



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

## Notice of Decision

Decision Date: April, 08 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005234

[REDACTED]

Dear [REDACTED]

On February 3, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's October 22, 2015 renewal notice and November 23, 2015, December 19, 2015, and December 20, 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 NY State of Health 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.

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: April, 08 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005234

[REDACTED]

## Issue

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

Did the Marketplace properly determine that you were eligible for Medicaid under the "continuous coverage" policy, effective January 1, 2016?

## Procedural History

In November of 2014, you submitted multiple applications to the Marketplace, in which you attested to various estimated annual incomes.

In the last application you submitted in November 2014, on November 25, 2014, you applied for insurance through the Marketplace for yourself. You attested in that application to an annual household income of \$35,313.70.

On November 28, 2014, the Marketplace issued an eligibility determination notice based on your final November 25, 2014 application. It stated that you were eligible to receive up to \$265.00 per month in advance payments of the premium tax credit; eligible for cost-sharing reductions, provided you selected a silver-level plan; and ineligible for Medicaid, effective January 1, 2015.

On December 9, 2014, the Marketplace issued an eligibility determination notice stating that you had enrolled in an Empire silver-level plan. Your Marketplace enrollment details reflect that you were enrolled in this plan from January 1, 2015 to December 31, 2015.

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No further actions were documented in your account until October 22, 2015, when the Marketplace sent you a renewal notice, stating it was time to renew your health insurance coverage for 2016. The notice further stated that, based on federal and state data sources obtained as of October 2, 2015, you qualified for healthcare coverage under Medicaid, effective January 1, 2016, based on an annual household income between \$0 and \$33,465.00. The notice stated that if you thought the Marketplace had made a mistake, you would need to make any necessary corrections to your account between November 16, 2015 and December 15, 2015 in order for the corrections to be effective January 1, 2016.

Your application was updated eleven times on November 17, 2015. Some of these applications indicated that you were seeking financial assistance; some did not. In these revisions, you attested to a range of annual incomes from \$33,800.04 to \$50,500.00. The first application submitted after the renewal notice was sent to you listed an expected annual household income of \$35,900.04.

The Marketplace prepared preliminary eligibility determinations in response to your multiple applications case stating that you were no longer eligible for Medicaid, but would continue to receive Medicaid coverage “because certain individuals determined eligible for Medicaid remain eligible for benefits for twelve continuous months from the date that they were determined eligible.” This is referred to as the “continuous coverage” policy.

Also on November 17, 2015, you spoke with the Marketplace’s Account Review Unit and appealed the preliminary determinations insofar as they continued your Medicaid eligibility instead of determining you eligible for a different insurance affordability program.

On November 23, 2015, the Marketplace issued an eligibility determination notice stating that you were no longer eligible for Medicaid, but that you would continue to receive Medicaid coverage until December 31, 2016. This eligibility determination was effective January 1, 2016.

Based on subsequent updates to your application submitted on December 18, 2015 and December 21, 2015, the Marketplace issued eligibility redetermination notices on December 19, 2015 and December 22, 2015, each of which again stated that you were no longer eligible for Medicaid, but that you would continue to receive Medicaid coverage until December 31, 2016. The eligibility determinations were effective January 1, 2016.

On February 3, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit. The record was developed during the hearing and remained open, because the Hearing Officer directed you to provide as additional evidence to corroborate your testimony: (1) 2014 tax return, (2) a reasonable record of income and expenses of your business, [REDACTED] on a month to month basis during 2015; and (3) your spouse’s four most recent

earning statements. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On February 4, 2016, you provided (1) your 2014 tax return, (2) a record of month earnings and expenses of your business, [REDACTED] between March 1, 2015 and December 31, 2015, and (3) four earnings statements issued to your spouse from her employer, [REDACTED] between December 11, 2015 and January 22, 2016, to the Appeals Unit via facsimile.

Accordingly, the record was closed on February 4, 2016.

## **Findings of Fact**

A review of the record support the following findings of fact:

- 1) The record reflects that your eligibility for health insurance was reviewed by the Marketplace on October 2, 2015, and you were found prospectively eligible for Medicaid. The income upon which this eligibility determination was based was obtained through state and federal data sources, as disclosed in the notice sent on October 22, 2015, and you were provided an opportunity to update your account should any of the information in the notice be incorrect.
- 2) The record reflects that you were determined prospectively eligible for Medicaid effective January 1, 2016.
- 3) You updated your account eleven times on November 17, 2015, in which you attested to a range of annual household incomes of between \$33,800.04 and \$50,500.00. These updated to your application were within the timeframe provided by the Marketplace to make such corrections. In each instance, the preliminary determinations stated that while you were ineligible for Medicaid coverage, your coverage would continue for 12 months.
- 4) You testified that you believe your income was greater than the eligibility threshold for Medicaid.
- 5) You testified that you made the eleven revisions to your application since you were attempting to remove your Medicaid eligibility in order to become eligible to enroll in a health plan and receive tax credits.
- 6) On February 4, 2015, you provided (1) records reflecting that your business, [REDACTED] received \$17,682.30 in income, after accounting for gross income and expenses between March 1, 2015 and

December 31, 2015, (2) earning statements issued to your spouse by [REDACTED] which reflected that she received a gross income payments of \$1,010.19 on December 11, 2015, December 25, 2015, January 8, 2016 and January 22, 2016, and (3) an unsigned copy of your 2014 tax return in which you reported an adjusted gross income of \$32,796.00.

7) You live in Suffolk County, New York.

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

## **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, when the Marketplace conducts annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, 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 Code of Federal Regulations (CFR) § 155.335(a), (b)).

The Marketplace must send an annual renewal notice that contains the individual's projected eligibility for the upcoming 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 and projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)).

### 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)), NY Social Services Law § 366(1)(b)).

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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 \$24,250.00 for a four-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 by the US Department of Health and Human Services, March 19, 2014).

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 (NY Social Services Law § 366(4)(c)).

## **Legal Analysis**

The issue under review is whether the Marketplace properly found you eligible for continuing coverage under Medicaid, effective January 1, 2016.

On October 22, 2015, when the required annual renewal notice was issued, the Marketplace determined, based on federal and state data sources that your income was between \$0.00 and \$33,465.00. Therefore, the Marketplace found that you were prospectively eligible for Medicaid effective January 1, 2016.

You credibly testified, however, that this income range was inaccurate and you should not have been found eligible for Medicaid. The record reflects that you revised your application, within the time period requested by the Marketplace, eleven times with a range of attested incomes between \$33,800.04 and \$50,500.00. You testified that you did this because you were seeking to provide an income amount to remove yourself from Medicaid coverage, but also that you do experience some income fluctuation from year to year based on the seasonal nature of your irrigation business.

Indeed, the first application you submitted on November 17, 2015 reflected an anticipated income of \$35,900.04, which you testified was based, in part, on your prior year's income together with your spouse's anticipated income.

According to the record, you are in a four-person household. You plan on filing a 2016 federal income tax return with the tax status of married filing jointly and you will claim your two children as dependents on that 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 (MAGI) that is at or below 138% of the federal poverty level (FPL) for the applicable family size. On the date of the October 22, 2015 renewal notice, the relevant FPL was \$24,250.00 for a four-person household.

A household income of \$35,900.04 is 148.04% of the 2015 FPL, which would result in ineligibility for Medicaid coverage. Since you timely corrected the Marketplace's prospective findings in the renewal notice, the Marketplace should have ignored those prospective findings and redetermined your eligibility for financial assistance based on your updated information. Instead, it acted as if the prospective eligibility was valid, and found that you would remain eligible for Medicaid for 12 months, despite your income being in excess of the program limit.

Therefore, since the November 23, 2015, December 19, 2015, and December 20, 2015 eligibility redetermination notices found you eligible for continuing Medicaid coverage based on a false assumption that you were previously financially eligible for Medicaid, they are incorrect and must be RESCINDED.

At the request of the Hearing Officer, you provided business records reflecting that you received a total income, after expenses, of \$17,682.30 for the period between March 1, 2015 and December 31, 2015. Based on these figures, this would equal an income of approximately \$1,768.23 per month for this ten month period. You testified that you reasonably expected to make the same amount during 2016 since your business is seasonal in that earn much less or no income during the months of January and February. It can, therefore, be reasonably inferred that your anticipated income during 2016 would be \$17,682.30.

You also provided documentation reflecting that your spouse expects to receive approximately \$26,264.94 (\$1,010.19 x 26 weeks) during 2016 in connection with her position at [REDACTED]

Therefore, the credible evidence of record reflects that you expect a household income of \$43,947.24 for the 2016 tax year. Your case is therefore REMANDED to the Marketplace for a redetermination of your eligibility for financial assistance based on a household size of four people, an expected annual household income of \$43,947.24, and a county residence of Suffolk County, New York, for coverage effective January 1, 2016.



## **Decision**

The November 23, 2015, December 19, 2015 and December 20, 2015 eligibility redetermination notices are RESCINDED.

Your case is REMANDED to the Marketplace for a redetermination of your eligibility for financial assistance based on a household size of four people, an expected annual household income of \$43,947.24, and a county residence of Suffolk County, New York, for coverage effective January 1, 2016.

**Effective Date of this Decision:** April, 08 2016

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

This is not a final determination of your eligibility for financial assistance.

It returns your case to the Marketplace for a redetermination of your eligibility for financial assistance, effective January 1, 2016.

You may be required to pay back premiums in order for this coverage to be backdated.

### **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.

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## **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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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The November 23, 2015, December 19, 2015 and December 20, 2015 eligibility redetermination notices are RESCINDED.

Your case is REMANDED to the Marketplace for a redetermination of your eligibility for financial assistance based on a household size of four people, an expected annual household income of \$43,947.24, and a county residence of Suffolk County, New York, for coverage effective January 1, 2016.

This is not a final determination of your eligibility for financial assistance.

It returns your case to the Marketplace for a redetermination of your eligibility for financial assistance, effective January 1, 2016.

You may be required to pay back premiums in order for this coverage to be backdated.

## **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

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

