



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

Notice of Decision

Decision Date: December 29, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004328

[REDACTED]

Dear [REDACTED],

On December 7, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 15, 2015 denial of retroactive Medicaid for the month of June 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 at the top of this notice.

Legal Authority

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

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Issues

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

Did the Marketplace properly determine that your enrollment in your Medicaid Managed Care plan ended effective March 31, 2015, and timely notify you of your disenrollment on March 18, 2015?

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

Procedural History

According to your Marketplace account, on April 7, 2014, the Marketplace redetermined your eligibility for financial assistance and found you were determined Medicaid eligible effective April 1, 2014. Your Marketplace account reflects that you had health insurance under Medicaid Fee-For-Services as of April 1, 2014 and were enrolled in a Medicaid Managed Care (MMC) plan as of May 1, 2014.

On February 13, 2015, the Marketplace issued a renewal notice, which stated you cannot re-enroll in your current health plan and needed to select a different health plan if you want coverage in 2015. The notice contained an eligibility redetermination that stated, based on federal and state data sources showing your income is between \$16,105.00 and \$46,680.00, you qualified for up to \$22.52 per month in advance premium tax credits (APTC) effective April 1, 2015, and did not qualify for cost sharing reductions because your income was over the maximum allowable income limit of \$29,175.00 for that program.

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On March 18, 2015, the Marketplace issued a disenrollment notice informing you that your health insurance coverage through your MMC plan would end effective March 31, 2015.

On July 16, 2015, the Marketplace issued a notice of eligibility redetermination that, based on your attested household income of \$23,400.00, you were eligible to receive up to \$248.00 per month in APTC and eligible for cost sharing reductions, effective August 1, 2015.

On July 25, 2015, the Marketplace issued an enrollment notice confirming your final selection of a silver-level qualified health plan with APTC, effective August 1, 2015.

On August 14, 2015, the Marketplace made a preliminary eligibility redetermination based on your updated application and request for help with paying for medical bills the past three months. You were redetermined eligible to receive up to \$248.00 per month in APTC and eligible for cost sharing reductions, effective September 1, 2015.

That same day, the Marketplace denied your request for retroactive Medicaid for the month of June 2015.

Also that same day, you spoke to the Marketplace's Account Review Unit and appealed being denied retroactive Medicaid coverage for the month of June 2015.

On August 15, 2015, the Marketplace issued notices consistent with its August 14, 2015 preliminary eligibility redetermination and denial of your request for help with paying medical bills for June 1, 2015 through June 30, 2015 through retroactive Medicaid.

On December 7, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to 15 days to allow you to submit documentary evidence regarding your income for May 2015 and June 2015.

On December 19, 2015, the Appeals Unit received a ten-page facsimile from you consisting of earning statements from the months of May 2015 and June 2015. On December 21, 2015, this ten-page facsimile was made part of the record as "Appellant's Exhibit A" and the record was closed.

Findings of Fact

A review of the record supports the following finding of facts:

- 1) According to your Marketplace account, as of March 31, 2014, April 8, 2014, and April 30, 2014, you elected to receive information from the Marketplace electronically, that is, through notices to your email account.

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- 2) According to your Marketplace account, you had health insurance coverage through Medicaid Fee-For-Services as of April 1, 2104 and were enrolled in an MMC plan, effective May 1, 2014.
- 3) You testified that you continued to have Medicaid coverage after you became gainfully employed in September 2014.
- 4) You testified that you did not receive information via email regarding the February 12, 2015 renewal notice nor the March 17, 2015 disenrollment notice regarding the end date of your MMC plan.
- 5) You testified that you could not retrieve email notices because your computer has been down for 1 and ½ years and you could not afford to fix or replace it.
- 6) You testified that you did not realize that your health coverage under your MMC plan had ended March 31, 2015, so you went to medical appointments in May 2015 and June 2015.
- 7) You testified that you learned you did not have health insurance any longer when you went for a medical test thereafter and were told at that time that you no longer have health insurance.
- 8) You testified that you did not have the medical test performed and would not have gone to the two medical appointments in May 2015 and June 2015 had you known you were no longer insured.
- 9) You testified that you have been billed over \$2,000.00 directly for the May 2015 and June 2015 appointments and that you cannot afford to pay these bills on your own.
- 10) You testified that when you spoke with a Marketplace representative in July 2015 about being disenrolled, you were informed that there was a “glitch” in the system in that it did not register your complete address; specifically, your apartment number.
- 11) You testified and your Marketplace account reflects, that your contact information was updated on July 24, 2015 by the Marketplace and the method for your receipt of information/notices from the Marketplace was changed to regular mail service.
- 12) According to your earning statements, you received \$2,250.00 in earnings during May 2015, and \$1,800.00 in June 2015 (Appellant’s Exhibit A, pp. 2-10).
- 13) According to your Marketplace account, you expect to file your 2015 federal tax return using a tax filing status of Single and will not be claiming any dependents on that return.

14) You testified that you want your Medicaid coverage to be reinstated for the months of May 2015 and June 2015 to cover the medical expenses you incurred during these two months.

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

Applicable Law and Regulations

Medicaid Continuous Coverage

Most adults determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage even if they lose 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 12-month period. This 12-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 (N.Y. Soc. Serv. Law § 366(4)(c)).

Medicaid Renewal

In general, the Marketplace must review Medicaid eligibility once every twelve months or “whenever it receives information about a change in a beneficiary’s circumstances that may affect eligibility” (42 CFR § 435.916(a)(1), (d)). The Marketplace must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual’s account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (42 CFR § 435.916(a)(2)).

The Marketplace must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, the Marketplace must issue a redetermination as provided by the notice, with consideration given to any updates provided by the individual (45 CFR § 155.335(h)).

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR 435.915(b)).

Proper Notice – Medicaid

A Medicaid recipient is entitled to receive timely and adequate notice when the Marketplace proposes to “discontinue, suspend or reduce ... medical assistance authorization or services” (18 NYCRR § 358-3.3; 42 CFR § 435.919(a)).

After any decision affecting the enrollee’s eligibility, including denial, termination, or suspension of eligibility, notice must be sent at least 10 days before such action goes into effect (18 NYCRR § 358-2.23).

Electronic Notices

Applicants may choose to receive notices and information from the Marketplace by either electronic or regular mail. If the applicant elects to receive electronic notices, the Marketplace must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant’s account (45 CFR §155.230(d); 42 CFR §435.918(b)(4)).

Medicaid

Medicaid can be provided through the Marketplace to adults who: (1) Are age 19 or older and under age 65; (2) Are not pregnant; (3) Are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act; (4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and (5) Have a household modified adjusted gross income that is at or below 138% of the federal poverty level for the applicable family size (42 CFR §§ 435.119(b), 435.603(d)(4); N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your updated application, that was the 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593).

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

Legal Analysis

First, under New York State law, once a person is eligible for Medicaid, that eligibility generally continues for 12 months, even if the household income rises above 138% of the FPL. This provision is called “continuous coverage.”

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According to your testimony, you became gainfully employed in September 2014 and, as a result, your expected income increased. However, since you were correctly determined eligible for Medicaid effective April 1, 2014, based on the application you submitted on April 7, 2014, you remained eligible for Medicaid for 12 continuous months regardless of any increases in your household income.

Since the Marketplace properly determined you eligible for Medicaid as of April 1, 2014, and therefore eligible for continuous coverage, it also correctly determined that your 12 months of continuous coverage was coming to an end on March 31, 2015, when it issued the February 13, 2015 renewal notice with a new eligibility redetermination effective April 1, 2015.

In this regard, the Marketplace must redetermine a qualified individual's eligibility for Medicaid once every twelve months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. In your case, the Marketplace's February 13, 2015 renewal notice stated that it was able to redetermine your eligibility for financial assistance in 2015 based on income information it obtained through federal and state data resources and found that you were eligible to receive advance premium tax credits effective April 1, 2015, but did not qualify for cost-sharing reductions.

That notice also instructed you to select a new health plan to continue to have coverage in 2015. Because there was no timely response to this notice, you were terminated from your MMC plan effective March 31, 2015, as stated in the March 18, 2015 disenrollment notice. Since you are entitled to notice at least 10 days before such action goes into effect, this disenrollment was timely issued on March 18, 2015.

However, you testified that you did not receive the February 13, 2015 renewal notice nor the March 18, 2015 disenrollment notice and, therefore, did not take any action to select a health plan or update your account.

Since you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within one business day of notice generation. It was also required to send an e-mail or other electronic communication alerting you that a notice had been posted to your account.

While you were entitled to notice of the need to renew your application, you testified that you have been without a computer for over 1 and ½ years such that you would not have been able to retrieve email notices from the Marketplace during February 2015 or March 2015. Therefore, you are not entitled to the presumption that you did not receive such notices due to Marketplace failure to send you email alerts that documents had been uploaded to your account for your review. Thus, the record does not support that the Marketplace improperly disenrolled you from your MMC plan without proper notice.

Accordingly, the February 13, 2015 renewal notice stating that you are eligible to receive advance premium tax credits, effective April 1, 2015, and needed to select a health plan, as well as the March 18, 2015 disenrollment notice informing you that your MMC plan coverage would end effective March 31, 2015, are AFFIRMED.

Lastly, according to your Marketplace appeal request, you are requesting that the denial of retroactive Medicaid for the month of June 2015 be reconsidered. At the hearing, you testified that you also want your eligibility for retroactive Medicaid reconsidered for the month of May 2015. In the interest of justice and administrative expediency, the Hearing Officer agreed to take your testimony regarding retroactive Medicaid coverage for both months.

Retroactive Medicaid coverage can be authorized for medical expenses incurred during the three months prior to the month of application for Medicaid, ***provided*** the applicant was eligible in the month in which the medical care and services were received (emphasis added).

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

Generally, to be eligible for retroactive Medicaid, your monthly income could not exceed 138% of the FPL for a one-person household during each month, which was \$1,354.00 at that time.

To be eligible for retroactive Medicaid during May 2015 and June 2015, you would first have to be determined eligible for the month in which you applied, that is, July 2015. According to your Marketplace account and the July 14, 2015 eligibility redetermination notice, you were determined eligible to receive up to \$248.00 per month in APTC and eligible for cost-sharing reductions, effective August 1, 2015, based on an annual attested household income of \$23,400.00. Since you were not eligible for Medicaid in July 2015, the Marketplace generally does not conduct a look-back to determine if you are eligible for retroactive Medicaid in the three previous months. Notwithstanding, in your case, the Marketplace did conduct a look-back for June 2015 and denied your request for help paying medical bills for June 1, 2015 through June 30, 2015.

However, based on the credible documentary evidence regarding the income you received in May 2015 and June 2015, you were not eligible for Medicaid because your reported income of \$2,250.00 in May 2015 and \$1,800.00 in June 2015 exceeded the maximum allowable monthly income limit of \$1,354.00 per month to be eligible for retroactive Medicaid during both or either month.

Therefore, the Marketplace's August 15, 2015 notice of eligibility for retroactive Medicaid is MODIFIED to state that your request for help paying for medical bills for May 1, 2015 through June 30, 2015 is denied because your income in each of these

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months (\$2,250.00 in May 2015 and \$1,800.00 in June 2015) exceeded the maximum allowable monthly income of \$1,354.00 per month.

Decision

The Marketplace's February 13, 2015 renewal notice and March 18, 2015 disenrollment notice are AFFIRMED.

The Marketplace's August 15, 2015 notice of eligibility for retroactive Medicaid is MODIFIED to state that your request for help paying for medical bills for May 1, 2015 through June 30, 2015 is denied because your income in each of these months (\$2,250.00 in May 2015 and \$1,800.00 in June 2015) exceeded the maximum allowable monthly income of \$1,354.00 per month.

The July 16, 2015 eligibility redetermination and July 24, 2015 enrollment notices remain in effect.

This decision does not affect any subsequent eligibility redeterminations issued by the Marketplace, in particular, any eligibility redeterminations for 2016.

Effective Date of this Decision: December 29, 2015

How this Decision Affects Your Eligibility

You were given timely notice that your coverage through your MMC plan ended after 12 months of continuous coverage effective March 31, 2015.

You are denied retroactive Medicaid coverage for the months of May 2015 and June 2015 because your monthly income for each of these months exceeded the maximum allowable monthly income limit of \$1,354.00.

You were eligible to receive up to \$248.00 per month in APTC and eligible for CSR as of August 1, 2015, and were enrolled in a silver-level QHP as of that date.

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

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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
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- By fax: 1-855-900-5557

Summary

The Marketplace's February 13, 2015 renewal notice and March 18, 2015 disenrollment notice are **AFFIRMED**.

You were given timely notice that your coverage through your MMC plan ended after 12 months of continuous coverage effective March 31, 2015.

The Marketplace's August 15, 2015 notice of eligibility for retroactive Medicaid is **MODIFIED** to state that your request for help paying for medical bills for May 1, 2015 through June 30, 2015 is denied because your income in each of these months (\$2,250.00 in May 2015 and \$1,800.00 in June 2015) exceeded the maximum allowable monthly income of \$1,354.00 per month.

The July 16, 2015 eligibility redetermination and July 24, 2015 enrollment notices remain in effect.

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You are denied retroactive Medicaid coverage for the months of May 2015 and June 2015 because your monthly income for each of these months exceeded the maximum allowable monthly income limit of \$1,354.00.

You were eligible to receive up to \$248.00 per month in APTC and eligible for CSR as of August 1, 2015, and were enrolled in a silver-level QHP as of that date.

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:

