



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: AP000000004732

[REDACTED]

Dear [REDACTED],

On December 3, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's two August 29, 2015 eligibility determinations.

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).

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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## Decision

Decision Date: December 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004732

[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 August 1, 2015?

Did the Marketplace properly determine that you were eligible for Medicaid coverage retroactively from July 1, 2015 to July 31, 2015?

## Procedural History

On August 29, 2015, the Marketplace issued a notice of eligibility determination based on your August 28, 2015 application for health insurance. The notice stated that you were eligible for Medicaid, effective August 1, 2015, based on your annual income of \$10,200.00 and your household size of one person.

That same day, the Marketplace issued a notice of eligibility redetermination that you were eligible for Medicaid retroactively from July 1, 2015 through July 31, 2015 because your monthly household income of \$850.00 was at or below the allowable monthly income limit of \$1,354.00 for that month.

On August 30, 2015, the Marketplace issued an enrollment notice confirming that you had selected a Medicaid Managed Care ((MMC) plan, with an effective date of October 1, 2015.

On September 17, 2015, you spoke to the Marketplace's Account Review Unit and appealed being determined eligible for Medicaid insofar as you wanted to enroll in a qualified health plan instead.

On October 16, 2015, the Marketplace issued a notice of eligibility redetermination that you remain eligible for Medicaid, effective October 1, 2015.

On October 17, 2015, the Marketplace issued an enrollment notice confirming your enrollment in your MMC plan as of October 1, 2015.

On December 3, 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 and your spouse are separated, but do not expect to be legally separated or divorced in 2015.
- 2) You testified that you and your estranged spouse have lived apart for over one year and for all of 2015.
- 3) You testified that you expect to file your 2015 federal income tax return as married filing single, and that you will not be claiming any dependents on that tax return. You further testified that you will not be claimed as a dependent on your estranged spouse's 2015 tax return.
- 4) According to the August 28, 2015 application, you attested to an expected annual household income of \$10,200.00. You testified that this amount was correct.
- 5) You testified that your spouse has a separate income of an unknown amount.
- 6) According to your Marketplace application and your testimony, you requested help with paying for medical bills that you had incurred in July 2015.
- 7) According to the November 2, 2015 Appeal Summary contained in the Marketplace's Evidence Packet, you indicated on September 17, 2015, that you received incorrect information from the Marketplace regarding your spouse, who is a U.S. citizen, in that you were told your spouse would not be held liable for the Medicaid benefits you receive.

- 8) The September 17, 2015 note in the Appeal Summary further indicates that you received counsel from an immigration attorney, who advised you that your spouse could be held liable for the Medicaid benefits you receive.
- 9) You testified that you believe your spouse would be liable for any such Medicaid benefits you receive as your spouse and as your sponsor for immigration.
- 10) You testified that you would be over-income for Medicaid if your spouse's income were to be included in your annual household income and you do not want your spouse to be held liable for any Medicaid benefits you receive.
- 11) For this reason, you testified that you are requesting to be able to select a qualified health plan at full cost.

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

## **Applicable Law and Regulations**

### Full Pay Qualified Health Plan or Medicaid

If an applicant is found eligible for any of the insurance affordability programs, including Medicaid, the Marketplace must permit the applicant to request an eligibility determination for enrollment in a qualified health plan only at full cost (45 CFR §155.310(b)).

### Household Size and Income

For purposes of Medicaid eligibility, "family size" means the number of persons counted as members of an individual's household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

In the case of a married couple ***living together***, each spouse is included in the Medicaid household of the other spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4); (emphasis added)).

In general, household income means the aggregate modified adjusted gross income of every person who is included in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)).

## 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 (80 Fed. Reg. 3236, 3237).

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)).

## 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)).

## Retroactive Medicaid

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)). Again, 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 first issue under review is whether the Marketplace properly determined that you were eligible for Medicaid effective August 1, 2015, and retroactively to July 1, 2015.

According to the record, you expect to file your 2015 tax return as married filing single and to claim no dependents on your tax return. You testified that, although you are married, you have lived separately from your spouse for all of 2015 and you will not be claimed as a tax dependent on your spouse's 2015 tax return. Therefore, for purposes of determining your eligibility for Medicaid, you have a one-person household.

Household income consists of the aggregate modified adjusted gross income of every person in the household who is required to file a federal tax return. Here, your household income consists of your own income since you testified that you will be filing a 2015 federal tax return as married filing single, that you and your estranged spouse have not lived together during all of 2015, that you do not receive any monetary support from your estranged spouse in 2015, and your spouse will not be claiming you as a tax dependent on their 2015 tax return. Therefore, the income of your estranged spouse is not included in the analysis of your eligibility for Medicaid and your reported income for 2015 of \$10,200.00 was correctly used in determining your eligibility for Medicaid.

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 application, the relevant FPL was \$11,770.00 for a one-person household. Since \$10,200.00 is below 100% of the FPL, the Marketplace properly found you to be eligible for Medicaid as of August 1, 2015 on an expected annual income basis, using the information provided in your application.

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."

Since you were correctly determined eligible for Medicaid based on the application you submitted on August 28, 2015, you remain eligible for Medicaid for 12 continuous months based on your household income and household size as reported at the time of the application and as you credibly testified at the time of your hearing.

Since the Marketplace properly determined you to be eligible for Medicaid as of August 1, 2015, and therefore eligible for continuous coverage, the August 29, 2015 notice of eligibility determination is AFFIRMED.

The second issue is whether the Marketplace properly determined that you were eligible for Medicaid retroactively to July 1, 2015.

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).

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As established above, you are in a one-person household with an expected 2015 annual income of \$10,200.00, and you indicated on your Marketplace application that you are seeking help with paying medical bills you incurred in July 2015.

To be eligible for retroactive Medicaid during July 2015, your income could not exceed 138% of the FPL for a one-person household, which was \$1343.00 per month at that time. Based on your annual income of \$10,200.00, the Marketplace estimated that your income for July 2015 was \$820.00. Since your July 2015 monthly income of \$820.00 is below the allowable monthly income limit of \$1,343.00, the Marketplace properly determined that you were eligible for Medicaid retroactive to July 1, 2015.

Therefore, the August 29, 2015 notice of eligibility redetermination regarding retroactive Medicaid for the month of July 2015 is **AFFIRMED**.

The record reflects, however, that on September 17, 2015, you requested to have your eligibility to select and enroll in a qualified health plan at full cost reconsidered since you are concerned that your estranged spouse may be held liable for Medicaid benefits you receive. According to Department of Health policy, your request to be taken out of Medicaid had to be made within two weeks of being determined eligible on August 28, 2015. That date was September 11, 2015. Since your request was made after September 11, 2015, you will remain in Medicaid continuous coverage until July 31, 2016.

## **Decision**

The two August 29, 2015 notices of eligibility determination are **AFFIRMED**.

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

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

Your Medicaid coverage, which was made effective retroactively to July 1, 2015 continues until July 31, 2016. Your enrollment in a Medicaid Managed Care plan became effective October 1, 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 two August 29, 2015 notices of eligibility determination are **AFFIRMED**.

Your Medicaid coverage, which was made effective retroactively to July 1, 2015 continues until July 31, 2016. Your enrollment in a Medicaid Managed Care plan became effective October 1, 2015.

## **Legal Authority**

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

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

