



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

Notice of Decision

Decision Date: September 11, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000696

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On July 2, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 19, 2014 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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 the 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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Appeal Identification Number: AP000000000696

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Is your spouse, [REDACTED] eligible for emergency Medicaid or full Medicaid?

Procedural History

On January 14, 2014, the Marketplace received an application for health insurance from you and your spouse, [REDACTED].

The Marketplace determined eligibility based on the information in this application and stated, in a notice dated February 19, 2014 that you were eligible for full Medicaid and that your wife was eligible for emergency Medicaid.

The Marketplace redetermined eligibility based on this same application and, in notices dated March 4, 2014, stated that both you and your wife were eligible for full Medicaid.

On April 2, 2014 and again on May 30, 2014, you spoke with Marketplace customer service and appealed the eligibility determination set out in the February 19, 2014 notice.

On July 2, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At that time, you stated that there was no longer a need for an appeal because everything had been resolved by the Marketplace's

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).

Customer Service Unit. The record was held open for 15 days to give you the opportunity to submit a written withdrawal.

No written withdrawal was received at the Appeals Unit within the 15 days allowed.

Findings of Fact

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

1. Your household consists of you and your spouse, [REDACTED].
2. You submitted an application for health insurance on January 14, 2014.
3. In a notice dated February 19, 2014, the Marketplace stated that you were eligible for full Medicaid and that your spouse was eligible for emergency Medicaid.
4. In notices dated March 4, 2014, the Marketplace stated that both you and your spouse were eligible for full Medicaid.
5. After the March 4, 2014 notice of determination was issued, you appealed the contradictory February 19, 2014 notice that it had superseded (replaced).
6. At your hearing on July 2, 2014, you testified that you wanted to withdraw the appeal because you and your spouse were satisfied with the March 4, 2014 eligibility determination.

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

Applicable Law and Regulations

As of July 2, 2014, the Appeals Unit was required to dismiss an appeal when the appellant withdrew the appeal request in writing (45 CFR § 155.530(a)(1)).

An individual may become eligible for enrollment in Medicaid when he or she meets certain non-financial criteria and has a household income that is at or below the applicable Medicaid income standard using modified adjusted gross income (45 CFR § 155.305(c)). One of the nonfinancial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance.

Only citizens, qualified immigrants, and PRUCOL aliens are eligible for full Medicaid benefits through New York State (18 NYCRR § 360-3.2). Under federal law, certain aliens who are qualified aliens and who enter the United States on or after August 22, 1996, are not eligible for any Federal means-tested public benefit, including federal Medicaid, for a period of five years beginning on the date of the alien's entry into the United States (8 U.S. Code § 1613(a)).

However, the New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 N.Y. 2d 418 [2001]), that New York must provide state-funded Medicaid to the lawfully residing immigrants who had been excluded from access to the federal Medicaid program; specifically, those with a qualified immigration status but subject to the federal five-year bar.

Legal Analysis

As of the date of the hearing, an appellant was permitted to withdraw an appeal only in writing. Since no written withdrawal is in the record, this decision will consider the appeal as it was filed.

The appellant submitted only one application for health insurance, and that was received by the Marketplace on January 14, 2014. The Marketplace processed this application twice and issued inconsistent notices. The February 19, 2014 notice stated that the appellant was eligible for Medicaid and that his spouse was eligible for emergency Medicaid. The March 4, 2014 notice, which superseded the February notice, found both eligible for Medicaid. By April 3, 2014, when the appellant filed his appeal, the February determination had already been superseded and was without effect.

The February determinations could be reinstated if the March 4, 2014 determinations were found to be defective and required rescission, but the record does not support such a finding. The March 4, 2014 notice of determination finding the appellant and his spouse eligible for full Medicaid appears to be supported by the facts of the case and consistent with the law. Therefore, it should continue in effect.

Accordingly, the February 19, 2014 notice of eligibility determination, already superseded, is now rescinded in response to the appeal; and the March 4, 2014 notice of eligibility determination continues in effect.

Decision

The February 19, 2014 eligibility determination is **RESCINDED**.

The March 4, 2014 eligibility determinations remain in effect.

Effective Date of this Decision: September 11, 2014

How this Decision Affects Your Eligibility

You and your spouse are eligible for Medicaid, as stated in the March 4, 2014 eligibility determinations. There will be no change to your 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.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Make an appeal request to the U.S. Department of Health and Human Services appeals entity within 30 days of the date of the Decision Date, which appears on the first page of the Decision (45 CFR § 155.520[c]).

AND/OR

- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which appears on the first page of the Decision.

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 for assistance.

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
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- By fax: 1-855-900-5557

Summary

The February 19, 2014 eligibility determination is RESCINDED.

The March 4, 2014 eligibility determinations remain in effect.

You and your spouse are eligible for Medicaid, as stated in the March 4, 2014 eligibility determinations.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]