



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 Number: AP000000005433

[REDACTED]

Dear [REDACTED]

On March 31, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's failure to issue a timely decision regarding your child's eligibility for retroactive Medicaid.

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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## Decision

Decision Date: April 4, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005433



## Issue

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

Did the Marketplace timely determine and notify you of your child's eligibility for retroactive Medicaid for the month of August 2014?

## Procedural History

On October 1, 2014, the Marketplace issued a notice of eligibility determination stating that your newborn child was conditionally eligible for Medicaid and needed to provide additional information about benefit information of Third Party Health Insurance before October 18, 2014 to confirm his eligibility.

According to the Eligibility Determination details in your Marketplace account, your newborn's conditional eligibility was effective September 1, 2014 to October 31, 2014.

According to the Eligibility Determination details in your Marketplace account, you were eligible to enroll in Medicaid from September 1, 2014 to December 31, 2014, and your infant child was found eligible for Medicaid from November 1, 2014 to December 31, 2014.

On December 2, 2014, the Marketplace issued a notice of eligibility redetermination that stated you were eligible for Medicaid, effective September 1, 2014, and your infant child was eligible for Medicaid as of November 1, 2014, and you both needed to pick a plan.

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On December 15, 2014, the Marketplace issued an enrollment notice confirming that you and your infant child had selected UnitedHealthcare of New York, Inc. as your Medicaid Managed Care (MMC) plan. The notice further confirmed that your insurance coverage through Medicaid Fee-For-Services would begin September 1, 2014 and enrollment with UnitedHealthcare of New York, Inc. would begin December 1, 2014; and your infant child's insurance coverage through Medicaid Fee-For-Services would begin November 1, 2014 and enrollment with UnitedHealthcare of New York, Inc. would begin December 1, 2014.

As of your January 12, 2015 updated application, you requested help with paying for medical bills for the past three months.

On January 13, 2015, the Marketplace issued a notice of eligibility redetermination that stated you and your infant child remained eligible for Medicaid, effective January 1, 2015. The notice further informed you that you can choose to stay with your current health plan or pick a new health plan.

Also on January 13, 2015, the Marketplace issued an enrollment notice confirming that you chose to remain with UnitedHealthcare of New York, Inc., with coverage for both of you beginning December 1, 2014.

On February 5 and 10, 2015, your income documents for August 2014 were uploaded to your Marketplace account.

On December 7, 2015, you spoke to the Marketplace's Account Review Unit to check on the status of an incident filed on January 26, 2015 to have your infant child's Medicaid Fee-For-Services backdated to August 1, 2014 to cover bills for his birth.

On December 8, 2015, the Marketplace issued a notice acknowledging your request for an appeal. The notice stated the reason as, "Other" and "Pregnancy back dating for help with medical bill from birth."

On March 31, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was closed at the end of the hearing.

## **Findings of Fact**

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

- 1) According to your Marketplace account as of September 30, 2014, you expected to file your 2014 federal income tax return as head of household with qualifying individual and claim your one child as a dependent.

- 2) According to your Marketplace account and your testimony at hearing, your child was born on August 27, 2014.
- 3) Your infant child was were initially found conditionally eligible for Medicaid as of September 1, 2014.
- 4) According to your September 30, 2014 Marketplace application, you did not indicate that you were seeking help with paying bills for the past three months for yourself or your newborn child.
- 5) You testified that you used the assistance of a certified application counselor (CAC) to complete that application and were not asked if you needed help with paying medical bills before September 2014.
- 6) According to your November 3, 2014 updated Marketplace application, you again did not indicate that you were seeking help with paying bills for the past three months for yourself or your newborn child.
- 7) You testified that you used the assistance of the same CAC to update that application and were not asked if you needed help with paying medical bills before September 2014.
- 8) According to your Marketplace account, after you updated your application on January 12, 2015, in which you requested help paying medical bills for the past three months, you requested that the Marketplace file a complaint on your behalf because your infant child needed retroactive Medicaid for the month of August 2014.
- 9) On February 3 and 5, 2015, you faxed duplicate copies of your August 2014 Employee Earnings Report consisting of two reports dated August 6, 2014 and August 21, 2014, which showed you received gross earnings in August 2014 of \$1,275.86 and \$1,347.51 respectively for a total monthly gross income of \$2,623.37 (see, Document [REDACTED] and Document [REDACTED]).
- 10) A note entered on December 7, 2015, which is contained in the Marketplace's Appeal Summary, dated March 2, 2016, states that:

Appellant [ ] contacted marketplace to check on the status of a incident filed on 1/26/2015 ([REDACTED]) to have their MAFFS backdated to 08/01/02014 to cover bills for their son's birth. The request is still pending. The Appellant states they have sent the documents that were required, which were received on 2/10/2015-Document [REDACTED], and have not yet been verified. The Appellant needs to [have] these bills paid. The Appellant is appealing to have their [MAFFS] coverage backdated to 8/1/2014

(see, Document [REDACTED], p. 2).

- 11) You confirmed at the hearing that you are seeking retroactive Medicaid coverage for outstanding hospital and clinic bills relating to your infant child's birth in August 2014 and because these bills have been sent to collection since you cannot afford to pay them on your own.

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

## **Applicable Law and Regulations**

### De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "*De novo review* means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

### Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

The Marketplace is required to provide "timely written notice to an applicant of any eligibility determination" made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

### 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)).

For purposes of Medicaid eligibility, however, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes

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not only the pregnant woman, but also 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).

### Medicaid for Children

A child who is under one year of age is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 223% of the FPL for the applicable family size. (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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). Family or household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year and expects to claim as a tax dependent, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1); 42 CFR § 435.603(f)(1)).

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 at 100% of the FPL was \$15,730.00 for a two-person household (79 Fed. Reg. 3593 (2014)).

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)).

## **Legal Analysis**

The issue is whether the Marketplace timely and properly determined your child's eligibility for retroactive Medicaid for August 2014 and timely and properly notified you of that determination.

Initially, we note that, in your September 30, 2014 and November 3, 2014 Marketplace applications, you did not request help with paying for medical bills

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for the past three months and, therefore, the Marketplace did not err in not determining your child's eligibility at that time.

However, you credibly testified that you needed retroactive Medicaid for August 2014 when both applications were prepared by a CAC, but were not asked that question by the CAC. You further credibly testified and the record reflects that the basis for your January 26, 2015 complaint was because you were seeking a determination regarding your child's eligibility for retroactive Medicaid for the month of August 2014. The record also reflects that you had submitted the requisite August 2014 income documents on February 3 and 5, 2015 for the Marketplace to prepare such a determination.

The record does not contain any notice in response to your request. However, it does contain a December 7, 2015 entry on the March 2, 2016 Appeal Summary in which the Marketplace acknowledges receipt of the complaint and a December 8, 2015 notice in which it acknowledges your appeal request and identifies the issue on appeal as "Other" and "Pregnancy back dating for help with medical bill from birth."

In this particular case, the lack a notice on the issue of your request for retroactive Medicaid does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The December 7, 2015 note entered on the March 13, 2016 Appeal Summary acknowledges the Incident Report in which you requested retroactive Medicaid has not been resolved and the text of the December 8, 2015 notice in which it states the basis for your permit the inference that the Marketplace did not provided timely and proper notice of its denial of your request for retroactive Medicaid for August 2014. Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a formal denial of your request for retroactive Medicaid had a notice issued. Therefore, the Appeals Unit issues this decision on the merits.

The issue under review is whether your child is eligible for retroactive Medicaid for the month of August 2014.

Your child was in a two-person household in August 2014. This is because, while pregnant, your unborn child was counted as a member of your household; and once born on August 27, 2014, he became a tax dependent. This is also because your September 30, 2014 application listed that you expected to file your 2014 federal taxes with a tax filing status of head of household with qualifying individual and expected to claim your child as a dependent on that 2014 tax return.

Your child was initially found conditionally eligible for Medicaid in the October 1, 2014 eligibility determination notice. According to this notice, his coverage with  
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Medicaid began September 1, 2014. He was later found to be Medicaid eligible without condition as of November 1, 2014, by the December 2, 2014 notice of eligibility redetermination.

You testified that you are seeking to have your child's Medicaid coverage retroactively applied for the month of August 2014.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual's application if the individual received medical services that would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. To be eligible for Medicaid retroactively in August 2014, your child would have needed to meet the non-financial criteria and have an income no greater than 223% of the applicable FPL of \$15,730.00, which is \$35,078.00 per annum and \$2,924.00 per month.

There is no indication in the record that your child would have been ineligible for Medicaid based on non-financial criteria during August 2014.

You testified that you received two paychecks in August 2014. You submitted two earning reports, dated August 6, 2014 and August 21, 2014, for a gross earnings received that month totaling \$2,623.37. Therefore, the record indicates that in the month of August 2014, your household had a monthly household income of \$2,623.37.

Since your income of \$2,623.37 was less than the \$2,924.00 monthly allowable Medicaid limit for August 2014, your case is RETURNED to the Marketplace to consider your request for retroactive coverage for your child based on a household size of two people and household income of \$2,623.37 for the month of August 2014.

## **Decision**

The Marketplace's notices of eligibility determination dated October 1, 2014, and redetermination dated December 2, 2014, REMAIN IN EFFECT.

Your case is RETURNED to the Marketplace to consider your child's eligibility for retroactive Medicaid coverage based on a household size of two people and household income of \$2,623.37 for the month of August 2014.

This Decision does not affect any subsequent determinations made by the Marketplace in 2015 and forward.

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**Effective Date of this Decision:** April 4, 2016

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

Your child was eligible for Medicaid as of September 1, 2014 and had the condition on his eligibility removed as of November 1, 2015.

This is not a final determination of your child's eligibility. Your case is being sent back to the Marketplace to redetermine his eligibility for retroactive Medicaid in the month of August 2014 based on the complete record.

### **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 Marketplace's notices of eligibility determination dated October 1, 2014, and redetermination dated December 2, 2014, REMIAN IN EFFECT.

Your case is RETURNED to the Marketplace to consider your child's eligibility for retroactive Medicaid coverage based on a household size of two people and household income of \$2,623.37 for the month of August 2014.

This Decision does not affect any subsequent determinations made by the Marketplace in 2015 and forward.

Your child was eligible for Medicaid as of September 1, 2014 and had the condition on his eligibility removed as of November 1, 2015.

This is not a final determination of your child's eligibility. Your case is sent back to the Marketplace to redetermine his eligibility for retroactive Medicaid in the month of August 2014 based on the complete record.

## **Legal Authority**

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

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

