



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

Notice of Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005025

[REDACTED]

Dear [REDACTED],

On November 4, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 7, 2015 and October 27, 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 (CFR) 45 CFR § 155.545(b).

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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 request for the review of the May 7, 2015 and May 11, 2015 notices of eligibility determination timely filed?

Did the Marketplace properly determine that you were no longer eligible for Medicaid, and were instead eligible only to purchase a qualified health plan through the Marketplace at full cost, effective December 1, 2015?

Procedural History

On May 6, 2015, the Marketplace received your application for health insurance, which listed an expected annual household income of \$34,264.00 and household income for the month of May 2015 of \$0.00.

On May 7, 2015, the Marketplace issued an eligibility determination notice based on the information contained in the May 7, 2015 application, stating that you, May, were conditionally eligible for Medicaid effective May 1, 2015. Your husband was also eligible for Medicaid, without conditions. The notice further confirmed your request to review your application to see if you were eligible for retroactive coverage by Medicaid for expenses incurred from February 1, 2015 to April 30, 2015. You were requested to submit proof of your income for those months by May 21, 2015.

On May 11, 2015, the Marketplace issued a notice of eligibility redetermination stating that you remained conditionally eligible for Medicaid, effective May 1,

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2015. Your husband remained eligible for Medicaid, without conditions. The notice further confirmed your request to review your application to see if you were eligible for Medicaid coverage from February 1, 2015 to April 30, 2015. You were requested to submit proof of your income for those months by May 25, 2015.

Also on May 11, 2015, the Marketplace sent you a notice confirming your enrollment with Healthfirst, a Medicaid Managed Care plan, effective June 1, 2015.

On October 26, 2015, the Marketplace received your multiple modified applications for health insurance, which listed various expected household incomes of \$88,218.00, \$87,680.00, and \$81,680.00 for the 2015 tax year. That day, a preliminary eligibility determination was prepared with regard to the last application, stating that you were eligible to purchase a qualified health insurance plan at full cost, effective December 1, 2015.

Also on October 26, 2015, you contacted the Marketplace's Account Review Unit and requested an expedited appeal of that preliminary eligibility determination as it related to your eligibility for continued Medicaid coverage.

On October 27 and October 28, 2015, the Marketplace issued eligibility determination notices based on the modified information provided in your applications, stating that you were eligible to purchase a qualified health plan at full cost, effective December 1, 2015. The notices further stated that you did not qualify for Medicaid because your income of \$81,680.00 was above the allowable income limit.

On October 30, 2015, a letter from [REDACTED] was uploaded to your Marketplace account in support of your expedited hearing request.

On November 4, 2015, you had an expedited telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At that time you were sworn in, and waived your right to formal notice. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence, including proof of income for yourself and your spouse for the month of May 2015.

On November 4, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included: a copy of your separation agreement with your former employer; a copy of your New Jersey Unemployment Insurance Benefit statements for the month of May 2015; and a copy of your spouse's freelance quarterly income statement from January to May 2015. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on November 4, 2015.

Findings of Fact

- 1) Your account indicates that you elected to receive notices from the Marketplace by regular mail. No notices sent to you have been returned to the Marketplace as undeliverable.
- 2) You testified that you are only appealing your individual eligibility determination.
- 3) You testified that you expected to file your 2015 federal income tax return with a tax filing status of married filing separate, and will claim no dependents on that tax return.
- 4) The application that was submitted on May 6, 2015 listed an annual household income of \$34,264.00, and a current monthly income of \$0.00. You testified that this amount was correct.
- 5) You testified, and provided evidence, that you separated from your previous employer on May 1, 2015 (Appellant's Exhibit 1, November 4, 2015). You further testified, and provided evidence, that at the time of your May 6, 2015 application, your unemployment insurance benefits had not begun (*id.*).
- 6) You provided evidence that you received your first unemployment insurance benefit payment on May 20, 2015, in the amount of \$1,292.00, before taxes were deducted (Appellant's Exhibit 1, November 4, 2015). You further provided evidence that you received an unemployment insurance benefit payment on May 27, 2015, in the amount of \$646.00, before taxes were deducted (*id.*). The record reflects that these are the only unemployment insurance benefit payments you received in May 2015.
- 7) You testified, and provided evidence, that your spouse did not receive any income for the month of May 2015 (Appellant's Exhibit 1, November 4, 2015).
- 8) The May 6, 2015 application stated that you were pregnant with one child, which was confirmed through your supporting testimony.
- 9) The May 6, 2015 application indicated that you were seeking retroactive Medicaid coverage for the months of February, March, and April 2015. You testified that the request for retroactive coverage was a clerical error when you submitted your application. You further testified that you were not seeking retroactive coverage for those months because you were receiving health insurance through your employer until you separated from your employment on May 1, 2015. You testified that you were never aware

of the Marketplace's request to submit income documentation for those months, since you were not seeking retroactive coverage.

- 10) Your account indicates that two of the three applications filed on May 6, 2015 were created by you personally; all three requested for assistance in paying medical bills for the previous three months.
- 11) There is no evidence in the record that documentation of your household income for the months of February, March, and April 2015 was received by the Marketplace by May 25, 2015.
- 12) You testified that your spouse began a new job in June 2015. You further testified that you updated your application on October 26, 2015 to reflect your spouse's change of income, and to include your unemployment insurance benefit payments. You further testified that the income listed in the October 26, 2015 application of \$81,680.00 is an accurate reflection of your current expected income for the 2015 tax year.
- 13) Your application states that you will not be taking any deductions on your 2015 tax return.
- 14) Your application states that you live in New York County.

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

Applicable Law and Regulations

Valid Appeal Requests

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 Federal Poverty Level (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)).

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In New York, a pregnant woman is eligible for Medicaid at a household income of 223% of the federal poverty level (42 CFR § 435.116 (c)(2); NY Department of Social Services Administrative Directive 13ADM-03).

“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)).

For purposes of Medicaid eligibility, the family size of a pregnant woman includes the pregnant woman and the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

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 \$20,090.00 for a three-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).

Most adults who are determined to be fully eligible for Medicaid are guaranteed 12 months of Medicaid coverage, even if they lose Medicaid eligibility because of any income increases or updates they make to their Marketplace account. This 12-month period is referred to as “continuous coverage” and is based on the start date of the original Medicaid eligibility determination or the date of a later Medicaid eligibility determination based on modified adjusted gross income (N.Y. Soc. Serv. Law § 366(4)(c)). There are limited exceptions to this rule, such as not being a resident of New York State or failing to provide a valid social security number (*id.*).

Legal Analysis

The first issue under review is whether your request for review of the May 7, 2015 and May 11, 2015 notices of eligibility determination can be reviewed by the NY State of Health Appeals Unit.

Individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by the Marketplace. You requested a review of the findings in your case on October 26, 2015. Because your request for review was not made within 60 days of the May 7, 2015 and May 11, 2015

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notices of eligibility determination, your request was untimely with regard to those determinations and the findings in those determinations will not be reviewed. Your request was timely with regard to the October 27, 2015 eligibility determination.

The second issue under review is whether the Marketplace properly determined that you were eligible only to enroll in a qualified health plan (QHP) at full cost, and no longer eligible for Medicaid, effective December 1, 2015.

You were determined to be only conditionally eligible for Medicaid through the Marketplace, effective May 1, 2015, based on the information contained in the application submitted on May 6, 2015. This application listed a household income of \$0.00 for the month of May 2015, and further listed that you were pregnant and expecting one child. The application submitted on May 6, 2015 also indicated that you were requesting retroactive coverage for the months of February, March, and April 2015. Your eligibility was conditional upon production of proof of your income for the months you were seeking retroactive coverage.

No appeal was filed within 60 days of the May 7, 2015 and May 11, 2015 notices of eligibility determination; therefore, the conditional nature of your eligibility for Medicaid will not be reviewed.

Your application was modified on October 26, 2015, and your expected annual household income was listed as \$81,680.00 for the 2015 tax year.

Since your Medicaid coverage was conditional at the time you submitted your modified application for health insurance, your Medicaid eligibility was properly redetermined based on the updated income information. You were not entitled to continuous coverage under N.Y. Soc. Serv. Law § 366(4)(c).

Medicaid can be provided through the Marketplace to pregnant women who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 223% of the federal poverty level (FPL) for the applicable family size. On the date of your application, the relevant FPL was \$20,090.00 for a three-person household, consisting of you, your spouse, and your unborn child.

Since \$81,680.00 is 406.57% of the 2015 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Therefore, the October 27 and October 28, 2015 notices of eligibility determination are **AFFIRMED**.

Decision

Your appeal with regard to the May 7, 2015 and May 11, 2015 notices of eligibility determination is **DISMISSED**.

The October 27 and October 28, 2015 notices of eligibility determination are **AFFIRMED**.

Effective Date of this Decision: November 25, 2015

How this Decision Affects Your Eligibility

You remain eligible to enroll in a qualified health plan at full cost.

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

Your appeal with regard to the May 7, 2015 and May 11, 2015 notices of eligibility determination is **DISMISSED**.

The October 27 and October 28, 2015 notices of eligibility determination are **AFFIRMED**.

You remain eligible to enroll in a qualified health plan at full cost.

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:

