



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

Notice of Decision

Decision Date: February 23, 2016

FEB 23 2016

[REDACTED]
Appeal Identification Number: AP000000003521

Dear [REDACTED],

On August 3, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 16, 2015 eligibility determination and apparent non-referral to Appellant's Local Department of Social Services (LDSS).

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 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: February 23, 2016

[REDACTED]
Appeal Identification Number: AP000000003521

Issues

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

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

Did the Marketplace properly determine that you were eligible for cost-sharing reductions, effective July 1, 2015?

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

Procedural History

On May 16, 2015, the Marketplace issued a notice stating that it was time to renew your NY State of Health Coverage. The notice further stated that the Marketplace could not make a decision on whether you qualify for financial assistance in paying for your health coverage based on the information available from federal and state sources. It directed you to update the information in your Marketplace account by June 15, 2015 so that the appropriate decision could be made.

On May 20, 2015, the Marketplace received your application for health insurance in which you attested to an expected yearly income of \$18,240.00.

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On May 21, 2015, the Marketplace issued an eligibility determination notice stating that you were newly eligible for up to \$306.00 per month in advance payments of the premium tax credit (APTC), newly eligible for cost-sharing reductions (CSR) if you selected a silver-level plan, and ineligible for Medicaid. This eligibility determination was effective July 1, 2015. This notice also confirmed that the Marketplace had sent your information to your "local Department of Social Services to determine eligibility for Medicaid on a different basis, including the Excess Income Program."

Also on May 21, 2015, the Marketplace issued a disenrollment notice confirming that your Medicaid coverage under EmblemHealth would end effective June 30, 2015. This notice was issued because you were no longer eligible to remain enrolled in your Medicaid plan.

On May 22, 2015, the Marketplace received a revised application in which you reported a slight increase to your expected yearly income of \$18,960.00.

On May 23, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to receive up to \$299.00 per month in APTC, eligible for CSR, and ineligible for Medicaid. This eligibility determination was effective July 1, 2015. This notice again confirmed that the Marketplace sent your information for to your "local Department of Social Services to determine eligibility for Medicaid on a different basis, including the Excess Income Program."

Also on May 23, 2015, the Marketplace issued a notice confirming your enrollment in an EmblemHealth silver-level plan at a premium rate of \$108.28 per month. The notice further stated that if you paid your first month's premium, your coverage could begin as soon as July 1, 2015.

On June 15, 2015, the Marketplace received an updated application in which you again reported an expected yearly income of \$18,960.00.

On June 16, 2015, Marketplace issued an eligibility redetermination notice stating that you were eligible to receive up to \$299.00 per month in APTC, eligible for CSR, and ineligible for Medicaid. This eligibility determination was effective July 1, 2015.

On June 17, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal of the June 16, 2015 eligibility determination insofar as you were found ineligible for Medicaid, and to the extent that you believed your case had not been referred to your Local Department of Social Services (LDSS) and because you were seeking transitional fee-for-service Medicaid coverage for a period of five months.

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On July 22, 2015, the Marketplace received copies of: (1) a receipt relating to a installation of a panic button, (2) a premium statement issued by Hartford Casualty Insurance Company in connection with auto insurance coverage for your 2008 BMW 6501 and 2004 Infinity FX35, (3) food receipts issued by Stop & Shop and King Kullen; (4) a premium statement issued by The Hartford in connection with your property insurance at [REDACTED], (5) a statement issued by Douglas Elliman Property Mgmt reflecting amounts charged for maintenance and electric services, (6) several receipts relating to your purchase of prescription medication, and (7) a statement issued by Verizon in connection with your television, internet and phone bundle.

On July 30, 2015, the Marketplace received a signed Authorized Representative Designation Form identifying Peter Travitsky of the New York Legal Assistance Group as your legal counsel during the appeal process.

Also on July 30, 2015, the Marketplace received a copy of (1) a July 29, 2014 eligibility determination notice issued by the Marketplace finding you eligible for Medicaid. The notice also stated that your fee-for-service Medicaid coverage would begin July 1, 2014 and that your coverage under EmblemHealth would begin September 1, 2014, (2) your Social Security Administration Notice of Award issued January 12, 2015, (3) a May 21, 2015 eligibility determination notice issued by the Marketplace finding you newly eligible for APTC and CSR, (4) an e-mail exchange forwarded to you by Alexandra Berke regarding transition from the NY State of Health to the Human Resource Administration (HRA), (5) a Local Commissioner's Memorandum (14 OHIP/LCM-2) regarding "Medicaid Recipients Transferred at Renewal from New York State of Health to Local Departments of Social Services", and (6) General Information System document issued by the Office of Medicaid Management (GIS 06 MA/005) regarding "Purposes of Medicaid Disability Reviews".

On July 31, 2015, the Marketplace received a Memorandum of Law from Peter Travitsky of the New York Legal Assistance Group seeking, among other things, a transfer of your case to LDSS of the HRA and to provide you with five months of fee-for-service Medicaid benefits to allow you to be redetermined for all other categories of Medicaid without a loss of coverage.

On August 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 closed at the end of the hearing.

Findings of Fact

- 1) You testified, and your application reflects, that you expect to file your 2015 taxes with a tax filing status of single. You will not claim any dependents on that tax return.

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- 2) The application that was submitted on June 15, 2015 listed annual household income of \$18,960.00, consisting solely of \$1,580.00 per month you receive in Social Security benefits. You testified that this amount was correct.
- 3) On July 30, 2015, you provided a copy of a Social Security Administration (SSA) Notice of Award issued to you on January 12, 2015. This document confirmed that you were found to have become disabled under the rules of the SSA effective January 1, 2014. The notice further confirmed that you would begin receiving \$1,580.00 per month beginning on or about the second Wednesday of February 2015, and that you would receive this same amount on or about the second Wednesday of each month.
- 4) Your application states that you will not be taking any deductions on your 2015 tax return.
- 5) You were enrolled in an EmblemHealth Medicaid Managed Care (MMC) plan until June 30, 2015.
- 6) On May 20, 2015 and June 15, 2015, the Marketplace found you eligible for advance payments of the premium tax credit and cost-sharing reductions effective July 1, 2015. You were also found ineligible for Medicaid.
- 7) Your counsel stated, and the July 31, 2015 Memorandum of Law reflects, that you were seeking a referral of your case from the NY State of Health to the New York City Human Resource Administration, along with an accompanying five months of Medicaid coverage to facilitate such a transition.
- 8) Your application states that you live in Queens County.

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

Applicable Law and Regulations

Advance Payments of the Premium Tax Credit

Advance payments of the premium tax credit (APTC) are 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 federal 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,

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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:

- 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).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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

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

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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 \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

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).

In general, to qualify for MAGI-based Medicaid through the Marketplace, you must also be one of the following:

- An adult aged 19-64 who is not eligible for Medicare Part A or Part B,
- A pregnant woman or infant,
- A child aged 1-18, or
- A parent or caretaker relative

(45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

If an individual does not fall into one of these categories, he or she may still be eligible for non-MAGI-based Medicaid coverage through their Local Department of Social Services or the New York City Human Resources Administration (see N.Y. Soc. Serv. Law § 366(1)(c)).

In the case of an individual who was enrolled in Medicaid through the Marketplace, but who is determined to be no longer eligible for MAGI-based Medicaid, the Marketplace must generally make such a referral for an individual who is not eligible for MAGI-based Medicaid through the Marketplace if he or she is in receipt of Medicare, is disabled, or is over the age of 65, but is not a parent/caretaker relative. During the referral process, an individual's Medicaid eligibility through the Marketplace, including their enrollment in a Medicaid Managed Care plan or receipt of Premium Payment Assistance, continues until such a time as their eligibility can be redetermined on a non-MAGI Medicaid basis (14 OHIP/LCM-2 effective as of December 1, 2014; GIS 16 MA/04 effective as of January 1, 2016; *see generally* 42 CFR § 435.1200, 42 CFR § 435.930).

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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)).

Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Legal Analysis

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

The application that was submitted on June 15, 2015 listed an annual household income of \$18,960.00 and the eligibility determination relied upon that information.

You are in a one-person household. You expect to file you 2015 income taxes as single and will not claim any dependents on that tax return.

You reside in Queens County, where the second lowest cost silver plan available for an individual through the Marketplace costs \$371.75 per month.

An annual income of \$18,960.00 is 162.47% of the 2014 FPL for a one-person household. At 162.47% of the FPL, the expected contribution to the cost of the health insurance premium is 4.60% of income, or \$72.68 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 an individual in your county (\$371.75 per month) minus your expected contribution (\$72.68 per month), which equals \$299.07 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.

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The second issue is whether you were properly found eligible for cost-sharing reductions (CSR).

CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$18,960.00 is 162.47% of the applicable FPL, the Marketplace correctly found you to be eligible for CSR.

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 \$11,770.00 for a one-person household. Since \$18,960.00 is 161.09% of the 2015 FPL, the Marketplace properly found you to be ineligible for Medicaid through the Marketplace on an expected annual income basis, using the information provided in your application.

Since the June 16, 2015 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 CSR, and ineligible for Medicaid, it is correct and is **AFFIRMED**.

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

You credibly testified and provided documentation reflecting that you have been receiving \$1,580.00 per month in Social Security benefits since February 2015.

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 \$1,353.55 per month. Since your income was \$1,580.00 for both May 2015 and June 2015, you did not qualify for Medicaid on the basis of monthly income when you submitted your revised applications on May 20, 2015 and June 15, 2015, respectively.

However, individuals who are no longer eligible for MAGI-based Medicaid because they are receiving Medicare, are over the age of 65, or are disabled may qualify for Medicaid under non-MAGI standards. The Marketplace is required to refer these individuals to the Local Department of Social Services (LDSS) or the New York City Human Resources Administration for redetermination of their Medicaid eligibility.

Once a case is referred, the Marketplace and the LDSS must ensure that an individual's Medicaid is maintained throughout the redetermination process to

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prevent any gaps in coverage. This includes maintaining an individual's coverage through their Medicaid Managed Care plan or their receipt of Medicaid Premium Assistance payments.

In several notices, the Marketplace stated that it had referred your case to your LDSS; however, it does not appear that this has been done.

Therefore, your case is RETURNED to the Marketplace to refer your case to your LDSS. The Marketplace is directed to reinstate your full Medicaid Fee-For-Service coverage, if it has not already done so. The Marketplace is further directed to continue your coverage until your LDSS can issue a redetermination of your eligibility for Medicaid on a non-MAGI basis.

Decision

The June 16, 2015 eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace to refer your case to your LDSS. The Marketplace is directed to reinstate your full Medicaid Fee-For-Service coverage, if it has not already done so. The Marketplace is further directed to continue your coverage until your LDSS can issue a redetermination of your eligibility for Medicaid on a non-MAGI basis.

Effective Date of this Decision: February 23, 2016

How this Decision Affects Your Eligibility

Your case is being referred to your LDSS for consideration of your eligibility for non-MAGI-based Medicaid.

Your eligibility for Fee-for-service coverage through Medicaid will continue until a redetermination of your eligibility by your LDSS can be made.

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 June 16, 2015 eligibility determination is AFFIRMED.

Your case is being referred to your LDSS for consideration of your eligibility for non-MAGI-based Medicaid.

Your eligibility for fee-for-service coverage through Medicaid will continue until a redetermination of your eligibility by your LDSS can be made.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:



New York Legal Assistance Group
7 Hanover Sq., 18th Floor
New York, NY 10004
Attn: Peter Travitsky, Esq.