



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

Notice of Decision

Decision Date: December 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003762

[REDACTED]

Dear [REDACTED]

On September 25, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 27, 2015, May 1, 2015, and May 8, 2015 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 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: December 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003762

[REDACTED]

Issues

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

Did the Marketplace properly determine that your spouse was conditionally Medicaid, effective February 1, 2015?

Did the Marketplace properly determine that your spouse was no longer eligible for Medicaid, as of May 1, 2015?

Did the Marketplace properly determine that your newborn children's eligibility to enroll a Child Health Plus was not effective as of [REDACTED], their date of birth?

Procedural History

On November 8, 2014, the Marketplace sent you a notice that it was time to renew your spouse's health insurance for 2015. The notice further stated that your spouse would be re-enrolled in coverage with Platinum Select Platinum NS INN Dep25 at full cost, effective January 1, 2015.

The Marketplace received your updated application on December 8, 2014.

On December 9, 2014, the Marketplace issued a notice of eligibility determination stating that your spouse was conditionally eligible for Medicaid, effective December 1, 2014. You were requested to provide proof of your income before December 25, 2014 to confirm your spouse's eligibility. This determination was based on a household income of \$84,000.00.

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 January 15, 2015, the Marketplace issued a notice of eligibility redetermination stating that your spouse was conditionally eligible to share an advance premium tax credit of up to \$0.00 per month. The notice further stated that your spouse was not eligible for Medicaid because your household income of \$84,000.00 was over the allowable income limit. You were requested to provide proof of your income before April 16, 2015 to confirm your spouse's eligibility.

Also on January 15, 2015, the Marketplace issued a disenrollment notice stating that your spouse's Medicaid Fee-For-Service coverage would be discontinued as of January 31, 2015.

The Marketplace received your updated application for health insurance on February 26, 2015.

On February 27, 2015, the Marketplace issued a notice of eligibility redetermination stating that your spouse was conditionally eligible for Medicaid, effective February 1, 2015. You were requested to provide proof of your income before March 13, 2015 to confirm your spouse's eligibility. This determination was based on a household income of \$84,000.00.

The Marketplace received your updated application for health insurance on April 30, 2015, which included your newborn children.

On May 1, 2015, the Marketplace issued a notice of eligibility redetermination stating that your spouse was newly conditionally eligible to share an advance premium tax credit of up to \$103.00 per month. The notice further stated that your spouse was not eligible for Medicaid because your household income of \$84,000.00 was over the allowable income limit. You were requested to provide proof of your income before July 29, 2015 to confirm your spouse's eligibility.

Also on May 1, 2015, the Marketplace issued a disenrollment notice stating that your spouse's Medicaid Fee-For-Service coverage would be discontinued as of May 31, 2015.

Also on May 1, 2015, the Marketplace sent you a notice stating that your newborn children may be eligible for health insurance through New York State of Health, but more information was needed to verify your income and confirm their eligibility.

On May 2, 2015, the Marketplace issued a notice confirming your spouse's enrollment in Fidelis Care Gold. The notice further stated that her coverage could begin as early as June 1, 2015, if you pay the first month's premium.

On May 5, 2015, a copy of your 2014 federal income tax return was uploaded to your Marketplace account.

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 May 8, 2015, the Marketplace issued a notice of eligibility redetermination stating that your spouse was eligible to share an advance premium tax credit of up to \$0.00 per month. The notice further stated that your newborn children were conditionally eligible to enroll through Child Health Plus with a \$30.00 monthly premium, effective June 1, 2015. You were requested to provide documentation confirming their citizenship status and social security number before August 5, 2015. This determination was based on a household income of \$106,305.00.

On July 2, 2015, you spoke with the Marketplace's Account Review Unit and appealed the February 27, 2015 eligibility determination insofar as it provided your spouse conditional Medicaid eligibility, the May 1, 2015 eligibility determination insofar as it discontinued your spouse's conditional Medicaid eligibility, and the May 8, 2015 eligibility determination insofar as it began your newborn children's eligibility for Child Health Plus, effective June 1, 2015.

On August 20, 2015, the Marketplace issued a notice confirming your children's Child Health Plus enrollment with Fidelis Care as of August 19, 2015. The notice further stated that your children's coverage could start as early as October 1, 2015, if you paid the first month's premium.

On September 25, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At that time, you designated [REDACTED] as your Authorized Representative, and she appeared on your behalf. The record was developed during the hearing and left open until October 12, 2015 to provide you an opportunity to submit supporting evidence.

On October 12, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included: a notice from the State of New York Office of the Attorney General Civil Recoveries Bureau requesting payment of overdue medical bills; personal notes regarding conversations with the Marketplace and Fidelis Care; a notice from Fidelis Care confirming your children's enrollment; notice denying your reimbursement for submitted bills by the New York State Department of Health; a completed request for a Fair Hearing with the NYS Office of Temporary and Disability Assistance; a copy of medical bills incurred for your spouse and your newborn children; a copy of a notice issued by the Marketplace on June 15, 2015 with handwritten notes; a copy of a fax log dated June 10, 2015; copies of your newborn children's social security cards and certificates of live birth; a copy of the emails between yourself and [REDACTED] [REDACTED] from Fidelis Care; and a copy of the premium invoices sent to you from Excellus BlueCross Blue Shield for the months of February and May 2015.

These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on October 12, 2015.

Findings of Fact

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

- 1) Your Marketplace account indicates that you receive notices from the Marketplace via regular mail. You further testified that the address listed in your account is correct.
- 2) No notices sent to you at the address listed on your Marketplace account have been returned as undeliverable.
- 3) The record reflects that, on November 20, 2014, your spouse was automatically re-enrolled in Platinum Select Platinum NS INN Dep25, with coverage effective January 1, 2015.
- 4) The record reflects that your application was updated several times on December 8, 2014, ultimately listing an expected household income of \$84,000.00 for the 2015 tax year. You testified that this income was an estimate of your expected income for the 2015 tax year.
- 5) The final application that was submitted on December 8, 2014 indicated that your spouse was pregnant with two children. The application further indicated that you expected to file your 2015 federal income tax return with the filing status of married filing jointly. You expected to claim your four children as dependents on that tax return.
- 6) You testified that your application was modified on December 8, 2015 when your spouse went to a doctor visit. You further testified that your spouse was informed by a certified application counselor that she could be eligible for more financial assistance or Medicaid.
- 7) According to the notice issued by the Marketplace on December 9, 2014, your spouse was determined conditionally eligible for Medicaid, pending the submission of proof of your household income before December 25, 2014.
- 8) You testified that you were out of the country for 4 months in early 2015 and did not immediately read the notices issued by the Marketplace regarding the Marketplace's request for additional information. You further testified that, since you were out of the country, you relied upon the information provided to you by the certified application counselor assisting your spouse with her application.
- 9) Your two youngest children were born on [REDACTED]. The Marketplace's system reflects that your spouse's Medicaid eligibility was conditional on the date of your children's birth.

- 10) The record reflects that your newborn children were added to your Marketplace application on April 30, 2015. This application listed an expected household income of \$84,000.00 for the 2015 tax year.
- 11) You testified that you were informed by the certified application counsellor that you must provide proof of your household income by May 27, 2015. You further testified that you were not aware that you must provide proof of your household income prior to May 27, 2015, because you were unable to read the notices issued by the Marketplace yourself.
- 12) The record reflects that your 2014 federal income tax return was uploaded to your Marketplace account on May 5, 2015. The record further reflects that your account was modified on May 8, 2015, based on the income documentation provided, listing an expected household income of \$106,305.00 for the 2015 tax year.
- 13) According to the eligibility determination issued by the Marketplace on May 8, 2015, your children were conditionally eligible for Child Health Plus at \$30.00 per month, effective June 1, 2015.
- 14) The record reflects that your children were enrolled in Child Health Plus through Fidelis Care on August 19, 2014, with coverage effective October 1, 2015.
- 15) You are seeking reimbursement of medical bills incurred at the time of your children's birth.

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

Applicable Law and Regulations

Medicaid

Medicaid through the Marketplace can be provided 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 (MAGI) that is at or below 138% of the federal poverty level (FPL) for the applicable family size (42 CFR §§ 435.119(b), 435.911(b)(1), 435.603(d)(4); N.Y. Soc. Serv. Law § 366(1)(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).

In New York, a pregnant woman is eligible for Medicaid at a household income of 223% of the federal poverty level (FPL) (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 application, that was the 2015 FPL, which is \$40,890.00.00 for an eight-person household (80 Fed. Reg. 3236, 3237).

Generally, Medicaid coverage begins on the first day of the month in which the applicant was found eligible (42 CFR § 435.915(b)).

General- Effective Date of Coverage for Qualified Health Plans

Qualified Health Plan enrollments received between the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (45 CFR § 155.420(b)(1)).

Newborn Child – Effective Date of Coverage for Qualified Health Plans

The Marketplace must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, or it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following the date of birth, adoption, placement for adoption, or placement in foster care (45 CFR §155.420(b)(2); NYS Insurance Law § 4305). The Marketplace has elected to make the effective date the first day of the month of birth.

General- Effective Date of Coverage for Medicaid Managed Care Plans

Medicaid Managed Care (MMC) plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract

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).

(Appendix H-6(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019; see, §1115 Soc. Sec. Act; N.Y. Soc. Serv. Law §364-j(1)(c); 18 NYCRR 360-10.3(h)).

Newborn Child – Effective Date of Coverage for Medicaid

Medicaid coverage must be provided to a child born to a woman who has been determined eligible and is receiving Medicaid on the date of the child's birth (42 CFR § 435.117(a), N.Y. Soc. Serv. Law § 366-g(3)).

Child Health Plus Effective Date- General

Child Health Plus is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

“A State must specify a method for determining the effective date of eligibility for [Child Health Plus], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between [Child Health Plus] and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage” (42 CFR § 457.340(f)).

In New York State, Child Health Plus benefits are furnished “By the first day of the month after the application is received if prior to the 15th of the month or the first day after the subsequent month if after the 15th of the month” (Selection made on Form CS 18, Separate Child Health Insurance Program Non-Financial Eligibility – Citizenship. Sections: 2105(c)(9) and 2107(e)(1)(J) of the SSA and 42 CFR 457.320(b)(6), (c) and (d)).

The current law sets a gap between the date of birth and the beginning date of coverage, through no fault of the enrollee (Sponsor Memo, 2015 NY Senate Bill S4745B (April 15, 2015)). There is legislation pending in the New York State Senate and Assembly that would amend the Public Health Law so that in the case of a newborn child their enrollment will be effective as of the date of the child's birth if the applicant for insurance applied either prior to the date of birth or within 60 days after the child's birth (2015 NY Senate-Assembly Bill S4745B, A7155B).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that your spouse was conditionally eligible for Medicaid effective February 1, 2015.

In the eligibility determination issued on February 27, 2015, you were advised that your spouse's eligibility was only conditional, and that you needed to provide documentation to confirm your income before March 13, 2015. This eligibility determination was based in reliance upon an expected household income of \$84,000.00. You testified that this income was an estimate of your expected income for the 2015 tax year.

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

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 2015 FPL, which is \$40,890.00 for an eight-person household. Since \$84,000.00 is 205.43% of the 2015 FPL, the Marketplace properly found your spouse to be eligible for Medicaid on an expected annual income basis, using the information provided in your application. However, since additional income information was requested to confirm your spouse's eligibility, the Marketplace properly found your spouse to be conditionally eligible for Medicaid, pending submission of the requested documentation.

Therefore, the Marketplace's February 27, 2015 eligibility determination was correct and is AFFIRMED.

The second issue is whether the Marketplace properly determined that your spouse was no longer eligible for Medicaid, as of May 1, 2015.

The record reflects that your newborn children were born on [REDACTED], and added to your Marketplace account on April 30, 2015. The record further reflects that proof of your household income had not been received as of April 30, 2015 to confirm your spouse's eligibility.

The application submitted on April 30, 2015 also listed an expected household income of \$84,000.00. As previously established, you testified that this income was an estimate of your expected income for the 2015 tax year.

Medicaid can be provided through the Marketplace to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$40,890.00 for an eight-person household. Since your spouse was no longer pregnant at the time of the April 30, 2015 application, her eligibility for Medicaid was evaluated based on the general eligibility requirements for adults. Since

\$84,000.00 is 205.43% of the 2015 FPL, the Marketplace properly found your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Therefore, the May 1, 2015 eligibility determination was correct and is AFFIRMED.

The final issue is whether the Marketplace properly determined that your newborn children's eligibility to enroll a Child Health plus plan was not effective as of [REDACTED], their date of birth.

As previously established, your newborn children were born on [REDACTED], and added to your Marketplace account on April 30, 2015.

On May 1, 2015, the Marketplace sent you a notice stating that your children may be eligible for health insurance through the Marketplace, but you must provide documentation to verify your household income and confirm their eligibility.

The record reflects that the Marketplace received the requested income documentation on May 5, 2015, which included a copy of your 2014 federal income tax return.

On May 8, 2015, the Marketplace issued a notice of eligibility determination stating that your children were conditionally eligible to purchase a child health plus plan, effective June 1, 2015.

Generally, in New York State if an application for insurance coverage is received through the Marketplace after the 15th of the month, health plan benefits are provided on "the first day of the subsequent month." If an application is received before the 15th of the month, benefits are provided on the first day of the next month. This rule applies to Qualified Health Plans, Medicaid Managed Care plans, and Child Health Plus plans.

However, special exceptions have been made for newborns seeking coverage through Medicaid or Qualified Health Plans as of the newborn's date of birth. In both cases, newborns are permitted to enroll in coverage, which is guaranteed under the law to begin as of their date of birth. According to the current law, there are no such exceptions for newborns seeking enrollment in Child Health Plus plans.

Federal Regulation clearly dictates that a State must specify a method for determining the effective date of eligibility for Child Health Plus, which can be determined through any other reasonable method that avoids gaps in coverage. Furthermore, there is current pending legislation in the New York State Senate and Assembly that specifically acknowledges a gap in coverage that results for

newborns between their date of birth and start date of Child Health Plus coverage. The pending legislation seeks to correct this gap.

Since New York State has clearly carved out exceptions allowing newborns to enroll in Medicaid and Qualified Health Plan coverage as of the date of their birth, and there is currently pending legislation which would allow a similar exception for newborns seeking coverage through Child Health Plus, it is proper that your newborn children should be provided coverage effective as of their date of birth in order to prevent a gap in insurance coverage.

Therefore, the May 8, 2015 eligibility determination is MODIFIED to state that your newborn children's eligibility to enroll in a Child Health Plus plan is effective as of [REDACTED].

The record reflects that your children were enrolled in a Child Health Plus plan on August 19, 2015, with coverage effective October 1, 2015. Therefore, the August 20, 2015 enrollment confirmation notice is MODIFIED to state that your newborn children's coverage in their Child Health Plus plan is effective as of [REDACTED].

Your case is RETURNED to the Marketplace to facilitate backdating of your children's Child Health Plus coverage, effective as of their date of birth.

Decision

The Marketplace's February 27, 2015 notice of eligibility determination is AFFIRMED.

The Marketplace's May 1, 2015 notice of eligibility determination is AFFIRMED.

The May 8, 2015 eligibility determination is MODIFIED to state that your newborn children's eligibility to enroll in a Child Health Plus plan is effective as of [REDACTED].

The August 20, 2015 enrollment confirmation notice is MODIFIED to state that your newborn children's coverage in their Child Health Plus plan is effective as of [REDACTED].

Your case is RETURNED to the Marketplace to facilitate backdating of your children's Child Health Plus coverage, effective as of their date of birth.

Effective Date of this Decision: December 21, 2015

How this Decision Affects Your Eligibility

This decision does not change your spouse's eligibility.

Your children are enrolled into their Child Health Plus plan as of [REDACTED]

Your case is being sent back to the Marketplace to facilitate this change.

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

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).

Summary

The Marketplace's February 27, 2015 notice of eligibility determination is AFFIRMED.

The Marketplace's May 1, 2015 notice of eligibility determination is AFFIRMED.

This decision does not change your spouse's eligibility.

The May 8, 2015 eligibility determination is MODIFIED to state that your newborn children's eligibility to enroll in a Child Health Plus plan is effective as of [REDACTED].

The August 20, 2015 enrollment confirmation notice is MODIFIED to state that your newborn children's coverage in their Child Health Plus plan is effective as of [REDACTED].

Your case is RETURNED to the Marketplace to facilitate backdating of your children's Child Health Plus coverage, effective as of their date of birth.

Your children are enrolled into their Child Health Plus plan as of [REDACTED].

Your case is being sent back to the Marketplace to facilitate this change.

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:

[REDACTED]

[REDACTED]