



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

Notice of Decision

Decision Date: January 22, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004214

[REDACTED]

Dear [REDACTED],

On December 16, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's determination that you were ineligible for retroactive Medicaid during the month of January 2015.

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 and the NY State of Health 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).

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: January 22, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004214

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you were not eligible for retroactive Medicaid coverage during the month of January 2015?

Procedural History

On March 19, 2015, the Marketplace received (1) a summary of short term disability claims payments issued to you by [REDACTED] between January 15, 2015 and March 12, 2015 and (2) several short term disability statements issued to you by [REDACTED] between January 22, 2015 and March 9, 2015.

On March 30, 2015, the Marketplace received two applications. In one of these applications, you attested to seeking help for paying medical bills from the last three months.

On March 31, 2015, the Marketplace issued a notice stating that you were eligible for Medicaid, effective March 1, 2015.

On April 9, 2015, the Marketplace received a revised application in which you attested to an annual household income \$0.00.

On April 10, 2015, the Marketplace issued a notice stating that you were eligible for Medicaid, effective April 1, 2015.

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Also on April 10, 2015, the Marketplace received a copy of an earning statement issued to you by your employer, [REDACTED] ([REDACTED]) on January 16, 2015.

On April 16, 2015, the Marketplace issued a notice confirming your enrollment in UnitedHealthcare Community Plan (UnitedHealthcare). The notice also stated that your Medicaid coverage would begin April 1, 2015 and enrollment with UnitedHealthcare would begin May 1, 2015.

On August 6, 2015, you were verbally told by the Marketplace that while you were found eligible for retroactive Medicaid coverage during February 2015, you were ineligible for such coverage during December 2014 and January 2015. The record does not contain any written notice issued to you confirming such a determination by the Marketplace.

Also on August 6, 2015, you spoke to the Marketplace's Account Review Unit and appealed the Marketplace determination that you were not found eligible for retroactive Medicaid coverage during January 2015.

On August 7, 2015, the Marketplace issued a notice confirming your request for a telephone hearing to review the denial of retroactive Medicaid coverage during January 2015.

On December 16, 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 are single and live with your 11 year old daughter.
- 2) All applications you submitted to the Marketplace reflect that you anticipate filing 2015 tax return with a tax filing status of single and would not be claiming any dependents. However, you testified that this was not accurate as you have always filed your tax returns as "head of household," and claimed your daughter as a dependent. You further testified that you would be filing your 2015 taxes with this same tax filing status.
- 3) Your relevant applications were received on March 30, 2015 and April 9, 2015.

- 4) Based on the March 30, 2015 application, you were found eligible for Medicaid coverage beginning March 1, 2015.
- 5) An application submitted on March 30, 2015 included a request to help to pay medical bills for three months prior to your application, which would include December 2014 and January 2015 and February 2015.
- 6) On August 6, 2015, you were verbally told by the Marketplace that while you were found eligible for retroactive Medicaid coverage during February 2015, you were ineligible for such coverage during December 2014 and January 2015. The record does not contain any written notice issued to you confirming such a determination by the Marketplace.
- 7) You testified that you suffered a [REDACTED] on January 1, 2015, and your family filed a short term disability benefit claim on your behalf on January 2, 2015. You testified that you began receiving short term disability benefits shortly thereafter.
- 8) On March 19, 2015, you provided to the Marketplace a summary of claim payments issued to you by [REDACTED] on March 16, 2015, as well as copies of short term disability benefit statements, which reflect that you received (1) \$188.39 on January 15, 2015, (2) \$170.00 on January 22, 2015, (3) \$170.00 on January 29, 2015, (4) \$170.00 on February 5, 2015, (5) \$170.00 on February 12, 2015, (6) \$170.00 on February 19, 2015, (7) \$313.99 on March 9, 2015, and (8) \$156.99 on March 12, 2015. The benefits paid to you January 15, 2015 and March 12, 2015 are amounts after taxes had been deducted.
- 9) On April 10, 2015, you provided to the Marketplace a single earning statement issued by your employer, [REDACTED] on January 16, 2015. This earning statement states that you received \$920.00 on January 16, 2015; however, it also states that you received \$2,806.00 year-to-date 2015.
- 10) You testified that you were seeking retroactive Medicaid coverage solely for January 2015 since that was the only month you had incurred out-of-pocket medical expenses relating to the [REDACTED] you suffered.
- 11) You testified that you did not recall amounts being deducted from your pay to pay for your disability coverage, and you believed it was part of your employer's benefit package.
- 12) You testified that you felt that the Marketplace's determination denying you retroactive Medicaid was unfair because the amounts you received

during January 2015 were used to pay for rent and for your daughter's tuition.

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

Applicable Law and Regulations

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).

Marketplace Eligibility Determinations

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)).

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)).

Medicaid for Adults between the Ages of 19 and 65

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)).

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 \$11,770.00 for a one-person household (79 Fed. Reg. 3593).

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Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

The Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of application if the individual received medical services that would have been covered under Medicaid and the individual would have been eligible for Medicaid at the time he received the services if he had applied (42 CFR 435.915(a)). 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)).

Short term disability benefits count as taxable income if the employer paid for the disability plan. If both the employee and employer paid premiums for the plan, only the portion of the benefits received due to the employer’s payments is taxable. If an individual paid the premiums through a cafeteria plan, and the amount was not included as taxable income, the premiums are considered paid by the employer, and the disability benefits are fully taxable (26 USC § 104).

Legal Analysis

You submitted an application on March 30, 2015 and the Marketplace issued an eligibility determination notice on March 31, 2015. While this notice confirmed your eligibility for Medicaid effective March 1, 2015, it did not include any decision on your request for retroactive Medicaid during the months of December 2014, January 2015, or February 2015.

While it appears that on August 6, 2015 you were verbally informed by the Marketplace that you were approved for retroactive Medicaid for the month of February 2015 and denied such coverage during the months of December 2014 and January 2015, the record does not contain any written notice issued by the Marketplace formalizing that determination.

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Although the Marketplace did not issue a timely notice of eligibility determination on whether you were eligible for retroactive Medicaid for the months December 2014, January 2015, or February 2015, this does not prevent the Appeals Unit from reaching the merits of your case on your August 6, 2015 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews of Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

The issue under review is whether the Marketplace properly determined that you were ineligible for retroactive Medicaid coverage for the month of January 2015. We confine our review solely to January 2015 since you indicated that was the sole month prior to your March 30, 2015 application in which you incurred out-of-pocket medical expenses.

Contrary to the information you provided to the Marketplace in each of your applications, you testified that you expect to file your 2015 tax return with a tax filing status as “head of household” and will be claiming your daughter as your sole dependent on that tax return. Accordingly, you are in a two-person household.

You were found eligible for Medicaid coverage per the March 31, 2015 eligibility determination notice, which was related to the March 30, 2015 application. Since the application that resulted in a determination of Medicaid eligibility was filed during March 2015, your Medicaid coverage began March 1, 2015.

You testified, and your application reflects, that you are seeking retroactive Medicaid coverage solely for the month of January 2015 since that was the only month you incurred out-of-pockets medical expenses prior to your Medicaid eligibility beginning March 1, 2015.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual’s application if the individual received medical services that would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. To be eligible for Medicaid in January 2015 for a two-person household, you would have needed to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,832.00 per month. There is no indication in the record that you would have been ineligible for Medicaid based on non-financial criteria during January 2015.

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You provided a single earning statement issued by your employer, [REDACTED] which reflects that you received \$920.00 on January 16, 2015; however, it also reflects that you received \$2,806.00 year-to-date, which indicates that you were compensated at least \$1,886.00 prior to January 16, 2015, but still during January 2015. You also testified, and provided supporting documentation reflecting, that you received three short term disability benefit payments from [REDACTED] during January 2015, which totaled at least \$528.39. Since the earning statement you provided reflects that no amount was deducted from your income to pay the premiums for short term disability coverage, and you testified this was provided to you as a benefit by your employer, these amounts are properly included in your modified adjusted gross income (MAGI) for determining your Medicaid eligibility.

Accordingly, the credible evidence of record reflects that your MAGI during January 2015 was \$3,334.39.

Since your income of \$3,334.39 during January 2015 was more than the \$1,831.95 Medicaid limit during January 2015 for a two-person household, you were correctly found to be ineligible for retroactive Medicaid coverage for the month of January 2015.

Decision

The Marketplace's determination that you were not eligible for retroactive Medicaid during the month of January 2015 is **AFFIRMED**.

Effective Date of this Decision: January 22, 2016

How this Decision Affects Your Eligibility

You remain eligible for Medicaid coverage beginning March 1, 2015.

You are not eligible for retroactive Medicaid coverage for the month of January 2015.

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.

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).

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's determination that you were not eligible for retroactive Medicaid during the month of January 2015 is **AFFIRMED**.

You remain eligible for Medicaid coverage beginning March 1, 2015.

You are not eligible for retroactive Medicaid coverage for the month of January 2015.

Legal Authority

We are sending you this notice in accordance with 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).

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A Copy of this Decision Has Been Provided To:

