



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

## Notice of Decision

Decision Date: January 29, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004078



Dear [REDACTED],

On December 3, 2015, your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 26, 2015 and July 16, 2015 eligibility determination notices, as well as the July 16, 2015 enrollment confirmation notice.

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 45 Code of Federal Regulations (CFR) § 155.545(b).

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## Decision

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NY State of Health Number: [REDACTED]  
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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 your eligibility as of March 26, 2015?

Did the Marketplace properly determine that your eligibility and enrollment as stated in the July 16, 2015 eligibility determination notice and enrollment confirmation began August 1, 2015?

## Procedural History

On March 26, 2015 the Marketplace issued an eligibility determination notice stating that you were eligible to receive advance payments of the premium tax, credit (APTC) up to \$354.00 credits per month, as well as cost-sharing reductions, effective May 1, 2015. This eligibility was based on a household income of \$10,535.28.

Also on March 26, 2015 the Marketplace issued an enrollment confirmation notice stating that you were enrolled in Empire HMO 2250 Silver NS INN Pediatric Dental Dep 25 with a premium responsibility of \$140.86. The notice also stated that your coverage in that plan could begin as early as January 1, 2015 if you paid the first month's premium.

On July 16, 2015 the Marketplace issued an eligibility determination notice stating that you were conditionally eligible for up to \$286.00 per month in APTC,

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as well as cost-sharing reductions, effective August 1, 2015. This eligibility was based on a household income of \$20,192.61.

Also on July 16, 2015 the Marketplace issued an enrollment confirmation notice stating that you were enrolled in Empire Blue Cross Blue Shield (Medical Downstate) with a premium responsibility of \$172.86. The notice also stated that your coverage was effective August 1, 2015.

On July 27, 2015, your daughter spoke to the Marketplace's Account Review Unit and appealed your July 16, 2015 eligibility and enrollment insofar as it began on August 1, 2015 and not earlier.

On December 3, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. During the hearing, your daughter appeared on your behalf as your authorized representative and Mandarin Interpreter # [REDACTED] assisted. 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) Your authorized representative testified that you were appealing the expenses that were charged to you from your health plan between the months of April and August 2015 that were a result of an increase in your deductible and out-of-pocket fees.
- 2) Your authorized representative testified that you are seeking to have your August 1, 2015 eligibility and enrollment made retroactive in order to assist you with those bills.
- 3) The record reflects that on February 10, 2015 and on February 11, 2015 income documentation was uploaded to your Marketplace account. This documentation was in [REDACTED] and there were no translated materials provided.
- 4) The record reflects that on March 25, 2015 your income documentation was again uploaded to your Marketplace account. The documentation had English translation of the documents written over the top of the [REDACTED].
- 5) The translated material that you submitted states that you receive \$9,657.33 per year from your employment as a [REDACTED] and that you received \$877.94 per month in retirement income.

- 6) On March 26, 2015 the Marketplace issued an eligibility determination notice based on a household income of \$10,535.28.
- 7) Your authorized representative testified that the income information in the March 26, 2015 eligibility determination was incorrect based on the documentation that had been submitted to the Marketplace on the previous day and that as a result of this error, your deductible and out-of-pocket expenses increased.
- 8) The record reflects that your appeal was filed on July 27, 2015.
- 9) The record reflects that on July 15, 2015 the income information in your application was updated to reflect that your expected yearly income is \$20,192.61.
- 10) The record reflects that on July 15, 2015 your enrollment in your qualified health plan was updated.

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

## **Applicable Law and Regulations**

### Valid Appeal Requests

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Marketplace to provide timely notice of an eligibility determination, and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through the Marketplace, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the federal poverty level (FPL) for the first day of the open enrollment

period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

The FPL “for the benefit year for which coverage is requested” (45 CFR § 155.305(g)(1)(i)(C)) on the date of your applications was the 2014 FPL, which was \$11,670.00 for a one-person household (79 Fed. Reg. 3593).

### Levels of Cost-Sharing Reductions

The Marketplace directs insurers to offer three variations of silver-level qualified health plans, in addition to a full-cost plan, which provide varying levels of financial assistance, called “cost-sharing reductions,” using the following categories:

(1) Those individuals with an annual household income that is at least 100% but less than or equal to 150 % of the federal poverty level (FPL),

(2) Those individuals with an annual household income that is greater than 150% but less than or equal to 200% of the FPL, and

(3) Those individuals with an annual household income that is greater than 200 but less than or equal to 250% of the FPL (see 45 CFR § 155.305(g)(2)).

(The categories for policies that cover more than one person are slightly different (45 CFR § 155.305(g)(3)), but those categories are not relevant in the current case).

Each category listed above gives a different level of cost-sharing reductions, so that you will receive financial assistance based on the level of your income (see 45 CFR § 155.420. These subsidies reduce the deductibles, copayments, coinsurance, and other out-of-pocket charges that people eligible for cost-sharing reductions pay when they use benefits covered by their health plan.

### Mid-benefit Year Change in Level of Cost-Sharing Reductions

If an individual’s eligibility for CSR changes in the middle of a benefit year and that individual stays in the same qualified health plan (QHP), the health plan must ensure that any cost sharing already paid by the individual that year is taken into account when the level of future cost sharing that year is calculated (45 CFR § 156.425(b)).

### Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant’s information, the Marketplace must generally make that redetermination effective on the first day of the month following the date the Marketplace is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, the Marketplace may determine that its policy will be that any change made after the 15<sup>th</sup> of any month will not be

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effective until the first of the next following month (45 CFR § 155.330 (f)(2)), and it has elected to do so (13 OHIP/ADM-03).

### Enrollment in a Qualified Health Plan

The Marketplace must provide 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)).

For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR § 155.410(e)); however, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements 'Waiting in Line' Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%98waiting-in-line%E2%80%99-provision-ahead-february-15-open>).

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 their enrollment to another plan (45 CFR § 155.420(d)).

For individuals who are eligible for a special enrollment period, the Marketplace must ensure coverage is effective the first day of the following month, for QHP selections received by the Marketplace between the first and the fifteenth of any month (45 CFR § 155.420(b)(1)(i)). The Marketplace must ensure coverage is effective the first day of the second following month, for QHP selections received by the Marketplace between the sixteenth and the last day of any month (45 CFR § 155.420(b)(1)(ii)).

## **Legal Analysis**

Your authorized representative testified that you are appealing partly because of the bills you received from your health plan during the time span of April-August 2015.

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide

timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Your appeal was requested to dispute bills that were issued to you. The bills were a result of deductible increase and out-of-pocket fees. This issue relates to coverage and billing which is not an issue that the NY State of Health Appeals Unit is authorized to address.

However, the bills were a result of the amount of cost-sharing reductions you were eligible for based on an eligibility determination that was issued on March 26, 2015. An eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions an applicant is eligible for is an appealable issue.

Therefore, the first issue under review is whether the Marketplace properly determined your eligibility as of March 26, 2015.

The record reflects that on February 10, 2015 and on February 11, 2015 income documentation was uploaded to your Marketplace account. This documentation was in [REDACTED] and there were no translated materials provided. The record reflects that on March 25, 2015 your income documentation was again uploaded to your Marketplace account but it had English translations of the documents written over the top of the [REDACTED].

The translated material that you submitted states that you receive \$9,657.33 per year from your employment as a [REDACTED] and that you receive \$877.94 per month in retirement income. On March 26, 2015, based on a household income of \$10,535.28, the Marketplace issued an eligibility determination notice stating that you were eligible to receive up to \$354.00 in advance premium tax credits per month and cost-sharing reductions, effective May 1, 2015.

Your authorized representative testified that the income information in the March 26, 2015 eligibility determination was incorrect based on the documentation that had been submitted to the Marketplace on the previous day and, as a result of this error, your deductible and out-of-pocket expenses increased. While it is clear that the income in the March 26, 2015 eligibility determination was incorrect based on the documentation you submitted, individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace.

For an appeal to have been valid on the issue of the eligibility stated in the March 26, 2015 notice an appeal should have been filed by May 25, 2015. According to the credible evidence in the record, you did not submit an appeal request to the Marketplace until July 27, 2015, which is well beyond 60 days from the March 26, 2015 eligibility determination notice.

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Therefore, there has been no valid appeal of the March 26, 2015 eligibility determination notice and your appeal on the issue of your eligibility as stated in that notice is DISMISSED.

The final issue under review is whether the Marketplace properly determined that your eligibility and enrollment as stated in the July 16, 2015 eligibility determination notice and enrollment confirmation began August 1, 2015.

Based on the July 15, 2015 updates to your account, on July 16, 2015 the Marketplace issued an eligibility determination notice stating that you were conditionally eligible for up to \$286.00 per month in advance premium tax credits and cost-sharing reductions, and an enrollment confirmation notice stating that you were enrolled in Empire Blue Cross Blue Shield. Your eligibility and enrollment were effective August 1, 2015.

Your authorized representative testified that you are seeking to have your August 1, 2015 eligibility and enrollment made retroactive.

When an individual changes information in their application before the 15th of any month, the Marketplace must make the redetermination that results from the change effective the first day of the next following month. The date on which a qualified health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected between the fifteenth day and last day of a month goes into effect on the first day of the next following month.

Therefore, the Marketplace's July 16, 2015 eligibility determination and enrollment confirmation notices are AFFIRMED because they properly began your eligibility and enrollment, as updated on July 15, 2015, on August 1, 2015.

## **Decision**

Your appeal of the March 26, 2015 eligibility determination is DISMISSED.

The Marketplace's July 16, 2015 eligibility determination and enrollment confirmation notices are AFFIRMED.

**Effective Date of this Decision:** January 29, 2016

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

There is no change in the enrollment effective date of your eligibility or your enrollment in your health 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).

## **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**

Your appeal of the March 26, 2015 eligibility determination is **DIMISSED**.

The Marketplace's July 16, 2015 eligibility determination and enrollment confirmation notices are **AFFIRMED**.

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There is no change in the enrollment effective date of your eligibility or your enrollment in your health plan.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

