containing the substance of what happened at the hearing, and any exhibits introduced at the hearing.

Appeal request means a clear expression, either orally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any eligibility determination or redetermination contained in a notice issued in accordance with §155.310(g), §155.330(e)(1)(ii), §155.335(h)(1)(ii), §155.610(i), §155.715(e) or (f), or §155.716(e) reviewed by an appeals entity.

Appeals entity means a body designated to hear appeals of eligibility determinations or redeterminations contained in notices issued in accordance with §155.310(g), §155.330(e)(1)(ii), §155.335(h)(1)(ii), §155.610(i), §155.715(e) and (f), or §155.716(e).

Appellant means the applicant or enrollee, the employer, or the small business employer or employee who is requesting an appeal.

De novo review means a review of an appeal without deference to prior decisions in the case.

Evidentiary hearing means a hearing conducted where evidence may be presented.

Vacate means to set aside a previous action.

[78 FR 54136, Aug. 30, 2013, as amended at 83 FR 17063, Apr. 17, 2018]

§155.505 General eligibility appeals requirements.

(a) *General requirements.* Unless otherwise specified, the provisions of this subpart apply to Exchange eligibility appeals processes, regardless of whether the appeals process is provided by a State Exchange appeals entity or by the HHS appeals entity.

(b) *Right to appeal.* An applicant or enrollee must have the right to appeal—

(1) An eligibility determination made in accordance with subpart D, including—

(i) An initial determination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with the standards specified in §155.305(a) through (h); and

(ii) A redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with §§155.330 and 155.335;

(iii) A determination of eligibility for an enrollment period, made in accordance with §155.305(b);

(2) An eligibility determination for an exemption made in accordance §155.605;

(3) A failure by the Exchange to provide timely notice of an eligibility determination in accordance with §155.310(g), §155.330(e)(1)(ii), §155.335(h)(1)(ii), or §155.610(i); and

(4) A denial of a request to vacate dismissal made by a State Exchange appeals entity in accordance with §155.530(d)(2), made under paragraph (c)(2)(i) of this section; and

(5) An appeal decision issued by a State Exchange appeals entity in accordance with §155.545(b), consistent with §155.520(c).

(c) *Options for Exchange appeals.* Exchange eligibility appeals may be conducted by—

(1) A State Exchange appeals entity, or an eligible entity described in paragraph (d) of this section that is designated by the Exchange, if the Exchange establishes an appeals process in accordance with the requirements of this subpart; or

(2) The HHS appeals entity—

(i) Upon exhaustion of the State Exchange appeals process;

(ii) If the Exchange has not established an appeals process in accordance with the requirements of this subpart; or

(iii) If the Exchange has delegated appeals of exemption determinations made by HHS pursuant to §155.625(b) to the HHS appeals entity, and the appeal is limited to a determination of eligibility for an exemption.

(d) *Eligible entities.* An appeals process established under this subpart must comply with §155.110(a).

(e) *Representatives.* An appellant may represent himself or herself, or be represented by an authorized representative under §155.227, or by legal counsel, a relative, a friend, or another spokesperson, during the appeal.

(f) *Accessibility requirements.* Appeals processes established under this subpart must comply with the accessibility requirements in §155.205(c).

(g) *Review of Exchange eligibility appeal decisions.* Review of appeal decisions issued by an impartial official as described in §155.535(c)(4) is available as follows:

(1) *Administrative review.* The Administrator may review an Exchange eligibility appeal decision as follows:

(i) *Request by a party to the appeal.* (A) Within 14 calendar days of the date of the Exchange eligibility appeal decision issued by an impartial official as described in §155.535(c)(4), a party to the appeal may request review of the Exchange eligibility appeal decision by the CMS Administrator. Such a request may be made even if the CMS Administrator has already at their initiative declined review as described in paragraph (g)(1)(ii)(B)(*1*) of this section. If the CMS Administrator accepts that party's request for a review after having declined review, then the CMS Administrator's initial declination to review the eligibility appeal decision is void.

(B) Within 30 days of the date of the party's request for administrative review, the CMS Administrator must:

(*1*) Decline to review the Exchange eligibility appeal decision;

(*2*) Render a final decision as described in §155.545(a)(1) based on their review of the eligibility appeal decision; or

(*3*) Choose to take no action on the request for review.

(C) The Exchange eligibility appeal decision of the impartial official as described in §155.535(c)(4) is final as of the date of the impartial official's decision if the CMS Administrator declines the party's request for review or if the CMS Administrator does not take any action on the party's request for review by the end of the 30-day period described in paragraphs (g)(1)(i)(B)(*1*) and (*3*) of this section.

(ii) *Review at the discretion of the CMS Administrator.* (A) Within 14 calendar days of the date of the Exchange eligibility appeal decision issued by an impartial official as described in §155.535(c)(4), the CMS Administrator may initiate a review of an eligibility appeal decision at their discretion.

(B) Within 30 days of the date the CMS Administrator initiates a review, the CMS Administrator may:

(*1*) Decline to review the Exchange eligibility appeal decision;

(*2*) Render a final decision as described in §155.545(a)(1) based on their review of the eligibility appeal decision; or

(*3*) Choose to take no action on the Exchange eligibility appeal decision.

(C) The eligibility Exchange appeal decision of the impartial official as described in §155.535(c)(4) is final as of the date of the Exchange eligibility appeal decision if the CMS Administrator declines to review the eligibility appeal decision or chooses to take no action by the end of the 30-day period described in paragraphs (g)(1)(i)(B)(*1*) and (*3*) of this section.

(iii) *Effective dates.* If a party requests a review of an Exchange eligibility appeal decision by the CMS Administrator or the CMS Administrator initiates a review of an Exchange eligibility appeal decision at their own discretion, the eligibility appeal decision is effective as follows:

(A) If an Exchange eligibility appeal decision is final pursuant to paragraphs (g)(1)(i)(C) and (g)(1)(ii)(C) in this section, the Exchange eligibility appeal decision of the impartial official as described in §155.535(c)(4) is effective as of the date of the impartial official's decision.

(B) If the CMS Administrator renders a final decision after reviewing an Exchange eligibility appeal decision as described in paragraphs (g)(1)(i)(B)(*2*) and (g)(1)(ii)(B)(*2*) of this section, the CMS Administrator may choose to change the effective date of the Exchange eligibility appeal decision as described in §155.545(a)(5).

(iv) *Informal resolution decision.* Informal resolution decisions as described in §155.535(a)(4) are not subject to administrative review by the CMS Administrator.

(2) *Judicial review.* To the extent it is available by law, an appellant may seek judicial review of a final Exchange eligibility appeal decision.

(3) *Implementation date.* The administrative review process is available for eligibility appeal decisions issued on or after January 1, 2024.

(h) *Electronic requirements.* If the Exchange appeals entity cannot fulfill the electronic requirements of subparts C,

D, F, and H of this part related to acceptance of telephone- or Internet-based appeal requests, the provision of appeals notices electronically, or the secure electronic transfer of eligibility and appeal records between appeals entities and Exchanges or Medicaid or CHIP agencies, the Exchange appeals entity may fulfill those requirements that it cannot fulfill electronically using a secure and expedient paper-based process.

[78 FR 54136, Aug. 30, 2013, as amended at 79 FR 30349, May 27, 2014; 81 FR 12344, Mar. 8, 2016; 81 FR 94179, Dec. 22, 2016; 88 FR 25920, Apr. 27, 2023]

§ 155.510 Appeals coordination.

(a) *Agreements.* The appeals entity or the Exchange must enter into agreements with the agencies administering insurance affordability programs regarding the appeals processes for such programs as are necessary to fulfill the requirements of this subpart. Such agreements must include a clear delineation of the responsibilities of each entity to support the eligibility appeals process, and must—

(1) Minimize burden on appellants, including not asking the appellant to provide duplicative information or documentation that he or she already provided to an agency administering an insurance affordability program or eligibility appeals process, unless the appeals entity, Exchange, or agency does not have access to the information or documentation and cannot reasonably obtain it, and such information is necessary to properly adjudicate an appeal;

(2) Ensure prompt issuance of appeal decisions consistent with timeliness standards established under this subpart; and

(3) Comply with the requirements set forth in—

(i) 42 CFR 431.10(d), if the state Medicaid agency delegates authority to hear fair hearings under 42 CFR 431.10(c)(ii) to the Exchange appeals entity; or

(ii) 42 CFR 457.348(b), if the state CHIP agency delegates authority to review appeals under § 457.1120 to the Exchange appeals entity.

(b) *Coordination for Medicaid and CHIP appeals.* (1) Where the Medicaid or CHIP agency has delegated appeals authority to the Exchange appeals entity consistent with 42 CFR 431.10(c)(1)(ii) or 457.1120, and the Exchange appeals entity has accepted such delegation—

(i) The Exchange appeals entity will conduct the appeal in accordance with—

(A) Medicaid and CHIP MAGI-based income standards and standards for citizenship and immigration status, in accordance with the eligibility and verification rules and procedures, consistent with 42 CFR parts 435 and 457.

(B) Notice standards identified in this subpart, subpart D, and by the State Medicaid or CHIP agency, consistent with applicable law.

(ii) Consistent with 42 CFR 431.10(c)(1)(ii), an appellant who has been determined ineligible for Medicaid must be informed of the option to opt into pursuing his or her appeal of the adverse Medicaid eligibility determination with the Medicaid agency, and if the appellant elects to do so, the appeals entity transmits the eligibility determination and all information provided via secure electronic interface, promptly and without undue delay, to the Medicaid agency.

(2) Where the Medicaid or CHIP agency has not delegated appeals authority to the appeals entity and the appellant seeks review of a denial of Medicaid or CHIP eligibility, the appeals entity must transmit the eligibility determination and all relevant information provided as part of the initial application or appeal, if applicable, via secure electronic interface, promptly and without undue delay, to the Medicaid or CHIP agency, as applicable.

(3) The Exchange must consider an appellant determined or assessed by the appeals entity as not potentially eligible for Medicaid or CHIP as ineligible for Medicaid and CHIP based on the applicable Medicaid and CHIP MAGI-based income standards for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions.

(c) *Data exchange.* The appeals entity must—

(1) Ensure that all data exchanges that are part of the appeals process,