



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

## Notice of Decision

Decision Date: December 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004420

[REDACTED]

Dear [REDACTED],

On November 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 9, 2014 eligibility determination and August 21, 2015 preliminary eligibility determination.

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 federal regulation 45 CFR § 155.545(b).

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## Decision

Decision Date: December 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004420

[REDACTED]

## Issues

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

Was the December 9, 2014 eligibility determination subject to appeal as of August 21, 2015?

Did the Marketplace properly determine that coverage under Medicaid was effective no earlier than July 1, 2015?

Were you entitled to an exemption from the requirement to have health insurance during 2014?

## Procedural History

On December 8, 2014, the Marketplace received your initial application for health insurance, in which you attested that your annual earnings were \$15,600.00, and that your daughter's annual income was \$7,680.00. The Marketplace calculated that your expected annual household income would be \$23,280.00.

On December 9, 2014, the Marketplace issued an eligibility determination notice based on the information you provided in the December 8, 2014 application. The notice stated that you were eligible for an advance premium tax credit (APTC) of up to \$230.00 per month; eligible for cost-sharing reductions (CSR), provided you selected a silver-level plan; eligible for the APTC Premium Assistance Program; and ineligible for Medicaid. This eligibility determination notice was effective January 1, 2015.

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On December 23, 2014, the Marketplace issued a notice confirming your enrollment in the Excellus BlueCross BlueShield (Excellus BCBS) silver-level plan as of December 22, 2014. The notice further stated that your coverage could start as early as February 1, 2015 if you paid your first month's premium.

On August 10, 2015, the Marketplace received a revised application, in which you attested to expected yearly income to \$18,200.00; the application indicated that your daughter no longer had any income.

On August 11, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible for Medicaid, effective August 1, 2015.

On that same date, the Marketplace issued a notice confirming your enrollment in the Excellus BCBS Medicaid Managed Care (MMC) plan, with such coverage beginning September 1, 2015.

Also on August 11, 2015, the Marketplace issued a disenrollment notice confirming that your coverage under the Excellus BCBS silver-level plan would end effective August 31, 2015 because you were no longer eligible to remain enrolled in that plan.

On August 21, 2015, the Marketplace received a further revised application, in which you attested to an expected yearly income to \$18,200.00, and that you were also seeking help paying for medical bills from the previous three months, including July 2015. In response to this application, the Marketplace prepared a preliminary eligibility determination finding you eligible for Medicaid, effective August 1, 2015, and that you were eligible for retroactive Medicaid during July 2015.

Also on August 21, 2015, you spoke with the Marketplace's Account Review Unit and appealed (1) the December 9, 2014 eligibility determination insofar as you were found not to have been eligible for Medicaid as of January 1, 2015, (2) the August 21, 2015 preliminary eligibility determination insofar as you were found eligible for retroactive Medicaid coverage no earlier than July 1, 2015, and (3) that you had been assessed a tax penalty on your 2014 tax return by the IRS for not having health insurance coverage for part of the 2014 plan year.

On August 22, 2015, the Marketplace issued an eligibility determination notice formalizing the findings under the August 21, 2015 preliminary eligibility determination. The notice stated that you remained eligible for Medicaid, effective August 1, 2015. The notice further stated that the Marketplace would be issuing a separate notice telling you if you are eligible for Medicaid for the three month period prior to your application.

Also on August 22, 2015, the Marketplace issued a notice stating that you were found eligible for retroactive Medicaid for July 1, 2015 through July 31, 2015

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because your monthly household income of \$1,516.67 was at or below the allowable monthly income limit of \$1,832.00.

On November 19, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony: letter issued by your employer reflecting gross income you received during months of May and June of 2015. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

That same day, you provided the above-referenced document to the Appeals Unit via facsimile.

The record was closed on November 19, 2015

## **Findings of Fact**

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

- 1) You testified that you are not married and live with your daughter.
- 2) You testified, and your August 21, 2015 application reflects, that you anticipate filing your 2015 tax return with a filing status of single, and would be claiming only your daughter as a dependent on that tax return.
- 3) On December 9, 2014, the Marketplace issued an eligibility determination finding, in part, that you were ineligible for Medicaid. This eligibility determination notice was effective January 1, 2015.
- 4) You first contacted the Marketplace on August 21, 2015 to appeal the December 9, 2014 determination that you were ineligible for Medicaid.
- 5) On August 21, 2015, the Marketplace issued a preliminary eligibility determination finding you eligible for Medicaid, effective August 1, 2015. This preliminary eligibility determination also found you eligible for retroactive Medicaid for the month of July 2015.
- 6) You testified that you were seeking a review of the December 9, 2014 determination since \$640.00 per month of Social Security income that was received by your daughter was erroneously included with your household income. You further testified that this is what caused you to have been found ineligible for Medicaid as of January 1, 2015.

- 7) You enrolled in a silver-level qualified health plan (QHP) through the Marketplace effective January 1, 2015. Since you qualified for the advance premium tax credit (APTC) Premium Assistance Program, you were not responsible for premium payments in connection with your enrollment in the silver-level plan. You testified, however, that you have been responsible for periodic co-pays associated with your doctor appointments.
- 8) You testified that when you revised your application on August 21, 2015, you were seeking a review of your eligibility for retroactive Medicaid for not only July 2015, but also back to January 1, 2015.
- 9) You testified that you and your daughter were each enrolled in Medicaid through your local department of social services (LDSS) until approximately September 2014. You further testified that you received paperwork which may have instructed you to apply to the Marketplace to continue your health insurance coverage.
- 10) You testified that you contacted the Marketplace sometime in September 2014 to enroll for coverage. You further testified that you were told by a Marketplace representative to wait until open enrollment and that it was too early for you to enroll in a plan.
- 11) You testified that because of this delay in submitting an application to the Marketplace, you did not have any health insurance coverage for the months of October, November and December 2014. You further testified that as a result of not being covered during those months, you were assessed a tax penalty of approximately \$143.00 on your 2014 tax return.
- 12) You testified that in addition to seeking Medicaid coverage beginning January 1, 2015, you were also seeking a written acknowledgement that the Marketplace acted improperly in not accepting an application in September 2015, which caused you to incur a tax penalty for not having been covered during a portion of 2014.
- 13) On November 19, 2015, you provided a letter issued by your employer, [REDACTED], confirming that you were paid (1) \$350.00 on May 6, 2015, (2) \$350.00 on May 13, 2015, (3) \$265.00 on May 20, 2015, (4) \$340.00 on May 27, 2015, (5) \$270.00 on June 3, 2015, (6) \$325.00 on June 10, 2015, (7) \$350.00 on June 17, 2015, (8) \$350.00 June 24, 2015 and (9) \$350.00 on July 1, 2015.

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

## **Applicable Law and Regulations**

### Appeal Timeliness

The Marketplace “appeals entity must allow an applicant or enrollee to request an appeal within (1) 90 days of the date of the notice of eligibility determination; or (2) a timeframe consistent with the state Medicaid agency’s requirement for submitting fair hearing requests, provided that timeframe is no less than 30 days, measured from the date of the notice of eligibility determination” (45 CFR § 155.520(b)). In New York State, the Medicaid agency permits submission of fair hearing requests within 60 days of the date of the notice of eligibility determination (N.Y. Soc. Serv. Law § 22(4)(a)), and this timeframe has been adopted by the Marketplace.

### 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 CFR § 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)).

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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 \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

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)).

### Hardship Exemption

Sometimes after an appeal decision an appellant can claim an exemption from the requirement to have health insurance. If both of the following applied to you in 2014, you might qualify for a health coverage exemption:

- In 2014 you did not enroll in a qualified health plan (QHP) because of an appealable reason, and
- Your appeal was eventually successful.

If this is accurate, you may not have to pay the fee for the months you were uncovered. If approved, your exemption generally also covers the month of the decision itself. It will not cover the month of the decision itself if the decision is in the next plan year. For example, you did not enroll during 2014 and we issue a decision in early 2015. In this case, your exemption would cover the months during 2014 you were uncovered but not the months in 2015.

**You must claim this exemption through the United States Department of Health and Human Services (HHS).** Currently, the NY State of Health Marketplace cannot and will not accept hardship exemption applications.

You will find all of the information you need to claim the exemption due to an appeal decision at [www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal](http://www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal). You can also call 1-800-318-2596.

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**Important:** If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

## Legal Analysis

On August 21, 2015, you spoke with the Marketplace's Account Review Unit and appealed the December 9, 2014 eligibility determination.

Eligibility determinations may be appealed within 60 days of issue. The Marketplace issued an eligibility determination on December 9, 2014 stating that you were eligible for APTC of up to \$230.00 per month, eligible for CSR provided you selected a silver-level plan, eligible for the APTC Premium Assistance Program, and ineligible for Medicaid, effective January 1, 2015. Since the December 9, 2014 eligibility determination notice was issued more than 60 days before August 21, 2015, the appeal is untimely with respect to that determination and is dismissed.

The December 9, 2014 eligibility determination continues in effect.

You submitted an application on August 21, 2015 in which you attested that you were seeking help with paying for medical bills from the last three months. The Marketplace issued an eligibility determination on August 22, 2015 based on that application. However, while the Marketplace found that you were eligible for Medicaid coverage effective July 1, 2015, it did not make a determination on your request to seek Medicaid coverage for the months of May 2015 and June 2015.

Although the Marketplace did not issue a timely notice of eligibility determination with respect to your request for Medicaid coverage for the months of May 2015 and June 2015, this does not prevent the Appeals Unit from reaching the merits of your case on your July 6, 2015 appeal request. Under federal regulation 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 next issue is whether the Marketplace properly determine that your fee-for-service Medicaid was effective no earlier than July 1, 2015.

You are in a two-person household; you file your taxes with a tax filing status of single and claim your daughter as a dependent on that tax return.

You were initially found eligible for Medicaid in the August 11, 2015 eligibility determination notice. According to this notice, your coverage with Medicaid began August 1, 2015.

You testified that you are seeking to have your Medicaid coverage retroactively applied for back to January 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. Your revised applications were received on August 10, 2015 and August 21, 2015. Therefore, since you had already been found eligible for retroactive Medicaid coverage for the month of July 2015, the Marketplace can only consider your eligibility for the months of May and June 2015.

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 May and June 2015, you would have needed to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,831.95 per month. There is no indication in the record that you would have been ineligible for Medicaid based on non-financial criteria during May and June 2015.

At the request of the Hearing Officer, you provided documentation reflecting that you received \$1,305.00 and \$1,295.00 in income from your employer, [REDACTED], during the months of May 2015 and June 2015, respectively.

Since the credible evidence of record reflects that your income was \$1,305.00 during May 2015 and \$1,295.00 during June, which is less than the \$1,831.95 limit for Medicaid eligibility, the August 22, 2015 eligibility determination is MODIFIED to state that you were eligible for retroactive Medicaid during the months of May and June 2015.

The final issue under review is whether you were entitled to an exemption from the requirement to have health insurance during 2014.

You testified that during September 2014, you were instructed by a Marketplace representative not to submit a new application until the open enrollment period had begun since it was too early to enroll in a plan for coverage beginning January 1, 2015. You further testified that as a result of not having submitted an application at that time, you were not found eligible for Medicaid and were forced to go without insurance during the months of October, November and December 2014. You claimed that this caused you to incur a tax penalty of approximately \$143.00 on your 2014 tax return.

There is no corroboration in your Marketplace account or in our files that any contact was made to the Marketplace prior to your account being created in December of 2014.

Therefore, at this time the Marketplace can neither confirm nor dispute your allegation that you attempted to obtain insurance through the Marketplace in September 2014, and were only stopped from doing so by instructions given to you by the Marketplace.

Additionally, NY State of Health cannot redetermine the appellant's eligibility for the 2014 plan year since we are now at the end of 2015.

You may have other claims or remedies that you may pursue, such a request for an exemption for 2014, through the United States Department of Health and Human Services.

## **Decision**

The August 21, 2015 appeal of the December 9, 2014 eligibility determination is untimely and is dismissed.

The August 22, 2015 eligibility determination is MODIFIED to state you were eligible for retroactive Medicaid for months of May and June 2015.

**Effective Date of this Decision:** December 18, 2015

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

The December 9, 2014 eligibility determination remains in effect,

You are eligible for retroactive fee-for-service Medicaid during the months of May, June and July 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.

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

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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):**

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- By fax: 1-855-900-5557

### **Summary**

The August 21, 2015 appeal of the December 9, 2014 eligibility determination is untimely and is dismissed.

The August 22, 2015 eligibility determination is MODIFIED to state you are eligible for retroactive Medicaid for months of May and June 2015.

The December 9, 2014 eligibility determination remains in effect,

You are eligible for retroactive fee-for-service Medicaid during the months of May, June and July 2015.

### **Legal Authority**

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

