplace issued two more notices of eligibility and on May 30, 2015, issued the most recent notice of eligibility redetermination that superseded (replaced) all previous eligibility redeterminations. This notice stated you are eligible to receive up to \$278.00 per month of APTC and eligible for CSR, effective July 1, 2015. It further stated that, if you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan through NY State of Health until the next open enrollment period, unless you qualify for a special enrollment period.

On June 1, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed the eligibility determination as it related to the amount of APTC to which you were entitled and the Marketplace's verbal denial of a special enrollment period made that same day.

On June 2, 2015, the Marketplace issued a letter confirming that you had requested a telephone hearing and were appealing these issues.

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 July 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) You testified that you expect to file your 2015 taxes with a tax filing status of Head of Household with a Qualifying Individual and will claim your parent as a dependent on that tax return.
- 2) You are seeking insurance for yourself only.
- 3) The application that was submitted on May 29, 2015 listed annual household income of \$33,000.00 in earned income minus \$7,900.00 in student loan interest, for an annual income amount of \$25,100.00. You testified that your actual 2014 gross earnings were \$32,849.00 and you expect your 2015 household income to be comparable to this amount, as well as your student loan interest payment of \$7,900.00 for the year.
- 4) You testified that you received a lot of "do not reply" emails from the Marketplace in 2015 that you did not pay attention to because you thought those emails were junk mail. You testified that, therefore, you were not aware of the renewal deadline.
- 5) You testified that you contacted your Medicaid Managed Care plan and were told that your coverage would end March 31, 2015, which you believed to be true.
- 6) You testified that you expected to get paperwork in the mail for your annual recertification for Medicaid, as you had in past years, and were not aware that you could do this online through the Marketplace.
- 7) You testified that you contacted the Marketplace on March 6, 2015 to try to renew your coverage through Medicaid and were not informed until May 9, 2015 that income documents were needed, which you promptly provided that same day.
- 8) You testified that, on June 1, 2015, the Marketplace verbally denied a special enrollment period to allow you to enroll in a health plan.
- 9) You testified that, even if you were able to enroll and apply tax credits, you cannot afford to pay for health insurance premiums of \$400.00 per month, which you stated is what the Marketplace said your monthly premium responsibility would be.

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).

10) Your application states that you reside in Queens 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 Continuous Coverage

People who receive or are eligible for Medicaid are not eligible for an advance premium tax credit (APTC) since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid social security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

Under New York's Social Services Law, a person who is found eligible for Medicaid based on his household's MAGI but loses that eligibility "for a reason other than citizenship status, lack of state residence, or failure to provide a valid social security number" keeps their Medicaid for twelve months, "provided that federal financial participation in the costs of such assistance is available" (Soc. Serv. Law § 366(4)(c)). This provision is referred to as "continuous coverage" and the twelve-month period of continuous coverage is based on the date of Medicaid eligibility.

Therefore, most applicants determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage offered through Medicaid Managed Care, even if the adult loses Medicaid eligibility because of any changes or updates they make to their Marketplace account. For example, even if income increases above the Medicaid limit allowed for the household size, the insured will remain covered under Medicaid for a twelve-month period. This twelve-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)).

Advance Premium Tax Credit

The advance premium tax credit (APTC) is available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable poverty level (FPL) (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

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).

Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

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)). Living expenses, such as rent and utilities are not an allowable deductions in computing adjusted gross income.

Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)).

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).

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)).

Special Enrollment Period

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 Marketplace must provide an initial open enrollment period and annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the 2015 calendar year began November 15, 2014 and ended on February 15, 2015 (45 CFR § 155.410(e)(1)).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another QHP.

One of the triggering events under which a special enrollment is permitted is when the qualified individual's or his or her dependent's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange (45 CFR § 155.420(d)(4)).

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, you can consult the Federal Marketplace website (www.healthcare.gov) for information and an application.

Legal Analysis

The first issue is whether the Marketplace properly terminated your Medicaid Managed Care (MMC) plan enrollment with Emblem Health, effective January 31, 2015.

On March 1, 2014, the Marketplace issued an eligibility determination that you are Medicaid eligible effective February 1, 2014. This eligibility determination corresponds to your Marketplace Enrollment History, which also indicates a Medicaid Fee-For-

Service (FFS) coverage start date of February 1, 2014 and a coverage end date of January 31, 2015.

Your Marketplace Enrollment History also reflects that after your initial health insurance coverage through Medicaid FFS beginning February 1, 2014, your enrollment in Emblem Health, an MMC plan, became effective April 1, 2014 with an end date of March 31, 2015. Your Enrollment History further reflects that your enrollment with Emblem Health was modified to begin on April 1, 2014 and end on January 31, 2015.

When your Medicaid FFS coverage beginning February 1, 2014 is combined with your health coverage with your MMC plan, you had Medicaid for a twelve month coverage period from February 1, 2014 to January 31, 2015. Therefore, your MMC plan enrollment with Emblem Health correctly ended after twelve months, that is, at the end of your Medicaid eligibility year on January 31, 2015. This twelve months of coverage is consistent with the continuous Medicaid coverage section of the New York Social Services Law.

Therefore, the Marketplace's January 18, 2015 disenrollment notice is correct and is **AFFIRMED**.

The second issue is whether the Marketplace properly determined that you were eligible for an APTC of up to \$278.00 per month, effective July 1, 2015.

The application that was submitted on May 8, 2015 listed an annual household income of \$25,100.00, after \$7,900.00 in student loan interest deductions was taken from your reported gross income of \$33,000.00.

Although the May 30, 2015 notice of eligibility determination relied upon that information, interest on a qualified educational loan can be deducted from annual gross income only in an amount up to \$2,500 in interest paid by taxpayers during the taxable year to reach adjusted gross income. In your case, the Marketplace deducted the full amount of \$7,900.00 in student loan interest from your reported income of \$33,000.00 to reach your adjusted gross income of \$25,100.00, which was in error since the maximum deduction allowed in a taxable year is \$2,500.00.

At the hearing, you also testified that you expect your 2015 gross earnings to be \$32,849.00 and your student loan interest payments to remain at about \$7,900.00 for 2015. Since the maximum allowable student loan interest that you can claim as a deduction for 2015 is \$2,500.00, your 2015 adjusted gross income less that amount equals \$30,349.00. Therefore, your case is being **RETURNED** to the Marketplace to redetermine your eligibility for financial assistance using a two-person household and a projected 2015 household income of \$30,349.00 in Queens County, New York.

Since the May 30, 2015 eligibility determination was incorrect in deducting the full amount of your student loan interest of \$7,900.00, and not the maximum amount of \$2,500.00 allowed under the law, to reach your household income, it is **RESCINDED**.

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).

Your case is RETURNED to the Marketplace to redetermine your eligibility for financial assistance using a two-person household and a 2015 household income of \$30,349.00 for an individual residing in Queens County, New York.

As a result of your new income information and corrected student loan interest deduction allowed, your eligibility for cost sharing reductions and Medicaid will also be redetermined by the Marketplace at that time.

The record reflects that on June 1, 2015, you spoke with the Marketplace's Account Review Unit and were verbally denied a special enrollment period. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period (SEP). It does contain a June 2, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Denial of Special Enrollment Period (SEP)."

In this particular case, the lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. 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 text of the June 2, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The record established that the Marketplace erred in deducting the full amount of your student loan interest of \$7,900.00, and not the maximum amount of \$2,500.00 allowed under the law, to reach your household income and determine your eligibility for financial assistance. Since there was Marketplace error, which is resulting in your case being returned to the Marketplace to redetermine your eligibility for financial assistance, the June 1, 2015 denial of a special enrollment period is RESCINDED.

You are granted a special enrollment period of 60 days from the date of this Decision to select and enroll in a qualified health plan through the Marketplace.

Decision

The Marketplace's January 18, 2015 disenrollment notice is AFFIRMED.

The Marketplaces May 30, 2015 eligibility determination is RESCINDED.

The Marketplace's June 1, 2015 denial of a special enrollment period is RESCINDED.

Your case is RETURNED to the Marketplace to redetermine your eligibility for financial assistance using a two-person household and a 2015 household income of \$30,349.00 for an individual residing in Queens County, New York.

You are granted a special enrollment period of 60 days from the date of this Decision to select and enroll in a qualified health plan through the Marketplace.

Effective Date of this Decision: October 28, 2015

How this Decision Affects Your Eligibility

Your effective end date of coverage through Medicaid was January 31, 2015.

This Decision does not determine your final eligibility.

Your case is RETURNED to the Marketplace to redetermine your eligibility for financial assistance using a two-person household and a 2015 household income of \$30,349.00 for an individual residing in Queens County, New York.

The Marketplace will issue a notice of eligibility redetermination.

You are being granted a special enrollment period of 60 days from the date of this Decision to select and enroll in a qualified health plan through the Marketplace.

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 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 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's January 18, 2015 disenrollment notice is **AFFIRMED**.

Your effective end date of coverage through Medicaid remains as January 31, 2015.

The Marketplaces May 30, 2015 eligibility determination is **RESCINDED**.

The Marketplace's June 1, 2015 denial of a special enrollment period is **RESCINDED**.

Your effective end date of coverage through Medicaid was January 31, 2015.

This Decision does not determine your final eligibility.

Your case is **RETURNED** to the Marketplace to redetermine your eligibility for financial assistance using a two-person household and a 2015 household income of \$30,349.00 for an individual residing in Queens County, New York.

The Marketplace will issue a notice of eligibility redetermination.

You are being granted a special enrollment period of 60 days from the date of this Decision to select and enroll in a qualified health plan through the Marketplace.

If you still wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, you can consult the Federal Marketplace website (www.healthcare.gov) for information and an application.

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).

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

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).

A Copy of this Decision Has Been Provided To:

