



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: AP000000004665

[REDACTED]

Dear [REDACTED],

On December 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 31, 2015 disenrollment date from your qualified health plan.

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 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004665

[REDACTED]

## Issues

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

Did the Marketplace properly determine that you were eligible for Medicaid, effective May 1, 2015?

Did the Marketplace properly determine that the coverage provided through your silver-level qualified health plan ended May 31, 2015?

## Procedural History

On February 14, 2015, the Marketplace issued a notice of eligibility determination that stated, based on your February 13, 2015 application and attested household income of \$20,799.96, you were conditionally eligible to receive up to \$279.00 per month in advance premium tax credits and, if you select a silver-level qualified health plan (QHP), eligible for cost-sharing reductions, effective March 1, 2015. The notice further instructed you to submit documentation before May 16, 2015 to confirm your income and citizenship status.

That same day, the Marketplace issued an enrollment notice confirming your selection of a silver-level QHP through Affinity Health Plan, Inc., with a monthly premium responsibility of \$92.75 after your monthly APTC of \$279.00 was applied. The notice stated that your health coverage would start after you paid your first month's premium and could start as early as March 1, 2015

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On May 13, 2015, the Marketplace received your 2014 federal tax return (Form 1040) and Certificate of Naturalization.

That same day, the Marketplace prepared a preliminary eligibility redetermination and issued a disenrollment notice stating that your silver-level QHP would end effective May 31, 2015.

On May 19, 2015, the Marketplace issued a notice of eligibility redetermination that you were eligible for Medicaid effective May 1, 2015.

That same day, the Marketplace issued an enrollment notice confirming that you had health insurance coverage through Medicaid Fee-For-Services as of May 1, 2015 and your enrollment in the Medicaid Managed Care (MMC) plan you had selected would begin July 1, 2015.

On September 10, 2015, you spoke with the Marketplace's Account Review Unit and requested an appeal insofar as you wanted the silver-level QHP to reimburse the premium payments you made for March 2015, April 2015, and May 2015.

On December 14, 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**

- 1) According to your Marketplace account, you expect to file your 2015 taxes with a tax filing status of Single and will not be claiming any dependents on that tax return.
- 2) The application that was submitted on February 13, 2015 listed annual household income of \$20,799.96, consisting of monthly gross business income of \$1,733.33. You testified that you are not sure how the certified application counselor who was assisting you that day arrived at this amount.
- 3) According to your 2014 federal tax return (Form 1040), dated April 13, 2015 and uploaded to your Marketplace account on May 13, 2015, your adjusted gross income was \$14,366.00 that year (Appellant's Exhibit A).
- 4) As required by the Marketplace, on May 13, 2015, you provided a copy of your Certificate of Naturalization showing that you became a citizen of the United States on March 2, 2002 (Appellant's Exhibit B).
- 5) Your Marketplace application as of that date does not indicate that you are looking for help paying medical bills you incurred during the three months prior to May 2015.

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- 6) You testified that you want to be reimbursed for the premiums you paid toward your silver-level QHP for the months of March 2015, April 2015, and May 2015, because you believe you should have been Medicaid eligible during March 2015 and April 2015, and were found Medicaid eligible as of May 1, 2015.
- 7) You testified that the insurance company, Affinity Health Plan, Inc., through which you were enrolled in a silver-level QHP, told you several times during telephone conversations that they had mailed the refund check to you but you never received it. You testified that this is why you filed an appeal.

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

## **Applicable Law and Regulations**

### Minimum Essential Coverage

Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f); 45 CFR § 155.305(f)(1)(B)).

### Termination of Coverage

The Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan, including when an enrollee obtains minimum essential coverage, with appropriate notice to the Marketplace or qualified health plan (45 CFR §155.430(b)(1)).

For enrollee-initiated terminations, the last day of coverage is either:

The termination date specified by the enrollee, if they provide notice at least 14 days before the requested termination becomes effective;

Fourteen days after the enrollee requests the termination, if they do not provide 14 days' notice; or

On a date on or after the date the enrollee requests the termination, subject to the determination of the enrollee's qualified health plan issuer, if the enrollee's qualified health plan issuer agrees to effectuate termination in fewer than 14 days, and the enrollee requests an earlier termination in fewer than 14 days, and the enrollee requests an earlier termination effective date

(45 CFR § 155.430(d)(2)(i)-(iii)).

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## 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 (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 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 2015 FPL, which is \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

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 in the month in which the medical care and services were received (18 NYCRR 360-2.4(c), 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)).

## **Legal Analysis**

The only issue under review is whether the Marketplace properly determined that the coverage provided by your silver-level QHP with APTC ended on May 31, 2015.

On February 14, 2015, the Marketplace issued an enrollment notice confirming you had selected an Affinity silver-level QHP with a monthly premium responsibility of \$92.75 after your APTC of \$279.00 was applied. On or about May 13, 2015, you provided the Marketplace with your 2014 federal tax return (Form 1040), dated April 13, 2015, which showed you had an annual household income of \$14,366.00 in 2014, which the Marketplace relied upon in redetermining your eligibility for financial assistance.

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 updated application, the relevant FPL was \$11,770.00 for a one-person household. Since \$14,366.00 is 122.06% of the 2015 FPL, the Marketplace properly found you to be eligible for Medicaid on an expected annual income basis, using the information provided in your application and correctly made your eligibility effective the first day of the month, that is, May 1, 2015. Therefore, the

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Marketplace's May 19, 2015 notices of eligibility redetermination and enrollment are AFFIRMED.

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). However, your Marketplace application reflects that you did not request that your eligibility for Medicaid be determined retroactively for three months. Therefore, the Marketplace did not issue an eligibility determination on this issue and, as such, it is not properly before the NY State of Health Appeals Unit and will not be addressed in this decision.

Lastly, the Marketplace determined that the disenrollment date from your silver-level QHP was May 31, 2015, which you are also disputing. An enrollee must be allowed to terminate their coverage with a QHP if they provide the appropriate 14 day notice to the Marketplace or to their health plan provider. However, the record reflects that you did not request to terminate your health insurance coverage through the Marketplace until at least March 19, 2015. Reasonable notice of at least 14 days before your requested termination date of May 1, 2015 would have meant notifying the Marketplace or your health insurance provider on or about April 16, 2015. It is clear that this would not have been possible given the date on which you provided proof of income and citizenship status to the Marketplace, which was May 13, 2015.

Since your Medicaid coverage started on May 1, 2015, and is currently in effect, you have minimum essential coverage through a government-sponsored program, as stated in the May 19, 2015 notices of eligibility redetermination and enrollment. So as to avoid any gap in coverage from May 1, 2015 to May 19, 2015 and because of the lack of reasonable notice to terminate your health plan at an earlier date, the Marketplace properly determined that your last date of eligibility with your silver-level QHP through Affinity Health Plan, Inc. was May 31, 2015. Therefore, the May 13, 2015 disenrollment notice is AFFIRMED.

Notwithstanding, you testified that Affinity Health Plan, Inc. had agreed several times to reimburse you for the premium you had paid but has failed to do so. Since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

## **Decision**

The Marketplace's May 13, 2015 disenrollment notice regarding your silver-level QHP is AFFIRMED.

The Marketplace's May 19, 2015 notices of eligibility redetermination and enrollment regarding Medicaid are AFFIRMED.

**Effective Date of this Decision:** December 21, 2015

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

Your eligibility for retroactive Medicaid prior to May 1, 2015 is not properly before the NY State of Health Appeals Unit and is not addressed in this decision.

You were eligible for Medicaid Fee-For-Services, effective May 1, 2015, and enrolled in a Medicaid Managed Care plan, effective July 1, 2015.

Your coverage through Affinity Health Plan Inc.'s silver-level QHP ended effective May 31, 2015. You may present this decision to Affinity Health Plan, Inc. and request that the insurer agree to effectuate termination of your coverage as of May 1, 2015, and reimburse you the premium you paid for that month.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

## **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)).

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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 May 13, 2015 disenrollment notice regarding your silver-level QHP is **AFFIRMED**.

The Marketplace's May 19, 2015 notices of eligibility redetermination and enrollment regarding Medicaid are **AFFIRMED**.

Your eligibility for retroactive Medicaid prior to May 1, 2015 is not properly before the NY State of Health Appeals Unit and is not addressed in this decision.

You were eligible for Medicaid Fee-For-Services, effective May 1, 2015, and enrolled in a Medicaid Managed Care plan, effective July 1, 2015.

Your coverage through Affinity Health Plan Inc.'s silver-level QHP ended effective May 31, 2015. You may present this decision to Affinity Health Plan, Inc. and request that the insurer agree to effectuate termination of your coverage as of May 1, 2015, and reimburse you the premium you paid for that month.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

## **Legal Authority**

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

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



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