



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

Notice of Decision

Decision Date: April 15, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005301

[REDACTED]

Dear [REDACTED],

On February 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace’s December 21, 2014, eligibility determination, and December 28, 2014 disenrollment notice.

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 number 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: April 15, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005301

[REDACTED]

Issues

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

Did the Marketplace properly determine that you were newly eligible to receive up to \$299.00 per month in advance payments of the premium tax credit, effective February 1, 2015?

Did the Marketplace properly determine that you were newly eligible for cost-sharing reductions?

Did the Marketplace properly determine that you were not eligible for Medicaid?

Did the Marketplace properly disenroll you from your Medicaid Managed care Plan effective January 31, 2015 with sufficient notice?

Procedural History

On March 23, 2014, the Marketplace received your initial application for financial assistance with your health insurance.

On March 24, 2014, an eligibility determination was made finding you eligible for Medicaid effective March 1, 2014. This determination was made based upon your reported household income of \$7,000.00.

On March 24, 2014, the Marketplace issued a notification confirming your election to receive all of your notices from the Marketplace electronically.

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On December 21, 2014, the Marketplace received your updated application for financial assistance.

That same day an eligibility determination was made finding you newly eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$299.00 per month effective February 1, 2015. That determination further found you ineligible for Medicaid because your household income you provided of \$19,000.00 was over the allowable income limit.

On December 28, 2014, the Marketplace issued a disenrollment notice ending your coverage with Hudson Health Plan, Inc. effective January 31, 2015.

On November 20, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of that eligibility determination as it related to you being found ineligible for Medicaid. You further requested to appeal your disenrollment from your Medicaid Managed Care Plan as you did not believe you were notified that your services under that plan had ended.

On February 12, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and kept open 15 days for you to provide documentation concerning your disenrollment from your Medicaid Managed Care plan. On February 18, 2016, the Marketplace received a one page fax from you demonstrating the disenrollment back to January 31, 2015, the document has been incorporated into the record as (Appellant's Exhibit 1).

Findings of Fact

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

- 1) You testified that you expected to file your 2015 taxes with a tax filing status of single. You will claim no dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) The application that was submitted on December 21, 2014 listed annual household income of \$19,000.00, consisting of income you earn from your employment.
- 4) Your application states that you will not be taking any deductions on your 2015 tax return.

- 5) You testified that you received a letter from your Medicaid Managed Care Plan in November 2015, ending your coverage for services effective January 31, 2015.
- 6) Your account indicates that you receive all of your notices via electronic communication.
- 7) On March 24, 2014, the Marketplace issued a notification confirming your election to receive all of your notices from the Marketplace electronically.
- 8) You testified that you had received plan cards from Hudson Health Plan despite being disenrolled from their coverage, and you used these plan cards for services rendered in the months of January and February 2015.
- 9) On March 24, 2014, an eligibility determination was made finding you eligible for Medicaid effective March 1, 2014. This determination was made based upon your reported household income of \$7,000.00.
- 10) On February 18, 2016, the Marketplace received a one page fax from you demonstrating the disenrollment back to January 31, 2015, the document has been incorporated into the record as (Appellant's Exhibit 1). The document is dated November 16, 2015, and states the Local Department of Social Services has informed Hudson Health Plan that you were no longer eligible for Medicaid. Your coverage under that plan would therefore be ended effective January 31, 2015.
- 11) Your application states that you live in Westchester County.

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

Applicable Law and Regulations

Advance Premium Tax Credit

The advance premium tax credit (APTC) is 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 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:

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- 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 \$ 11,670.00 for a one-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 6.34 % and 4.02% 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 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

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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 2014 FPL, which is \$11,670.00 for a one -person household (79 Fed. Reg. 3593).

Financial eligibility for Medicaid for applicants who *are* currently receiving Medicaid benefits financial eligibility may be based either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year (42 CFR § 435.603(h)(2), *but see* SPA 13-0055-MM3, as approved March 19, 2014).

People who receive or are eligible for Medicaid are not eligible for APTC since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan for 12 months, 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 (N.Y. Soc. Serv. Law § 366(4)(c)).

Medicaid Renewal

In general, the Marketplace must review Medicaid eligibility once every twelve months or “whenever it receives information about a change in a beneficiary’s circumstances that may affect eligibility” (42 CFR § 435.916(a)(1), (d)). The Marketplace must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (42 CFR § 435.916(a)(2)).

The Marketplace must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, the Marketplace must issue a redetermination as provided by the notice, with consideration given to any updates provided by the individual (45 CFR § 155.335(h)).

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An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b)).

Medicaid Managed Care (MMC) plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract (Appendix H(6)(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019, N.Y. Soc. Serv. Law §364-j(1)(c); 18 NYCRR § 360-10.3(h)).

Electronic Notices

Applicants may choose to receive notices and information from the Marketplace by either electronic or regular mail. If the applicant elects to receive electronic notices, the Marketplace must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (45 CFR §155.230(d); 42 CFR §435.918(b)(4)).

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).

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)).

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Generally, gross income does not include “amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer)” (26 USC § 104(a)(3)).

An individual’s income from Social Security benefits is included in their gross income only to the extent that the sum of the person’s IRS-defined “modified adjusted gross income” and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1), (c)(1)(A)).

Legal Analysis

The first issue is whether the Marketplace properly determined that you were eligible for an APTC of up to \$299.00 per month.

The application that was submitted on December 21, 2014, listed an annual household income of \$19,000.00 and the eligibility determination relied upon that information.

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

You reside in Westchester County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$372.40 per month.

An annual income of \$19,000.00 is 162.81% of the 2014 FPL for a one-person household. At 162.81% of the FPL, the expected contribution to the cost of the health insurance premium is 4.60% of income, or \$72.83 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 primary subscriber and one dependent in your county (\$372.40 per month) minus your expected contribution (\$72.83 per month), which equals \$299.57 per month. Therefore, rounding to the nearest dollar, the Marketplace correctly determined you to be eligible for up to \$299.00 per month in APTC.

The second issue is whether you were properly found eligible for cost-sharing reductions. 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 \$19,000.00 is 162.81% of the applicable FPL, the Marketplace correctly found you to be eligible for cost sharing reductions.

The third issue is whether the Marketplace properly determined that you 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 \$11,670.00 for a one-person household. Since \$19,000.00 is 162.81% of the 2014 FPL, the Marketplace properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

The fourth issue under review is whether the Marketplace properly disenrolled you from your Medicaid Managed care Plan effective January 31, 2015.

On March 24, 2014, an eligibility determination was made finding you eligible for Medicaid effective March 1, 2014. This determination was made based upon your reported household income of \$7,000.00.

People who receive or are eligible for Medicaid are not eligible for APTC since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan for 12 months, with limited exceptions. This means that regardless of an increase in income from the previous year, you are guaranteed 12 months of coverage.

Since you were determined eligible for Medicaid effective March 1, 2014, your coverage should have lasted 12 complete months despite any increase in your reported income. With a start date of your Medicaid Managed Care Plan under Hudson Health Plan effective March 1, 2014, your coverage should have run continuously for 12 months until February 28, 2015.

Your account indicates that you chose to receive your notices electronically from the Marketplace. You testified that you did not receive the December 28, 2014 disenrollment notice, and the first time that you had realized that you had been disenrolled from your Medicaid Managed care plan was when you received notification from Hudson Health Plan. On February 18, 2016, the Marketplace received a one page fax from you demonstrating the disenrollment back to January 31, 2015, the document has been incorporated into the record as (Appellant's Exhibit 1).

The document is dated November 16, 2015, and states the Local Department of Social Services has informed Hudson Health Plan that you were no longer eligible for Medicaid. Your coverage under that plan would therefore be ended effective January 31, 2015.

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.

You testified that you had received plan cards from Hudson Health Plan despite being disenrolled from their coverage, and you used these plan cards for services rendered in the months of January, and February 2015.

Applicants may choose to receive notices and information from the Marketplace by either electronic or regular mail. If the applicant elects to receive electronic notices, the Marketplace must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account.

You testified that you had received plan cards from Hudson Health Plan despite being disenrolled from their coverage, and you used these plan cards for services rendered in the months of January and February 2015.

Absent evidence to the contrary the Marketplace did not deliver proper notice electronically via your e-mail account in the form of the December 28, 2014 disenrollment notice. Additionally, the date on that notice for the end date of your coverage should be February 28, 2015, not January 31, 2015.

Since the December 21, 2014, eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$299.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid it was proper, however the effective date of this determination is MODIFIED to be effective after your last date of eligibility for Medicaid which would be March 1, 2015.

Since the Marketplace's December 28, 2014 disenrollment notice ended your coverage with Hudson Health plan on January 31, 2015 and not February 28, 2015 it is RESCINDED. The last day of your Medicaid Managed Care plan is February 28, 2015.

Decision

The December 21, 2014, eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$299.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, however the effective date of this determination is MODIFIED to be effective after your last date of eligibility for Medicaid which would be March 1, 2015.

The Marketplace's December 28, 2014, disenrollment notice ended your coverage with Hudson Health plan on January 31, 2015 and not February 28, 2015, it is RESCINDED.

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Effective Date of this Decision: April 15, 2016

How this Decision Affects Your Eligibility

You remain eligible for up to \$299.00 in APTC effective March 1, 2015.

You are eligible for cost-sharing reductions effective March 1, 2015.

You are eligible for Medicaid under your Medicaid Managed Care Plan until February 28, 2015.

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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NY State of Health Appeals
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- By fax: 1-855-900-5557

Summary

The December 21, 2014, eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$299.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, however the effective date of this determination is MODIFIED to be effective after your last date of eligibility for Medicaid which would be March 1, 2015.

The Marketplace's December 28, 2014, disenrollment notice ended your coverage with Hudson Health plan on January 31, 2015 and not February 28, 2015 it is RESCINDED.

You remain eligible for up to \$299.00 in APTC effective March 1, 2015.

You are eligible for cost-sharing reductions effective March 1, 2015.

You are eligible for Medicaid under your Medicaid Managed Care Plan until February 28, 2015.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

