



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

Notice of Decision

Decision Date: August 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001716

[REDACTED]

Dear [REDACTED],

On April 16, 2015, your Authorized Representative appeared by telephone on your behalf at a hearing on your appeal of NY State of Health Marketplace's December 4, 2014 eligibility determination.

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 Code of Federal Regulation (CFR) 45 CFR § 155.545(b).

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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001716

[REDACTED]

Issue

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

Did the Marketplace properly determine that you were eligible to receive Medicaid coverage only for the treatment of emergency medical conditions, effective November 1, 2014?

Procedural History

On November 17, 2014, the Marketplace received copies of (1) a Notice of Decision issued by the Suffolk County Department of Social Services (DSS) regarding your medical assistance, which stated that your application for Medicaid coverage, dated May 29, 2014, had been received and was being sent to NY State of Health to determine your eligibility and (2) a Self-Declaration of Income (DOH-4444 (0X/10)).

The Marketplace received an application for health insurance on November 17, 2014. Within each application you attested to an expected yearly income of \$15,600.00 and that your Citizenship/Immigration status was "Other."

On November 18, 2014, the Marketplace issued a notice stating that you might be eligible for health insurance through the NY State of Health, but that more information was needed to make a determination. You were requested to provide income documentation for your household by December 5, 2014.

That same day, your eligibility was rerun based on the information contain in your November 17, 2014 application. In response to this eligibility rerun, the Marketplace prepared a preliminary eligibility determination finding you eligible

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for Medicaid coverage beginning November 1, 2014. This preliminary determination did not specify whether you were eligible for full or emergency Medicaid coverage.

On December 4, 2014, the Marketplace issued a notice of eligibility determination based on the rerun of your eligibility on November 18, 2014. It stated that you were eligible for Medicaid coverage only for the treatment of emergency medical conditions beginning November 1, 2014. This determination was based, in part, on your reported annual household income of \$15,600.00. It also stated that “you are only eligible for emergency medical care and services because you are not a citizen, qualified alien or are permanently residing in the United States under color of law (PRUCOL).”

On December 12, 2014, the Marketplace received (1) a letter, dated December 9, 2014, from your apparent Authorized Representative, [REDACTED], in which he requested an appeal on your behalf seeking emergency Medicaid coverage in connection with your February 2014 hospitalization, (2) a duplicate copy of the Notice of Decision issued by the Suffolk County Department of Social Services on May 29, 2014, (3) an Authorization Form, signed April 2, 2014, in which you consented to have [REDACTED] act as your “true and lawful representative... including requesting & representing me at a New York State Fair Hearing,” (4) a letter issued by the Suffolk County DDS, dated May 29, 2014, acknowledging that “your application for Medicaid/Family Health Plus was received... on 5/29/14,” (5) and an Access NY Health Care application for Medicaid/Family Health Plus/Child Health Plus executed by you on April 2, 2014.

On January 8, 2015, the Marketplace received an Identity Verification Form (DOH-5088 (09/13)), executed by you as of November 6, 2014, which was apparently to the NY State of Health by [REDACTED] also on November 6, 2014.

On March 11, 2015, the Marketplace received a copy of an executed Release to Disclose Protected Information and Authorization of Designated Representative in which you identified [REDACTED] as your Authorized Representative.

On April 6, 2015, your Authorized Representative had a telephone hearing with a Hearing Officer from the Marketplace’s Appeals Unit on your behalf. During the hearing, the Authorized Representative uploaded to the Marketplace: (1) a copy of a Self-Declaration of Income form executed on April 2, 2014 and (2) a copy of a letter from your sister, [REDACTED], regarding your living and work circumstances along with details on your hospitalization. The record was developed during the hearing, including the two aforementioned documents, and closed at the end of the hearing.

Findings of Fact

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

- 1) Your November 17, 2014 application to the Marketplace attested that you are single and have no children. You also attested in your application that your expected yearly income is \$15,600.00 and that your Citizenship/Immigration status was "Other."
- 2) Your Access NY Health Care application for Medicaid/Family Health Plus/Child Health Plus executed by you on April 2, 2014 indicated that your household consisted of you, your two sisters, and three other family relations; however, it is not apparent to whom this form was submitted.
- 3) Your sister, [REDACTED], certified in an undated letter that you have lived with her since May 5, 2013, and that you required a period of hospitalization between February 26, 2014 and March 3, 2014.
- 4) Your Authorized Representative stated that he submitted a DOH-4220 Medicaid Application to the [REDACTED] Department of Social Services in order to apply for your emergency Medicaid coverage in connection with your February/March 2014 hospitalization.
- 5) The Suffolk County DSS acknowledged in a written notice issued to you on May 29, 2014, that your application was received on May 29, 2014.
- 6) On May 31, 2014, a Notice of Decision (Notice Number [REDACTED]) was issued to you by the Suffolk County DSS stating, among other things, that your application was being sent to NY State of Health to determine your eligibility.
- 7) Your Authorized Representative stated that he was told by Marketplace Representatives that the application was likely being processed and that he would have to wait due to the high volume of applications being submitted.
- 8) Your Authorized Representative stated that over a period of four to five months, he was told by multiple Marketplace representatives that there was no record of the application having been received from Suffolk County DSS, and that he was advised to submit a new application to the Marketplace and then to lodge an appeal to attempt to backdate coverage should emergency Medicaid be granted.

- 9) The Marketplace did not receive an application, either physically or electronically, until November 17, 2014. It was based on this application that you were ultimately determined for emergency Medicaid, effective November 1, 2014.
- 10) You attested in Self-Declaration of Income, dated November 17, 2014 that “you work as a day laborer & obtain work by waiting at the local train station for anyone to hire me for the day”. You also attested that you earn approximately \$300.00 per week from an unknown employer. Your application submitted to the Marketplace on November 17, 2014 is consistent with these figures.
- 11) You attested in a separate Self-Declaration of Income, dated April 2, 2014 that “you work as a day laborer & I’m hired by the day if work is available by different contactors.” You also attested that you get paid in cash and do not receive pay checks or pay stubs. You attested to receiving (1) \$180.00 on February 7, 2014, (2) \$200.00 on February 14, 2014 and (3) \$200.00 on February 21, 2014. For the period between February 28, 2014 and March 28, 2014, you attested to not having received any income as a result of your hospitalization and period of recovery from the surgery.
- 12) You desired that [REDACTED] act as your Authorized Representative.
- 13) Your Authorized Representative stated that you were requesting that your emergency Medicaid be backdated to February 1, 2015 to cover medical expenses associated with your hospitalization.

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

Applicable Law and Regulations

Medicaid, Generally

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 federal poverty line (FPL) for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

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An individual is eligible for enrollment in Medicaid when he or she meets the non-financial criteria and has a household income that is at or below the applicable Medicaid MAGI-based income standard (45 CFR § 155.305(c)).

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 2014 FPL, which is \$11,670.00 for a one-person household (79 Fed. Reg. 3593, 3593).

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 by the US Department of Health and Human Services, March 19, 2014).

Immigration Status and Medicaid Eligibility

A person who meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard is eligible for Medicaid benefits (45 CFR § 155.305(c)). One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. A person is eligible for Medicaid when his or her immigration status is satisfactory and he or she meets all other requirements for Medicaid.

Generally, no person, except a United States citizen, naturalized citizen, qualified alien, and persons permanently residing in the United States under color of law (PRUCOL), is eligible for medical assistance from the state (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment of bodily functions; or
- (c) Serious dysfunction of any bodily organ or part

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(42 CFR § 435.930(c)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

Application Referral from Local Department of Social Services

Since January 1, 2014, local Departments of Social Services (LDSS) have referred applicants in the MAGI eligibility group to the New York State of Health Marketplace for eligibility determinations. Applications for the MAGI household members and the referral to Marketplace are date stamped before being transferred. LDSS notifies the customer that the application was referred to Marketplace for an eligibility determination (NY Dept. of Health Admin. Directive 13 ADM-04).

Retroactive Medicaid

The Department of Health must make Medicaid eligibility effective no later than the third month before the month of application if the individual received medical services that would have been covered under Medicaid and would have been eligible for Medicaid at the time he received the services if he had applied (42 CFR 435.915(a)). The Department of Health may make eligibility effective for fee-for-service Medicaid on the first day of the month if an individual was eligible any time during that month (42 CFR 435.915(b)).

Legal Analysis

The issue on appeal is whether the Marketplace properly determined that you are eligible to receive emergency Medicaid coverage no earlier than November 1, 2014.

Your initial application was received by the Marketplace on November 17, 2014, in which you attested to an expected yearly income of \$16,000.00, which was based on your approximate \$300.00 in earnings per week. That same day, you provided to the Marketplace an executed Self-Declaration of Income (Form DOH-4444 (0X/10)), in which you attested to earning approximately \$300.00 in cash per week as a day laborer on an as needed basis. This document was verified by the Marketplace on November 18, 2014 as acceptable proof on income. That same day, you were found eligible for emergency Medicaid coverage beginning November 1, 2014.

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On November 17, 2014, and December 12, 2014, you provided documentation that indicated the Suffolk County DSS received your application for Medicaid on May 29, 2014, and that it was then referred to the Marketplace on May 31, 2014 to make a determine on your eligibility.

While it does not appear the Marketplace has a record of having received such an application, the credible record of evidence reflects that the Suffolk County DSS sent your application to the Marketplace no later than May 31, 2014.

As this referral of your application to the Marketplace occurred on or about May 31, 2014, your application was deemed received by the Marketplace at that time. Accordingly, the December 4, 2014 eligibility determination is MODIFIED solely to the extent that emergency Medicaid coverage begins on May 1, 2014.

A person who is Medicaid eligible can be considered for retroactive assistance for up to three months immediately before the month of the Medicaid application. To determine which three months can be considered, the date of your successful Medicaid application and the date your Medicaid eligibility began must be known.

As a result of this decision, you are properly found eligible for emergency Medicaid coverage beginning May 1, 2015.

According to the record as now developed, emergency Medicaid was granted on the basis of your May 31, 2014 application. Therefore, you were eligible for emergency Medicaid coverage as of May 1, 2014 and can be considered for retroactive coverage for the months of February, March, and April 2014.

To qualify for retroactive coverage in a given month, a person must meet the financial and nonfinancial Medicaid criteria during that month. The financial standard for an adult is a modified adjusted gross income that is at or below 138% of the federal poverty for the applicable family size. On May 31, 2014, that was the 2014 FPL, which is \$11,670.00 for a one-person household. Since \$16,104.60 is 138% of \$11,670.00, you would qualify for retroactive Medicaid when your income for the month was no higher than \$1,342.05.

According to the record, you were paid \$580.00 during February and \$0.00 during March, though there is insufficient evidence to establish your income during the month of April 2014 since you did not attest to amounts received during that time, nor as to any continued hospitalization resulting in an inability to work. Therefore, the record supports returning your case to the Marketplace to redetermine your eligibility for retroactive Medicaid for the months of February and March 2014.

Decision

The December 4, 2014 eligibility determination is MODIFIED solely to the extent that emergency Medicaid coverage begins on May 1, 2014.

Your case is returned to the Marketplace to determine your eligibility for retroactive Medicaid for the months of February and March 2014.

Effective Date of this Decision: August 14, 2015

How this Decision Affects Your Eligibility

You are eligible for emergency Medicaid services beginning May 1, 2015.

The Marketplace will issued an additional determination on your eligibility for emergency Medicaid for the months of February and March 2014.

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 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 4, 2014 eligibility determination is MODIFIED solely to the extent that emergency Medicaid coverage begins on May 1, 2014.

Your case is returned to the Marketplace to determine your eligibility for retroactive Medicaid for the months of February and March 2014.

You are eligible for emergency Medicaid services beginning May 1, 2015.

The Marketplace will issued an additional determination on your eligibility for emergency Medicaid for the months of February and March 2014.

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:

