



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

## Notice of Decision

Decision Date: February 12, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004893

[REDACTED]

Dear [REDACTED],

On December 16, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 9, 2015 eligibility determination and the subsequent denial of a special enrollment period.

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).

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: February 12, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004893



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you and your spouse were not eligible for Medicaid as of October 8, 2015?

Do you and your spouse qualify to select a health plan outside of the open enrollment period?

## Procedural History

On October 8, 2015 your Marketplace account was created and an application was submitted on your and your spouse's behalf. That day, a preliminary eligibility determination was prepared stating that you and your spouse were eligible for up to \$679.00 per month in advance premium tax credits and cost-sharing reductions.

Also on October 8, 2015, you spoke to the Marketplace's Account Review Unit and appealed that preliminary eligibility determination insofar as you and your spouse were seeking Medicaid or the ability to enroll into a qualified health plan effective October 1, 2015.

On October 9, 2015, the Marketplace issued a notice of eligibility determination based on your October 8, 2015 application, stating that you and your spouse were eligible to receive up to \$679.00 per month in advance premium tax credits and cost-sharing reductions effective November 1, 2015. You were not eligible for Medicaid because your income was over the allowable limits for that program.

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On December 16, 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 expect to file your 2015 taxes with a tax filing status of married filing jointly. You will claim no dependents on that tax return.
- 2) The application that was submitted on October 8, 2015 listed an annual household income of \$23,644.43. You testified that this amount was not correct and that it was only the year to date income you had earned as of the date you filed the application.
- 3) You testified that in 2015 you expect to earn \$32,488.00. This amount consists of \$5,888.00 you received from unemployment insurance for the months of January 2015-March 2015 and \$26,600.00 you earned from a job from April 2015-December 2015.
- 4) You testified that you receive a weekly paycheck from your job in the gross amount of \$700.00.
- 5) Your application states that you will not be taking any deductions on your 2015 tax return.
- 6) On October 9, 2015 the Marketplace issued a hearing confirmation notice listing the description of appeal as "Requesting a SEP due to medical necessity."
- 7) You testified that you are seeking either Medicaid or a Special Enrollment Period to allow you and your spouse to enroll in a health plan to cover medical bills from October 2015 onward.

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

## **Applicable Law and Regulations**

### Medicaid

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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 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).

### Enrollment Periods

The Marketplace must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR §155.410(a)).

For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR §155.410(e)); however, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements ‘Waiting in Line’ Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%99waiting-line%E2%80%99-provision-ahead-february-15-open>).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is permitted when one of the following triggering events occur:

(1) The qualified individual or his or her dependent loses certain health insurance coverage:

(a) Health insurance considered to be minimum essential coverage;

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- (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) Medically needy coverage.
- (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
  - (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
  - (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or
  - (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
  - (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions; or
  - (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
  - (8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or
  - (9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or
  - (10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a

result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

### 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).

### **Legal Analysis**

The first issue is whether the Marketplace properly determined that you and your spouse were not eligible for Medicaid.

You are in a two-person household. You expect to file your 2015 income taxes as married filing jointly and will claim no dependents on that tax return.

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 that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$15,930.00 for a two-person household.

The application that was submitted on October 8, 2015 listed an annual household income of \$23,644.43 and the October 9, 2015 eligibility determination relied on that account.

Since \$23,644.43 is 148.43% of the 2015 FPL, the Marketplace properly found you and your spouse to be not eligible for Medicaid on an expected annual income basis, using the information provided in your application.

You testified that this income amount was not correct and that it was only the year to date income you had earned as of the date you filed the application. You testified that in 2015 you actually expect to earn \$32,488.00. This amount consists of \$5,888.00 you received from unemployment insurance for the months of January 2015-March 2015 and \$26,600.00 you earned from a job from April 2015-December 2015.

An income of \$32,488.00 is 203.94% of the 2015 FPL, based on this amount you and your spouse would also not be eligible for Medicaid on an annual income basis.

However, 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 on a monthly basis, you would need to meet the nonfinancial criteria and have an income no greater than 138% of the FPL, which is \$1,832.00 per month for a two-person household. You testified that you receive a weekly paycheck from your job in the gross amount of \$700.00. Therefore, assuming you work four weeks a month, your household monthly income is \$2,800.00 (\$700.00 per week x 4 weeks). Since your monthly income of \$2,800.00 is over the Medicaid limit of \$1,832.00, you and your spouse are also not eligible for Medicaid on a monthly basis.

Since the October 9, 2015 eligibility determination properly stated that you and your spouse are not eligible for Medicaid, it is correct and is AFFIRMED.

The last issue under review is whether you qualify to select a health plan outside of the open enrollment period.

On October 9, 2015 the Marketplace issued a hearing confirmation notice listing the description of appeal as "Requesting a SEP due to medical necessity." You testified that you are seeking either Medicaid or a Special Enrollment Period to allow you and your spouse to enroll in a health plan to cover medical bills from October 2015 onward. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Since the Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you should be granted a special enrollment period in order to allow you to enroll in a health plan outside of the open enrollment period.

The Marketplace provided an open enrollment period from November 15, 2014 until February 15, 2015, which was later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline.

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The record indicates that a Marketplace account was not created on your and your spouse's behalf until October 8, 2015 which was outside of the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

The credible evidence of record indicates that you and your spouse did not experience any triggering events that would qualify you for a special enrollment period.

Therefore, you and your spouse are denied a special enrollment period to enroll into a plan for 2015 coverage.

## **Decision**

The October 9, 2015 eligibility determination is AFFIRMED.

You do not qualify for an additional special enrollment period.

**Effective Date of this Decision:** February 12, 2016

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

You and your spouse do not qualify for Medicaid.

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

This decision has no effect on eligibility effective January 1, 2016.

## **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.

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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 October 9, 2015 eligibility determination is AFFIRMED.

You and your spouse do not qualify for a special enrollment period.

You and your spouse do not qualify for Medicaid.

This decision has no effect on eligibility effective January 1, 2016.

### **Legal Authority**

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

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

