



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

## Notice of Decision

Decision Date: April 12, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005786

[REDACTED]

Dear [REDACTED],

On March 15, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 29, 2015 eligibility determination and enrollment notices.

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 federal regulation 45 CFR § 155.545(b).

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## Decision

Decision Date: April 12, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005786



## Issue

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

Did the Marketplace properly determine that you, your spouse and two eldest children were eligible to enroll in the Essential Plan as of December 29, 2015?

Did the Marketplace properly determine that your two youngest children were eligible to enroll in Child Health Plus at no cost effective as December 29, 2015?

Did the Marketplace properly determine that you, your spouse and four children were not eligible for Medicaid as of December 29, 2015?

Did the Marketplace properly determine that you, your spouse and two eldest children's start date of coverage in the Essential Plan should be February 1, 2016?

Did the Marketplace properly determine your two youngest children's start date of coverage in their Child Health Plus plan should be February 1, 2016?

## Procedural History

On October 23, 2015 the Marketplace issued a notice that it was time to renew your family's health insurance for 2016. That notice stated that based on information from federal and state sources, the Marketplace could not make a decision about whether you would qualify for financial help paying for your health

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coverage, and that you needed to update your account by December 15, 2015 or you might lose the financial assistance you are currently receiving.

No updates were made to your account by December 15, 2015.

On December 21, 2015, the Marketplace issued an eligibility determination notice that your three youngest children were not eligible for financial assistance or cannot enroll in a qualified health plan at full cost through NY State of Health. The notice states that you failed to respond to the renewal notice and that their eligibility will end December 31, 2015.

On December 21, 2015, the Marketplace issued an eligibility determination notice that you, your spouse and eldest child were newly eligible to purchase a qualified health plan at full cost through NY State of Health as of January 1, 2016.

On December 28, 2015 your Marketplace account was updated.

On the same day you spoke to the Marketplace Account Review Unit and requested an appeal insofar as your family's enrollment start dates.

On December 29, 2015 the Marketplace issued an eligibility determination stating that you, your spouse and two eldest children eligible to enroll in the Essential Plan with a \$20.00 premium per month. The notice also determined your two youngest children eligible to enroll in Child Health Plus at no cost.

On the same day the Marketplace issued an enrollment notice confirming you, your spouse and two eldest children's enrollment in Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus) and your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan), both with the effective date of February 1, 2016.

On March 15, 2016, your spouse 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 testified that you are applying for health insurance coverage for you, your spouse and four children.
- 2) At the time of your December 28, 2015 Marketplace application, your children's ages were 23, 21, 18 and 14.

- 3) You testified that you plan on filing a 2015 and 2016 federal income tax return with the tax status of married filing jointly and will be claiming four dependents on both tax returns.
- 4) According to your December 28, 2015 Marketplace application and testimony, your expected annual household income is \$51,757.90 and your monthly household income is consistent.
- 5) On October 23, 2015 the Marketplace issued a notice that it was time to renew your health insurance for 2016. That notice stated that you needed to update your account by December 15, 2015 or you might lose the financial assistance that is currently be received.
- 6) Your Marketplace account indicates that you receive notices from the Marketplace via electronic mail.
- 7) You testified that you did not receive a notice from the Marketplace requesting that you update the information in your Marketplace to ensure that your family's health insurance coverage would continue.
- 8) You testified that you became aware that your family's financial assistance was being discontinued when you contacted the Marketplace at the end of December 2015.
- 9) According to your Marketplace account, the information in your Marketplace Account was updated on December 28, 2015.
- 10) On December 29, 2015 the Marketplace issued an enrollment notice confirming you, your spouse and two eldest children's enrollment in Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus) and your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan), both with the effective date of February 1, 2016.
- 11) You testified that you want your entire family's health insurance coverage to start on January 1, 2016, not February 1, 2016.
- 12) You testified that you did not incur any medical expenses for the month of January 2016.

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

## **Applicable Law and Regulations**

### Essential Plan

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).

The Marketplace must generally determine an applicant eligible for the Essential Plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), N.Y. Soc. Serv. Law § 369-gg(3)).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

In an analysis of Essential Plan eligibility, the determination is based on the FPL for the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$32,570.00 for a six-person household (80 Fed. Reg. 3236, 3237).

### Child Health Plus

A child under the age of nineteen may be eligible for subsidized coverage through Child Health Plus (CHP) provided (1) he or she lives in a household having a household income at or below 400% of the FPL; (2) is not eligible for medical assistance; (3) is not eligible for other health insurance, and (4) is a resident of New York State (NY PHL § 2511(2)(a-e)).

CHP is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY PHL § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in New York Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child's family household income (NY PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (NY PHL § 2510(9)(d)).

In an analysis of Child Health Plus 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 was \$32,570.00 for a six-person household (80 Fed. Reg. 3236, 3237).

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## 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)), 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 2015 FPL, which is \$32,570.00 for a six-person household (80 Fed. Reg. 3236, 3237).

A child who is at least one year of age but younger than nineteen 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 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York Department of Health Administrative Directive 13 OHIP/ADM-03).

## Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, 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 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the information which the Marketplace will use to redetermine a qualified individual's eligibility for that 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 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 following the year in which the Marketplace provided the redetermination notice, or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)).

## Electronic Notices

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).

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)).

## **Legal Analysis**

The first issue under review is whether the Marketplace properly determined that you, your spouse and two eldest children were eligible for the Essential Plan as of December 29, 2015.

You expect to file your 2016 federal tax return with the tax status of married filing jointly, with your spouse, and claim four dependents on that return. Therefore, you are in a six-person household.

In the application that was submitted on December 28, 2015 you attested to an annual household income of \$51,757.90 and the eligibility determination issued on December 29, 2015 relied on this information.

The Essential Plan is provided through the Marketplace to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$32,570.00 for a six-person household. Since \$51,757.90 is 158.91% of the 2015 FPL, the Marketplace properly found you, your spouse and two eldest children to be eligible for the Essential Plan.

The second issue is whether the Marketplace properly determined that your two youngest children were eligible to enroll in Child Health Plus at no as of December 29, 2015.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the FPL. Households with an income below 160% are responsible for a \$0.00 per month Child Health Plus premium payment. On the date of your application, the relevant FPL was \$32,570.00 for a six-person household. Since \$51,757.90 is 158.91% of the 2015 FPL, the Marketplace properly found your two youngest child to be eligible for Child Health Plus with a \$0.00 per month premium payment.

The third issue is whether the Marketplace properly determined that you, your spouse and four children were not eligible 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

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modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size.

Medicaid can be provided through the Marketplace to children between the ages of one and nineteen who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 154% of the FPL for the applicable family size.

On the date of your application, the relevant FPL was \$32,570.00 for a six-person household. Since \$51,757.90 is 158.91% of the 2015 FPL for a six-person household, the Marketplace properly found you, your spouse and children to be not eligible for Medicaid.

The fourth issue under review is whether the Marketplace properly determined that you, your spouse and two eldest children's enrollment in the Essential Plan, and your two youngest children's Child Health Plus enrollment to be effective February 1, 2016.

The Marketplace must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. The Marketplace must issue a renewal notice that contains the individual's eligibility. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 23, 2015, the Marketplace issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources, the Marketplace could not make a decision about whether or not you qualify for financial help with paying for your health coverage. You were asked to update the information in your account by December 15, 2015, or the financial help you were receiving might end.

Because there was no timely response to this notice, your family's eligibility for financial assistance and was terminated December 31, 2015.

However, you testified and the record reflects that you elected to receive alerts regarding notices from the Marketplace electronically. You credibly testified that you did not receive an electronic alert regarding the eligibility determination notice, which directed you to update the information in your Marketplace account. There is no evidence in your account documenting that any email alert was sent to you regarding the need to renew your application.

Therefore, it is concluded that the Marketplace did not give you the proper notice that you needed to update your account.

You first renewed your eligibility for financial assistance through the Marketplace for 2016 on December 28, 2015, and therefore the information that would have been used had you been timely informed of the need to update your account, as stated in the renewal notice.

Therefore, the December 29, 2015, notice of enrollment is MODIFIED to state that you, your spouse and two eldest children's enrollment in Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus) and your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan) shall have an effective date of January 1, 2016.

## **Decision**

The December 29, 2015 Marketplace eligibility determination is AFFIRMED.

The December 29, 2015, notice of enrollment is MODIFIED to state that you, your spouse and two eldest children's enrollment in Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus) and your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan) shall have an effective date of January 1, 2016.

**Effective Date of this Decision:** April 12, 2016

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

This decision does not change your family's eligibility for financial assistance.

The effective date of you, your spouse and two eldest children's Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus) is January 1, 2016.

The effective date of your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan) is January 1, 2016.

You may be responsible for additional health insurance premiums in order to effectuate this coverage.

## **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

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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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The December 29, 2015 Marketplace eligibility determination is **AFFIRMED**.

The December 29, 2015, notice of enrollment is **MODIFIED** to state that you, your spouse and two eldest children's enrollment in Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus), and your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan) shall have an effective date of January 1, 2016.

This decision does not change your family's eligibility for financial assistance.

The effective date of you, your spouse and two eldest children's Essential Plan 1 (Empire Blue Cross Blue Shield HealthPlus) is January 1, 2016.

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The effective date of your two youngest children's enrollment in Child Health Plus (UnitedHealthcare Community Plan) is effective date of January 1, 2016.

You may be responsible for additional health insurance premiums in order to effectuate this coverage.

### **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:**

