



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

Notice of Decision

Decision Date: November 16, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004833

[REDACTED]

Dear Ms. [REDACTED]

On October 21, 2015, you appeared by telephone at an expedited hearing on your appeal of NY State of Health Marketplace's October 1, 2015 eligibility and enrollment notices.

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).

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).

This page intentionally left blank.



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

Decision

Decision Date: November 16, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004833

[REDACTED]

Issues

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

Did the Marketplace properly determine on October 1, 2015 that you were eligible to receive an advance premium tax credit of up to \$241.00 per month?

Did the Marketplace properly determine on October 1, 2015 that you were eligible to receive cost-sharing reductions, if you enroll in a silver-level qualified health plan?

Did the Marketplace properly determine on October 1, 2015 that you were not eligible for Medicaid?

Did the Marketplace properly determine that your Fidelis Care Bronze health plan could start as early as November 1, 2015?

Procedural History

On April 11, April 30, and May 13, 2014, the Marketplace issued you notices that stated that "you have chosen to receive all information from New York State of Health electronically. This means that all important notifications will be sent to your Marketplace account."

On February 10, 2015, the Marketplace issued a notice stating that it was time to renew your health insurance for 2015. That notice stated that "[b]ased on the information from federal and state sources, we cannot make a decision about whether or not you qualify for financial help paying for your health coverage." The

notice directed you to update your Marketplace account by March 15, 2015 or your financial assistance might end.

On March 17, 2015, the Marketplace issued an eligibility determination notice that “[y]ou did not respond to the renewal notice and did not complete your renewal with the required time. As a result, you no longer qualify to receive financial assistance to help pay for your health coverage.” The notice stated that your eligibility would end March 31, 2015.

On March 18, 2015, the Marketplace issued a disenrollment notice that your MetroPlus Health Plan coverage would end effective March 31, 2015.

On September 14, 2015, your Marketplace account was updated.

On September 15, 2015, the Marketplace issued a notice that you “may be eligible for health insurance through New York State of Health but MORE information is needed to make a determination.”

On September 30, 2015, your Marketplace account was updated. The Marketplace rendered a preliminary determination that you are eligible for up to \$241.00 of advance premium tax credits and cost-sharing reductions, if you enroll in a silver-level qualified health plan with a start date of November 1, 2015.

On that same day, you spoke to the Marketplace’s Account Review Unit and appealed the eligibility determination and the health plan start date of November 1, 2015.

On October 1, 2015, the Marketplace issued an eligibility determination notice that you are eligible to receive up to \$241.00 per month in advance premium tax credits and cost-sharing reductions, if you enroll in a silver-level qualified health plan, effective November 1, 2015.

On that same day, the Marketplace issued a notice confirming your enrollment in the Fidelis Care Bronze health plan. The letter also stated that your plan enrollment start date was November 1, 2015.

On October 21, 2015, you had an expedited telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit. The record was developed during the hearing and the record was left open until November 4, 2015 to allow you to submit additional information to the Marketplace Appeals Unit.

No additional documentation was submitted to the Marketplace Appeals Unit within the allotted time. The record is now complete and closed.

Findings of Fact

- 1) You are applying for health insurance through the Marketplace for yourself.
- 2) According to your September 30, 2015 application, you plan on filing a 2015 federal income tax return with the tax status of single and will claim one dependent on that return.
- 3) According to your September 30, 2015 application, you attested to a 2015 expected household income of \$28,600.00.
- 4) According to your September 30, 2015 application, you attested that your average monthly income is the same as your income in the current month.
- 5) You currently reside in Bronx County, New York.
- 6) You were directed by the Hearing Officer to provide your bi-weekly pay stubs from April 2015 through August 2015 to the Marketplace Appeals Unit by November 4, 2015. No additional documentation was submitted to the Marketplace Appeals Unit within the allotted time.
- 7) You testified that you did not receive any notices from the Marketplace, either by email or US mail, telling you that you needed to update the information in your Marketplace to ensure that your coverage would not be interrupted.
- 8) On April 11, April 30, and May 13, 2014, the Marketplace issued you notices that stated that “you have chosen to receive all information from New York State of Health electronically. This means that all important notifications will be sent to your Marketplace account.”
- 9) You testified that you went to the hospital in August 2015 for a toe injury and in September 2015 because of complications with your eye.
- 10) You testified that the hospital informed you in September 2015 that your health insurance had expired.
- 11) You testified that your current email address is the same address that is listed in your Marketplace account.
- 12) You testified that you currently have outstanding medical bills for August and September 2015.

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

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).

Applicable Law and Regulations

Advance Premium Tax Credit:

The advance premium tax credit (APTC) is available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the 2014 federal poverty level (FPL); (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP; and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

The maximum amount of APTC that can be authorized equals

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2015 is set at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), IRS Rev. Proc. 2014-37).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (see 26 CFR § 1.36B-3(g)(2), 45 CFR § 155.300(a)), IRS Rev. Proc. 2014-37).

In an analysis of APTC eligibility, the determination is based on the FPL "for the benefit year for which coverage is requested (45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$15,730.00 for a two-person household (79 Fed. Reg. 3593, 3593).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their income tax form). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund. Those who take more tax credit in advance than

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).

they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Cost-Sharing Reductions:

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through the Marketplace, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the plan year coverage is requested and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)(1)).

Hardship Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a qualified health plan (QHP). Such an exemption may be granted if that person can show that she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a qualified health plan (45 CFR § 155.605 (a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

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 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 currently receiving Medicaid benefits is based on current monthly household income and family size

(42 CFR § 435.603(h)(2); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the projected eligibility determination for the following year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)).

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)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for an advance premium tax credit (APTC) of up to \$241.00.

In the application that was submitted on September 30, 2015, you attested to an expected yearly household income of \$28,600.00, and the eligibility determination relied upon that information.

According to the same application, you attested on planning to file your 2015 federal income tax return using the tax status of single and claiming one dependent on that return. Therefore, the record indicates that you are in a two-person tax household.

You currently reside in Bronx County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month.

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).

An annual income of \$28,600.00 is 181.82% of the 2014 Federal Poverty Level (FPL) for a two-person tax household. At 181.82% of the FPL, the expected contribution to the cost of the health insurance premium is 5.49% of income, or \$131.08 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through the Marketplace for an individual in your county (\$371.75 per month) minus your expected contribution (\$131.08 per month), which equals \$240.67 per month. Therefore, the Marketplace correctly determined that you are eligible to receive an APTC up to \$241.00 per month.

The second issue is whether the Marketplace properly determined that you were eligible for cost-sharing reductions.

Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$28,600.00 is 181.82% of the 2014 FPL, the Marketplace correctly found you to be eligible for cost-sharing reductions.

The third issue is whether the Marketplace properly determined that you were ineligible 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 \$15,930 for a two-person household. Since \$28,600.00 is 179.54% of the 2015 FPL, the Marketplace properly found you to be not eligible for Medicaid on an expected annual income basis, using the information provided in your application.

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, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,832.00 per month. According to your September 30, 2015 application, you attested that your average monthly income is the same as your income in the current month. You were directed by the Hearing Officer to provide additional income to document your monthly income by November 4, 2015. However, no additional documentation was received within the allotted time. Therefore, your monthly household income was approximately \$2,383.33(\$28,600.00/12), and you did not qualify for Medicaid.

Since the October 1, 2015 eligibility determination properly stated that, based on the information you provided, you were eligible for an APTC of up to \$241.00 per

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).

month, eligible for cost-sharing reductions, and not eligible for Medicaid, it is correct and is AFFIRMED.

The fourth issue is whether or not the Marketplace properly started your Fidelis Care Bronze ST INN Pediatric Dental Dep25 (Fidelis Care Bronze plan), effective November 1, 2015.

The Marketplace must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. The Marketplace must issue a renewal notice that contains the projected eligibility determination for the following year. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On February 10, 2015, the Marketplace issued an annual renewal notice in your case. That notice stated that "[b]ased on the information from federal and state sources, we cannot make a decision about whether or not you qualify for financial help paying for your health coverage." The notice directed you to update your Marketplace account by March 15, 2015 or your financial assistance may end.

However, the record reflects, that you elected to receive your notices from the Marketplace via electronic mail. You credibly testified that you did not receive the renewal notices and had not received any notices asking you to update your account and enroll in a new health plan through the Marketplace.

Since you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within 1 business day of notice generation. It was also required to send an email or other electronic communication alerting you that a notice has been posted to your account.

If the electronic communication failed, the Marketplace was required to send a notice by regular mail within three business days of the date of the failed electronic communication if the electronic communication was undeliverable.

The record does not contain any evidence on behalf of the Marketplace as to whether or not the electronic communications were undeliverable. The record also does not contain evidence that the notices were sent by regular mail within three business days of the date of a failed electronic communication. Without evidence on behalf of the Marketplace, that you were given proper electronic notice or proper written notice, the notices in question must be Rescinded and/or Modified.

Therefore, it is concluded that the Marketplace did not give you the proper notice that you needed to enroll in a new health plan through the Marketplace.

You updated your account and enrolled in a health plan through the Marketplace for 2015 on September 30, 2015, and therefore we must assume that this is the information that would have been used had you been properly notified that you needed to update your account and enroll in a new health plan through the Marketplace.

The October 1, 2015 eligibility determination notice is MODIFIED to state that you are eligible for APTC and CSR, if you enroll in a silver-level qualified health plan, effective August 1, 2015.

The October 1, 2015, enrollment notice is MODIFIED to state that your Fidelis Care Bronze plan could start as early as August 1, 2015, if you pay your first month's premium.

Decision

The October 1, 2015 notice of eligibility is AFFIRMED insofar as it states that you are eligible to receive up to \$241.00 of advance premium tax credit and cost-sharing reductions, if you enroll in a silver-level health plan.

The October 1, 2015 eligibility determination notice is MODIFIED to state that you are eligible for APTC and CSR, if you enroll in a silver-level qualified health plan, effective August 1, 2015.

The October 1, 2015, enrollment notice is also MODIFIED to state that your Fidelis Care Bronze plan could start as early as August 1, 2015, if you pay your first month's premium.

Effective Date of this Decision: November 16, 2015

How this Decision Affects Your Eligibility

You are eligible for coverage in the Fidelis Care Bronze plan starting August 1, 2015, provided that you pay the health insurance starting with the month of August 2015.

You are eligible for up to \$241.00 of advance premium tax credit and for cost-sharing reductions, if you enroll in a silver-level health plan, effective August 1, 2015.

You are not eligible for Medicaid.

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).

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

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)).

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

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).

Summary

The October 1, 2015 notice of eligibility is AFFIRMED insofar as it states that you are eligible to receive up to \$241.00 of advance premium tax credit and cost-sharing reductions, if you enroll in a silver-level health plan.

The October 1, 2015 eligibility determination notice is MODIFIED to state that you are eligible for APTC and CSR, if you enroll in a silver-level qualified health plan, effective August 1, 2015.

The October 1, 2015, enrollment notice is also MODIFIED to state that your Fidelis Care Bronze plan could start as early as August 1, 2015, if you pay your first month's premium.

You are eligible for coverage in the Fidelis Care Bronze plan starting August 1, 2015, provided that you pay the health insurance starting with the month of August 2015.

You are eligible for up to \$241.00 of advance premium tax credit and for cost-sharing reductions, if you enroll in a silver-level health plan, effective August 1, 2015.

You are not eligible for Medicaid.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

Legal Authority

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:

