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

Notice of Decision

Decision Date: July 1, 2016

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000006875

[redacted]

Dear [redacted]

On June 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 5 and 19, 2016 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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Issues

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

> Did NY State of Health determine that you were eligible for the appropriate level of cost-sharing reductions, effective March 1, 2016?
>
> Did NY State of Health properly determine that you were not eligible for Medicaid?

Procedural History

On February 5, 2016, NY State of Health (NYSOH) received your completed application for health insurance. That day, a preliminary eligibility determination was prepared finding you eligible to receive advance payments of the premium tax credit (APTC) of up to $170.00 per month and eligible for cost sharing reductions, effective March 1, 2016. The silver-level qualified health plan you selected that same day had a $1,500.00 annual deductible.

Also on February 5, 2016, you spoke with a representative from NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to the deductible amount in that you wanted it lowered.

On February 6, 2016, NYSOH issued notices of eligibility determination and enrollment that were consistent with the February 5, 2016 preliminary determination and the health plan you selected, MetroPlus Health SilverPlus Plan, both effective March 1, 2016. The February 6, 2016 enrollment notice confirmed that your annual deductible amount was $1,500.00.

On February 19, 2016, you renewed your appeal insofar as the $1,500.00 annual deductible was not affordable.

On February 20, 2016, based on your February 19, 2016 updated application, NYSOH issued a notice of eligibility redetermination that stated you were eligible to receive APTC of up to $179.00 per month and were eligible for cost sharing reductions, effective April 1, 2016.

Also on February 20, 2016, NYSOH issued an enrollment notice confirming your silver-level qualified health plan selection, MetroPlus Health SilverPlus Plan, with an annual deductible of $1,500.00.

On June 29, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed that same day after your four-page facsimile was received and made part of the record as "Appellant's Exhibit A."

Findings of Fact

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

1) You testified that you expect to file your 2016 taxes with a tax filing status of single and will not be claiming any dependents on that tax return.

2) The application that was submitted on February 19, 2016 listed annual household income of $28,600.00, consisting solely of your earnings from employment. You testified that this amount was correct at the time, but may be less because you took days off from work without pay in May and June 2016.

3) You testified, and provided documentation, that your monthly income for May 2016 was $2,030.70; and for June 2016 was $2,428.03 (*see* Appellant's Exhibit A).

4) You testified that you have already paid $600.00 to $700.00 in co-payments to the various medical providers you treat with routinely and cannot afford to keep paying copays until you reach $1,500.00.

5) Your application states that you live in Bronx County, New York.

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)).

Cost Sharing Reductions

Cost sharing reductions are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (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)).

Levels of Cost Sharing Reductions

The Marketplace directs insurers to offer three levels of silver-level qualified health plans, in addition to a full-cost plan, which provide varying levels of financial assistance, called "cost-sharing reductions," using the following categories:

(1) Those individuals with an annual household income that is at least 100% but less than or equal to 150 % of the federal poverty level (FPL),

(2) Those individuals with an annual household income that is greater than 150% but less than or equal to 200% of the FPL, and

(3) Those individuals with an annual household income that is greater than 200 but less than or equal to 250% of the FPL (*see* 45 CFR § 155.305(g)(2), 45 CFR § 155.305(g)(3)).

Each category listed above gives a different level of cost sharing reductions, so an individual would receive different amounts of financial assistance based on the level of their income (*see* 45 CFR § 156.420). These subsidies reduce the deductibles, copayments, coinsurance, and other out-of-pocket expenses that people eligible for cost sharing reductions pay when they use benefits covered by their health plan.

Medicaid

Medicaid can be provided through NYSOH 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)).

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 2016 FPL, which is $11,880.00 for a one-person household (81 Fed. Reg. 4036).

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).

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)).

Legal Analysis

You updated your application on February 5, 2016 and February 19, 2016 and changed your attested annual household income from $29,250.00 to $28,600.00, which resulted in NYSOH redetermining your eligibility for financial assistance. NYSOH issued its written notices of eligibility determination regarding those

applications on February 6, 2016 and February 20, 2016 respectively. Neither of these notices provided a determination with respect to the specific level of CSR for which you were eligible.

Although NYSOH did not issue a timely notice of eligibility determination with respect to your eligibility for the applicable cost sharing reduction version, this does not prevent the Appeals Unit from reaching the merits of your case on your February 5 and 19, 2016 appeal requests. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit review of NYSOH determinations is conducted on a de novo basis, no deference would have been granted to such written determination had it been issued before you filed your appeal.

In the application that was updated on February 5, 2016 and February 19, 2016, you attested to expected annual household incomes of $29,250.00 and $28,600.00 respectively and the corresponding eligibility determinations relied upon that information.

According to the record, you are in a one-person tax household because you plan on filing your taxes as single and will not be claiming any dependents.

An annual income of $29,250.00 is 248.51% of the 2015 federal poverty level (FPL) of $11,770.00 for a one-person household; and an annual income of $28,600.00 is 242.99% of that same 2015 FPL. Since you met the non-financial requirements and had a household modified adjusted gross income (MAGI) that was at or below 250% of the FPL for the applicable family size, you were correctly found eligible for cost sharing reductions.

Since you were most recently redetermined to be at 242.99% of the 2015 FPL for a one-person household and you were enrolled in an individual's silver-level qualified health plan, you were eligible for the third level of CSR, as provided by 45 CFR § 155.305(g)(2) and 45 CFR § 155.305(g)(3).

The Appeals Unit cannot determine by the information available in your NYSOH account whether your plan does in fact qualify under level three of the federal regulations.

Therefore, this matter is RETURNED to NYSOH to confirm that your plan complies with the requirements for this level of cost sharing reduction eligibility and to ensure that your health plan properly calculated your benefits.

The second issue is whether NYSOH properly determined that you were ineligible for Medicaid.

Medicaid can be provided through NYSOH 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 $11,880.00 for a one-person household. Since $28,600.00 is 240.74% of the 2016 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

You submitted earning statements that shows in May 2016 you received $2,030.70 in gross earnings, and in June 2016 received $2,428.03 in gross earnings.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is $1,367.00 per month. Since the documentation you provided shows that you earned $2,030.70 in May 2016 and $2,428.03 in June 2016, which monthly incomes are both greater than $1,367.00 monthly income limit, you do not qualify for Medicaid on the basis of monthly income as of the date of your application.

Since the February 20, 2016 eligibility determination notice properly stated that, based on the updated information you provided, you were eligible for up to $179.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for Medicaid, the notice was correct and is AFFIRMED.

Decision

The February 20, 2016 eligibility determination notice is AFFIRMED.

However, this matter is RETURNED to NYSOH to confirm that your plan complies with the federal requirements for level three of cost sharing reduction eligibility and to ensure that your health plan properly calculated your benefits. NYSOH will notify you accordingly.

Effective Date of this Decision: July 1, 2016

How this Decision Affects Your Eligibility

You remain eligible for up to $179.00 in APTC.

You remain eligible for cost-sharing reductions.

However, your case is being sent back to NYSOH to confirm that your plan is applying the correct level of cost sharing reductions and to ensure your benefits are being properly calculated. NYSOH will notify you accordingly.

You are ineligible for Medicaid.

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

Summary

The February 20, 2016 eligibility determination notice is AFFIRMED.

However, this matter is RETURNED to NYSOH to confirm that your plan complies with the federal requirements for level three of cost sharing reduction eligibility and to ensure that your health plan properly calculated your benefits. NYSOH will notify you accordingly.

You remain eligible for up to $179.00 in APTC.

You remain eligible for cost-sharing reductions.

However, your case is being sent back to NYSOH to confirm that your plan is applying the correct level of cost sharing reductions and to ensure your benefits are being properly calculated. NYSOH will notify you accordingly.

You are ineligible for Medicaid.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

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).