



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

Notice of Decision

Decision Date: February 16, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004787

[REDACTED]

Dear [REDACTED],

On January 11, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, July 8, 2015, and August 14, 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 Code of Federal Regulation 45 CFR § 155.545(b).

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Decision Date: February 16, 2016

NY State of Health Number: [REDACTED]
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Issues

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

Was your appeal of the Marketplace's February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, and July 8, 2015 eligibility determinations timely?

Did the Marketplace properly calculate the amount of Modified Adjusted Gross Income used when determining your and your child's eligibility as of August 13, 2015?

Procedural History

On February 10, 2014, the Marketplace received your initial application for health insurance.

On February 11, 2014, April 17, 2014, and July 24, 2014 the Marketplace issued eligibility determination notices based on the information contained in your Marketplace application, stating that you were eligible to receive advance premium tax credits of up to \$119.00 per month and cost-sharing reductions. The notice further stated that you were not eligible for Medicaid because your household income of \$38,688.00 was over the allowable income limit for that program.

On November 28, 2014, the Marketplace issued an eligibility redetermination notice stating that you were conditionally eligible to receive advance premium tax credits of up to \$123.00 per month and cost-sharing reductions effective January

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1, 2015. Your child was newly conditionally eligible to enroll through Child Health Plus with a \$15.00 per month premium, effective January 1, 2015. The notice further stated that you and your child were not eligible for Medicaid because your household income of \$38,688.00 was over the allowable income limit for that program.

On July 8, 2015, the Marketplace issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost through the Marketplace, effective August 1, 2015. Your child was eligible to enroll through Child Health Plus with a \$15.00 per month premium, effective August 1, 2015. This same notice stated that you were not eligible for advance premium tax credits because you indicated in your application that you did not plan to file a tax return for the year 2015. This notice also stated that you and your child were not eligible for Medicaid because your household income of \$38,688.00 was over the allowable income limit for that program.

On August 14, 2015, the Marketplace issued a redetermination notice stating that you were newly eligible to receive advance premium tax credits up to \$123.00 per month and cost-sharing reductions, effective September 1, 2015. Your child was eligible to enroll through Child Health Plus with a \$15.00 per month premium, effective August 1, 2015. This notice also stated that you and your child were not eligible for Medicaid because your household income of \$38,688.00 was over the allowable income limit for that program.

On September 18, 2015, the Marketplace issued an eligibility determination stating that you and your child were eligible for Medicaid, effective September 1, 2015.

On September 24, 2015, you requested a telephone hearing to appeal the eligibility determinations dated February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, July 8, 2015 and August 14, 2015, insofar as they found you not eligible for Medicaid. You also requested this appeal with regard to the November 28, 2014, July 8, 2015, and August 14, 2015 eligibility determinations, insofar as they found your child not eligible for Medicaid.

On January 11, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for 15 days to allow you to submit Social Security award letters for yourself and your child. On January 19, 2016 the Appeals Unit received your documentation via faxed. The documentation was marked as Appellant's Exhibit #1 and was incorporated into the record. The record was closed that day.

Findings of Fact

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

- 1) You testified that you currently reside with your one child. You further testified that you are widowed.
- 2) The record reflects that in your applications dated February 10, 2014, November 20, 2014, and August 13, 2015 you attested to planning to file a tax return.
- 3) You testified that you did not file a tax return for the 2014 tax year because your only source of income was Social Security survivor's benefits and you are not required to file a tax return on that income.
- 4) You testified that you will not be filing a tax return for the 2015 tax year because the income you expect to receive is from Social Security survivor's benefits.
- 5) The record reflects that the applications that were submitted on February 10, 2014, April 16, 2014, June 23, 2014, November 27, 2014, July 8, 2015 and August 13, 2015 all listed an annual household income of \$36,688.00. This amount consisted of \$18,344.00 in income that you receive from Social Security survivor's benefits and \$18,344.00 that your child receives from Social Security survivor's benefits.
- 6) You testified that you have no income other than the Social Security survivor's benefits both you and your child receive. You also testified that your income remained the same through all of the eligibility determinations at issue in this appeal.
- 7) You testified that your child does not expect to receive any income from a job in 2015.
- 8) You testified that you were enrolled in a qualified health plan in both 2014 and 2015, that you received advance premium tax credits to assist in help paying for that plan, and that you paid premiums.

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

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR 155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

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)).

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 (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" 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

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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)).

The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term “modified adjusted gross income” the same definition as “adjusted gross income,” without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

“Adjusted gross income” means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

“Gross income” is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual’s income from Social Security benefits is included in their gross income only to the extent that the sum of the person’s IRS-defined “modified adjusted gross income” and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1), (c)(1)(A)).

Medicaid for Children

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household

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modified adjusted gross income that falls at or below 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

In the case of an individual who expects to file a tax return and does not expect to be claimed by another taxpayer, the household consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1)).

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). In this instance, that was the 2015 FPL, which was \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the Marketplace and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

The first issue under review is whether your appeal of the Marketplace’s February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, and July 8, 2015 eligibility determinations was timely.

On February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, and July 8, 2015 the Marketplace issued eligibility determination notices that all stated you were not eligible for Medicaid because your household income of \$38,688.00 was over the allowable income limit for that program. Furthermore,

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the November 28, 2014 and July 8, 2015 eligibility determinations also stated that your daughter was not eligible for Medicaid for the same reason.

The record reflects that the first time you contacted the Marketplace to file a formal complaint or appeal about the income the Marketplace used when determining your and your daughter's eligibility for financial assistance was September 24, 2015. Individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by the Marketplace. According to the credible evidence in the record, you did not contact the Marketplace until September 24, 2015 to file a formal complaint or appeal which is well beyond 60 days from the date of any of the above listed eligibility determination notices.

Therefore, there has been no valid timely appeal of the February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, and July 8, 2015 eligibility determination notices, and your appeal of these determination notices is **DISMISSED**.

Your appeal also included an eligibility determination dated August 14, 2015. Since this determination was issued within 60 days of your appeal we will discuss the merits of this determination.

Therefore, the remaining issue is whether the Marketplace properly calculated the amount of Modified Adjusted Gross Income used when determining your and your daughter's eligibility as of August 13, 2015.

On August 13, 2015, your application listed an annual household income of \$36,688.00. This amount consists of \$18,344.00 that you receive from Social Security survivor's benefits, and \$18,344.00.00 your child receives from Social Security survivor's benefits

In order to determine an individual's eligibility for financial assistance, the Marketplace must determine a household's modified adjusted gross income (MAGI). Generally, a household's MAGI includes the adjusted gross income of all individual's in that household and adds to it any relevant amount excluded from gross income, including foreign earned income and the cost of housing for the individual, interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and an amount equal to the portion of the taxpayer's social security benefits which is not included in your gross income. A child or a dependent's income is not included in the household's MAGI if the child is not required to file a tax return.

A dependent will be required to file a tax return in 2015 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

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To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, your child received \$18,344.00 in income from Social Security survivor benefits, and received no earned income. Therefore, \$9,172.00 (one-half the amount of Social Security survivors benefits she receives) plus \$0.00 earned income equals \$9,172.00. Since \$9,172.00 is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income. As a result, your child's Social Security survivor's benefits are not included in your household's MAGI for purposes of determining Medicaid eligibility.

You testified that you do not intend to file an income tax return for the 2015 tax year because you only receive income from Social Security benefits. However, you are not a child or a tax dependent so your Social Security income, regardless of the fact that you may not be required to file taxes on it, is still included in the household's income for the purposes of determining your eligibility for financial assistance through the Marketplace.

Therefore, your household's total modified adjusted gross income for the August 13, 2015 application was \$18,344.00 for a household of two. Therefore, the August 14, 2015 eligibility determination is RESCINDED because your child's income should not have been included in your household's income for Marketplace purposes.

Your case is RETURNED to the Marketplace for a redetermination of your household's eligibility for financial assistance as a two-person household with an expected household income of \$18,344.00. The eligibility that results from this redetermination is effective as of August 1, 2015.

Please note, that 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. However, please be advised that if you request to have your coverage converted to Medicaid for those months in which you were enrolled in a qualified health plan in 2015 could have adverse effects if any/all of the providers you utilized do not accept Medicaid. This is because there is the potential that payments made under your qualified health plan to providers could be charged back, and you could then be billed by any providers who do not accept Medicaid.

Lastly, please note that the amount of advance premium tax credits an individual receives is reconciled when that individual files a tax return. Therefore, if an individual paid too much in premiums, and should have received more in

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advance premium tax credit, that individual may be able to receive a refund of some or all of the premiums they paid. This is possible only if a tax return is filed. Your Marketplace account inbox contains Form 1095-A from the IRS, which reflects the amount of advance premium tax credit you received in 2014. The 1095-A for the year 2015 will be issued in early 2016.

Decision

Your appeal with regard to the February 11, 2014, April 17, 2014, June 24, 2014, November 28, 2014, and July 8, 2015 eligibility determination notices is **DISMISSED** as untimely.

The August 14, 2015 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to the Marketplace for a redetermination of your household's eligibility for financial assistance as a two-person household with an expected household income of \$18,344.00. The eligibility that results from this redetermination is effective as of August 1, 2015.

If you are found Medicaid eligible as of August 1, 2015, you may request to have that coverage made retroactive for the three months prior.

Effective Date of this Decision: February 16, 2016

How this Decision Affects Your Eligibility

This decision does not affect your current Medicaid coverage that was made effective September 1, 2015.

Your case is being sent back to the Marketplace for a determination of your household's eligibility as of August 1, 2015. If you are found Medicaid eligible, you may request retroactive Medicaid coverage for the three months leading up to August 1, 2015.

Once a determination has been made, the Marketplace will issue you a determination notice which will contain further information.

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.

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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):

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Summary

The August 14, 2015 eligibility determination notice is RESCINDED.

Your case is being sent back to the Marketplace for a determination of your household's eligibility as of August 1, 2015. If you are found Medicaid eligible, you may request retroactive Medicaid coverage for the three months leading up to August 1, 2015.

Once a determination has been made, the Marketplace will issue you a determination notice which will contain further information.

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A Copy of this Decision Has Been Provided To:

