



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

Notice of Decision

Decision Date: April 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Numbers: AP000000005043, AP000000005171

[REDACTED]

Dear [REDACTED],

On January 14, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 27, 2015 eligibility determination and disenrollment notice, and the October 28, 2015, October 31, 2015, and November 10, 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 and the Account ID at the top of this notice.

Legal Authority

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

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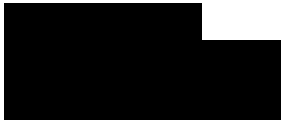


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Decision Date: April 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Numbers: AP000000005043, AP000000005171



Issues

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

Are you eligible for your enrollment in your current Medicaid Managed Care plan (Independent Health) to be extended to May 31, 2016?

Did the Marketplace properly find that you were ineligible to receive assistance in paying medical bills accrued from June 1, 2014 to August 31, 2014?

Did the Marketplace properly determine that you were eligible for \$49.00 or \$74.00 per month in advance payments of the premium tax credit, as well as cost-sharing reductions, and no longer eligible for Medicaid, effective December 1, 2015?

Procedural History

You first applied for health insurance and financial assistance through the Marketplace on September 5, 2014.

After several request for additional information, on December 1, 2014, the Marketplace issued an eligibility determination based in part on documents you had submitted and on your October 1, 2014 application. It stated that you were eligible, and your spouse was conditionally eligible, for Medicaid effective September 1, 2014.

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Also on December 1, 2014, the Marketplace issued an eligibility determination based in part on documents you had submitted and on your November 3, 2014 application. It stated that you were eligible, and your spouse was conditionally eligible, for Medicaid, effective November 1, 2014.

On December 4, 2014, the Marketplace issued a notice stating that you were no longer eligible for Medicaid, but that your coverage under Medicaid would continue until October 31, 2015. This eligibility was effective December 1, 2014. You were subsequently enrolled in a Medicaid Managed Care plan through New York State Catholic Health Plan, Inc. (Fidelis).

However, in eligibility determinations filed on December 19, 2014, December 23, 2014, December 24, 2014, and February 19, 2015, the Marketplace stated that you were not eligible for Medicaid, but that you were instead eligible to enroll in a qualified health plan and to receive advance payments of the premium tax credit (APTC).

On January 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 24, 2014 eligibility determination.

The decision rendered by the Appeals Unit on April 27, 2015 in response to this appeal found that your eligibility for Medicaid should have continued under the 12-month "continuous coverage" period, and that you were eligible for continuous coverage through Medicaid effective September 1, 2014 and continuing for 12 months. Your coverage under Medicaid was reinstated for the remainder of this 12-month period.

On April 30, 2015, the Marketplace issued a notice of eligibility determination stating that your eligibility had been redetermined and that you were eligible for Medicaid effective January 1, 2015; your "current coverage" would end on April 30, 2015. The decision did not specify if the coverage referred to was Medicaid or the qualified health plan you had previously been found eligible for.

Also on April 30, 2015, the Marketplace issued a disenrollment notice, stating your coverage in the qualified health plan would end on April 30, 2015. Also on April 30, 2015, the Marketplace issued a confirmation notice stating your enrollment in Medicaid "will begin on January 1, 2015" and the enrollment in a Medicaid Managed Care plan provided through Fidelis would begin on June 1, 2015.

However, on May 1, 2015, the Marketplace then issued a disenrollment notice stating that "your request has been processed," and that your coverage through Fidelis would end effective May 31, 2015. Also on May 1, 2015, the Marketplace issued a confirmation notice stating that you had been enrolled in a new Medicaid Managed Care plan, through Independent Health Association, effective June 1, 2015.

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On September 17, 2015, the Marketplace issued a notice advising you that it was time to renew your coverage through the Marketplace, and directing you to update your account between October 16, 2015 and November 15, 2015 in order for your plan to become effective with no gap in coverage.

Your account was then modified several times.

On October 27, 2015, the Marketplace redetermined your eligibility for financial assistance. That determination found you eligible to receive up to \$130.89 per month in APTC, as well as cost-sharing reductions, effective December 1, 2015.

Also on October 27, 2015, the Marketplace issued a notice of disenrollment, ending your enrollment in your Medicaid Managed Care plan through Independent health, effective November 30, 2015.

On October 28, 2015 and October 31, 2015, the Marketplace redetermined your eligibility for financial assistance. Those determinations found you eligible to receive up to \$74.00 per month in APTC, as well as cost-sharing reductions, effective December 1, 2015.

That same day a disenrollment notice was issued ending your coverage through your Medicaid Managed Care plan effective November 30, 2015.

Also on that day you contacted the Marketplace's Account Review Unit and appealed your eligibility and the level of APTC you were found eligible to receive.

On November 10, 2015, the Marketplace issued an eligibility determination stating that you were newly eligible to receive APTC in the amount of \$49.00 per month, as well as cost-sharing reductions, effective December 1, 2015.

On November 12, 2015, you enrolled in a silver level qualified health plan with a premium responsibility of \$350.35 per month, with a start date of December 1, 2015.

Also on November 12, 2015, you contacted the Marketplace's Account Review Unit and appealed your disenrollment from your Medicaid Managed Care plan.

On December 11, 2015, the Marketplace issued an eligibility determination based on your December 10, 2015 updated application, stating that you were eligible to receive up to \$110.00 per month in APTC, as well as cost-sharing reductions, effective January 1, 2016.

Also on December 11, 2015, the Marketplace issued a denial of your request for assistance in paying medical bills during the period from June 1, 2014 to August 31, 2014, because the program for which you were eligible (i.e. a qualified health plan with or without APTC) could not retroactively pay for medical bills.

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On December 29, 2015, an enrollment confirmation letter was issued confirming your enrollment in a gold level qualified health plan with a premium responsibility of \$311.21 per month with a start date of February 1, 2016.

On January 14, 2016, 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 are seeking insurance for yourself.
- 2) You submitted a copy of a November 10, 2014 letter from the Social Security Administration that stated you were entitled to monthly disability benefits beginning July 2014. You were to receive your first payment of \$6,560.00 on or about November 16, 2014, which would represent your entitlements for July 2014 to October 2014. You would thereafter receive \$1,640 per month on or about the second Wednesday of the month, beginning December 14, 2014.
- 3) You expect to file your 2015 federal income tax return as married filing jointly, and claim no dependents.
- 4) According to your February 18, 2015 application, your expected annual earnings for the upcoming year included \$19,680.00 in Title II benefits, \$1,944.00 in additional annual benefits, and \$2,382.49 in annual earnings from your spouse.
- 5) In your second October 27, 2015, application you attested to an annual household income of \$36,000.00, which included income earned by your spouse.
- 6) In your October 27, 2015 application you stated that you were receiving \$19,200.00 annually in Social Security Title II benefits. In your November 6, 2015 application, you also added that you received \$1,920.00 annually in additional income.
- 7) According to the November 9, 2015 application, you attested to an expected household income of \$37,920.00. Your spouse did not need insurance through the Marketplace.

- 8) According to your December 10, 2015 application you attested to an annual household income of 37,760.00. You testified that, at the time you submitted your application, this income was an accurate reflection of your expected income for the 2015 tax year.
- 9) Your most recent application on December 10, 2015 stated that your spouse currently received \$16,640.00 in earned income.
- 10) You currently reside in Erie County.

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

Applicable Law and Regulations

Medicaid for Adults between the Ages of 19 and 65

Medicaid through the Marketplace can be provided 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), 435.911(b)(1), 435.603(d)(4); NY Social Services 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 applications that were submitted between February 18, 2015 and December 10, 2015, that was the 2015 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse (42 CFR § 435.603 (f)(4)).

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

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original Medicaid eligibility determination, or the date of a subsequent Medicaid eligibility determination, based on modified adjusted gross income (NY Social Services Law § 366(4)(c)).

Retroactive Coverage

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)).

Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally 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 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 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 200% but less than 250% of the 2014 FPL, the expected contribution is between 6.34% and 8.10% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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)).

Legal Analysis

The first issue under review is whether you would be eligible for your enrollment in your current Medicaid Managed Care plan (Independent Health) to be extended to May 31, 2016.

On January 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 24, 2014 eligibility determination. The decision rendered after that appeal found you eligible for continuous coverage through your Medicaid Managed Care plan, effective September 1, 2014 and continuing for 12 months.

Under New York State law, once a person is eligible for Medicaid, and again after every redetermination of Medicaid eligibility, that eligibility generally continues for 12 months from the date of each determination, even if the household income subsequently rises above 138% of the FPL. This provision is called "continuous coverage." They will be enrolled or remain in their Medicaid plan with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid social security number, or having third party health insurance.

Twelve months from September 1, 2014 would mean you would generally remain eligible for continuous coverage under your Medicaid Managed care plan at least until August 31, 2015.

However, subsequent decisions found that you continued to be eligible for Medicaid effective October 1, 2014 and November 1, 2014. Each decision served to extend your continuous coverage under Medicaid; therefore, as of the

December 1, 2014 eligibility determination, you would have remained eligible on a financial basis for continuous coverage under Medicaid until October 31, 2015.

On May 1, 2015, the Marketplace issued a disenrollment notice terminating your coverage through your Medicaid Managed Care plan effective May 31, 2015, apparently because you chose a different Medicaid Managed Care plan in which to enroll.

The 12-month continuous coverage under Medicaid, even when your income increases to a level where ordinarily you would no longer be eligible for such coverage, applies to your overall eligibility for Medicaid; it does not apply to your enrollment in any specific Medicaid Managed Care plan.

Therefore you would not be entitled to continuous coverage under your current Medicaid Managed Care plan until May 31, 2016, and your overall coverage under Medicaid should have ended on October 31, 2015, barring a new decision finding you financially eligible.

However, in the renewal notice sent to you on September 17, 2015, the Marketplace stated your eligibility would not change until December 1, 2015, instead of November 1, 2015.

Therefore, in order to assure you are not left with a gap in coverage through no fault of your own, it is determined that your eligibility to remain enrolled in your Medicaid Managed Care plan extended to November 30, 2015.

The second issue is whether the Marketplace properly found that you were ineligible to receive assistance in paying medical bills accrued from June 1, 2014 to August 31, 2014.

In the December 11, 2015 notice, the Marketplace issued a denial of your request for assistance in paying medical bills during the period from June 1, 2014 to August 31, 2014, because the program for which you were eligible could not retroactively pay for medical bills. At the time that decision was issued, the Marketplace was acting under the misapprehension that you were not eligible for Medicaid, and denied your request accordingly, because you would only be eligible for this additional coverage if you were eligible for Medicaid.

Your possible financial eligibility for this additional benefit was not considered. However, as noted above, you were found eligible for Medicaid effective September 1, 2014. Your request for retroactive coverage under Medicaid should therefore have been considered on a financial basis for the three months immediately preceding that eligibility start date. Since it was not, this matter must be returned to the Marketplace for consideration of your request for retroactive Medicaid assistance in paying medical bills accrued from June 1, 2014 to August 31, 2014, based on your monthly income for that period. It is noted that you were

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not yet receiving your Social Security benefits during that period, so your household income was much lower than it currently is.

The third issue is whether the Marketplace properly determined that you were eligible for either \$49.00 or \$74.00 per month in advance payments of the premium tax credit (APTC), along with cost-sharing reductions (CSR), effective December 1, 2015, and ineligible for Medicaid.

On November 9, 2015, you submitted the last application that would affect your eligibility for December 2015. In that application, you attested to expected household annual income for 2015 of \$37,920.00.

According to the record, you expect to file your 2015 tax return as married filing jointly, and will claim no dependents. Therefore, you live a two-person household for purposes of Marketplace eligibility.

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 federal poverty level (FPL) for the applicable family size. On the date of your November 9, 2015 application, that was the 2015 FPL, which is \$15,930.00 for a two-person household.

You would qualify for Medicaid if you met the nonfinancial criteria and had a household income no higher than 138% of the FPL for a two-person household. Since the 2015 federal poverty level for a two-person household is \$15,930.00, you would be eligible for Medicaid at an annual income of up to \$21,984.00.

In your November 9, 2015 application, you attested to an expected household income of \$37,920.00. Therefore, the Marketplace correctly determined that, with a combined total household income of \$37,920.00, you were now over the income threshold of \$21,984.00 for a two-person household in 2015 and no longer eligible for Medicaid.

With regard to the level of APTC for which you are eligible, you reside in Erie County, where the second lowest cost silver plan available for an individual through the Marketplace for 2015 cost \$295.03 per month.

Since an annual income of \$37,920.00 is 241.07% of the 2014 FPL for a two-person household, the expected contribution to the cost of your health insurance premium is 7.79% of income, or \$246.16 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 (\$295.03 per month) minus your expected contribution (\$246.16 per month), which equals \$48.87 per month. Therefore, rounding to the nearest

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dollar, the Marketplace correctly determined you to be eligible for up to \$49.00 per month in APTC.

You were also properly found eligible for CSR, which might mean lower co-pays and deductibles for your coverage. 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 \$37,920.00 is 241.07% of the 2014 FPL for a two-person household, the Marketplace correctly found you to be eligible for cost sharing reductions.

Therefore the November 9, 2015 eligibility determination, which related only to your coverage for December 2015, was correct and is AFFIRMED.

Decision

The October 27, 2015, eligibility determination notice is MODIFIED to reflect that despite your new eligibility for advance premium tax credits you remained eligible for Medicaid until October 31, 2015 through continuous coverage.

The October 28, 2015 and October 31, 2015 eligibility determinations were replaced by the November 9, 2015 eligibility determination and are no longer in effect.

The November 9, 2015 eligibility determination is AFFIRMED.

Effective Date of this Decision: April 4, 2016

How this Decision Affects Your Eligibility

Your eligibility to remain enrolled in your Medicaid Managed Care plan extended to November 30, 2015.

This matter must be returned to the Marketplace for consideration of your request for retroactive Medicaid assistance in paying medical bills accrued from June 1, 2014 to August 31, 2014, based on your monthly income for that period. It is noted that you were not yet receiving your Social Security benefits during that period, so your household income was much lower than now.

You remain eligible to receive up to \$49.00 per month in advance payment of the premium tax credit for December 1, 2015 if you were enrolled in your qualified health plan; however, you may have already reconciled this in your tax return for 2015.

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This decision has no effect on eligibility determinations made after November 10, 2015 and no effect on any level of advance payments of the premium tax credit for 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 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 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
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- By fax: 1-855-900-5557

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Summary

The October 27, 2015, eligibility determination notice is MODIFIED to reflect that despite your new eligibility for advance premium tax credits you remained eligible for Medicaid until October 31, 2015 through continuous coverage.

The October 28, 2015 and October 31, 2015 eligibility determinations were replaced by the November 9, 2015 eligibility determination and are no longer in effect.

The November 9, 2015 eligibility determination is AFFIRMED.

Your eligibility to remain enrolled in your Medicaid Managed Care plan extended to November 30, 2015.

This matter must be returned to the Marketplace for consideration of your request for retroactive Medicaid assistance in paying medical bills accrued from June 1, 2014 to August 31, 2014, based on your monthly income for that period. It is noted that you were not yet receiving your Social Security benefits during that period, so your household income was much lower than now.

You remain eligible to receive up to \$49.00 per month in advance payment of the premium tax credit for December 1, 2015 if you were enrolled in your qualified health plan; however, you may have already reconciled this in your tax return for 2015.

This decision has no effect on eligibility determinations made after November 10, 2015 and no effect on any level of advance payments of the premium tax credit for 2016.

Effective Date of this Decision: date

Legal Authority

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

A Copy of this Decision Has Been Provided To:

