



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

Notice of Decision

Decision Date: January 22, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004936

[REDACTED]

Dear [REDACTED],

On December 21, 2015, your spouse appeared by telephone on behalf of both of you at a hearing on your appeal of NY State of Health Marketplace's October 15, 2015 eligibility redetermination.

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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Issues

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

Did the Marketplace properly determine that your and your spouse's Medicaid coverage ended effective October 31, 2015?

Did the Marketplace properly determine that you and your spouse were eligible to receive up to \$466.00 per month in advance premium tax credit and, if you selected a silver-level qualified health plan, eligible for cost-sharing reductions, effective November 1, 2015?

Did the Marketplace properly determine that you and your spouse were not eligible for Medicaid, effective November 1, 2015?

Procedural History

According to your Marketplace account, you and your spouse were found Medicaid eligible as of November 1, 2014, had health insurance coverage under Medicaid Fee-For-Services as of that date, and were enrolled in an MMC plan, effective January 1, 2015.

On October 15, 2015, the Marketplace prepared a preliminary eligibility redetermination and found you and your spouse eligible to share in advance premium tax credits of up to \$466.00 per month and eligible for cost-sharing reductions, effective November 1, 2015.

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That same day, your spouse spoke with the Marketplace's Account Review Unit and requested an appeal insofar as you both wanted to remain eligible for Medicaid. Your spouse also requested that the Marketplace grant both of you continuing aid under Medicaid during the appeal process.

On October 16, 2015, the Marketplace issued a notice of eligibility redetermination that was consistent with the October 15, 2015 preliminary redetermination.

The Marketplace granted the request for aid to continue under Medicaid, which was confirmed in the October 23, 2015 and December 6, 2015 notices of eligibility redetermination and enrollment. This "aid to continue" was granted from November 1, 2015 to April 30, 2016 through YourCare Health Plan, the MMC plan in which you were both enrolled at the time the appeal was taken.

On December 21, 2015, your spouse 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) Your spouse testified that, if you are expected to file your 2015 taxes, you will use the tax filing status of married filing jointly and will not be claiming any dependents on that tax return.
- 2) The application that was updated on October 15, 2015 listed annual household income of \$27,984.00, consisting of \$24,720.00 you receive in Social Security benefits and \$3,264.00 your spouse receives in Social Security benefits. Your spouse testified that this amount was correct.
- 3) Your application states that you will not be taking any deductions on your 2015 tax return.
- 4) Your application states that you and your spouse reside in Erie County, New York.
- 5) According to your Marketplace account and your spouse's testimony, the Marketplace did not issue a renewal notice or cancellation notice regarding your MMC plan coverage ending on October 31, 2015.
- 6) Your spouse testified that it was fortuitous that she contacted the Marketplace on October 15, 2015, because she thought your Medicaid did not end until December 31, 2015, and she was calling to request a one month extension of coverage under your MMC plan until your Medicare Parts A & B started on February 1, 2015.

- 7) According to an October 15, 2015 letter from your doctor, you suffer from a serious medical condition that requires ongoing treatment and follow up care and uninterrupted health insurance coverage.

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

Applicable Law and Regulations

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)).

Proper Notice – Medicaid

A Medicaid recipient is entitled to receive timely and adequate notice when the Marketplace proposes to “discontinue, suspend or reduce ... medical assistance authorization or services” (18 NYCRR § 358-3.3; 42 CFR § 435.919(a)).

After any decision affecting the enrollee’s eligibility, including denial, termination, or suspension of eligibility, notice must be sent at least 10 days before such action goes into effect (18 NYCRR § 358-2.23).

Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

Under Medicaid "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)).

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 applicable 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 by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 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).

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 (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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 federal income tax return). 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 or have their tax bill reduced. Those who take more tax credit in advance

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than 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 first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(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)).

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).

Modified Adjusted Gross Income

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” 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 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)).

“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 time savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

Legal Analysis

Under New York State law, once a couple 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.”

The record reflects that on November 27, 2014, you and your spouse were determined eligible for Medicaid, effective November 1, 2014. Since you and your spouse were correctly determined eligible for Medicaid based on your November 2014 application, you both remained eligible for Medicaid for 12 continuous months. This eligibility included health insurance coverage under Medicaid Fee-For-Services as of November 1, 2014, and MMC plan coverage as of January 1, 2015, with 12 months of continuous coverage ending on October 31, 2015. Therefore, it was proper for your 12 months of continuous coverage to end October 31, 2015.

However, the Marketplace did not issue proper notice ten days in advance of October 31, 2015, informing you and your spouse that your health insurance coverage under your MMC plan then in place, YourCare Health Plan, was due to end. Rather, your spouse learned that your Medicaid coverage was due to end when she contacted the Marketplace on October 15, 2015. As a result of her telephone contact with the Marketplace, your household’s eligibility was redetermined based on the household size and income information contained in your Marketplace application at the time.

It is from this eligibility redetermination that you and your spouse requested an appeal. At the same time, your spouse requested that your health insurance coverage under your MMC Plan continue during the appeal process. An individual, or couple in your case, is entitled to have their aid continue while awaiting a fair hearing on their eligibility for Medicaid. This is known as a request for “aid to continue” and is usually granted if requested within 10 days of the eligibility determination at issue. Your spouse’s request that your MMC plan coverage continue during the appeal process was made on the same day that the preliminary eligibility redetermination was reached and, therefore, was timely. Accordingly, the Marketplace granted the request and continued your couple’s health insurance coverage under your MMC plan, YourCare Health Plan, from November 1, 2015 through April 30, 2016, or until the appeal process is completed, whichever occurs earlier.

Turning to the issues under review, the first issue is whether the Marketplace properly determined that you and your spouse were eligible for an APTC of up to \$466.00 per month.

The application that was updated on October 15, 2015 listed an annual household income of \$27,984.00 and the eligibility determination relied upon that information.

You and your spouse expect to file your 2015 income taxes as married filing jointly and will not be claiming any dependents on that return. Therefore, for purposes of this analysis, you are in a two-person household.

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You reside in Erie County, where the second lowest cost silver plan available for a couple through the Marketplace costs \$590.03 per month.

An annual income of \$27,984.00 is 177.90% of the 2014 FPL for a two-person household. At 177.90% of the FPL, the expected contribution to the cost of the health insurance premium is 5.31% of income, or \$123.94 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 a couple in your county (\$590.03 per month) minus your expected contribution (\$123.94 per month), which equals \$466.09 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you and your spouse to be eligible for up to \$466.00 per month in APTC.

The second issue is whether you and your spouse properly found eligible for cost-sharing reductions. Cost-sharing reductions are available to a couple who have a household income no greater than 250% of the FPL. Since a household income of \$27,984.00 is 177.90% of the applicable FPL, the Marketplace correctly found you and your spouse to be eligible for cost sharing reductions.

The third issue is whether the Marketplace properly determined that you and your spouse 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 \$15,930.00 for a two-person household. Since \$27,984.00 is 175.67% of the 2015 FPL, the Marketplace properly found you and your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the October 16, 2015 notice of eligibility redetermination properly stated that, based on the information you provided, you and your spouse were eligible for up to \$466.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, it is correct and is **AFFIRMED**.

Decision

The October 16, 2015 notice of eligibility redetermination is **AFFIRMED**.

Effective Date of this Decision: January 22, 2016

How this Decision Affects Your Eligibility

You and your spouse were eligible to share in up to \$466.00 per month in APTC and eligible for cost-sharing reductions in 2015.

You and your spouse were ineligible for Medicaid.

If your spouse wishes, she may re-apply for health insurance through the Marketplace for 2016. The open enrollment period to do so ends January 31, 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.

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:

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- By fax: 1-855-900-5557

Summary

The October 16, 2015 notice of eligibility redetermination is AFFIRMED.

You and your spouse were eligible to share in up to \$466.00 per month in APTC and eligible for cost-sharing reductions in 2015.

You and your spouse were ineligible for Medicaid.

If your spouse wishes, she may re-apply for health insurance through the Marketplace for 2016. The open enrollment period to do so ends January 31, 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:

