



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

Notice of Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003723

[REDACTED]

Re: [REDACTED]

Dear [REDACTED],

On September 23, 2015, you appeared by telephone at a hearing as the attorney for and on behalf of the appellant regarding his appeal of NY State of Health Marketplace's June 17, 2015 and June 27, 2015 eligibility redeterminations.

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 federal regulation 45 CFR § 155.545(b).

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DEPARTMENT OF HEALTH
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Decision

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003723

[REDACTED]

Re: [REDACTED]

Issues

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

Did the Marketplace properly determine that [REDACTED] was no longer eligible for financial assistance or to enroll in a qualified health plan, effective June 30, 2015?

Did the Marketplace properly determine that [REDACTED] was eligible for Emergency Medicaid, effective June 1, 2015?

Procedural History

On July 17, 2014, the appellant was found eligible for Emergency Medicaid through the Marketplace, effective July 1, 2014, and not eligible for other financial assistance programs or to enroll in a qualified health plan at full cost because he was not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

On May 16, 2015, the Marketplace issued a renewal notice that stated, based on federal and state data sources, a decision could not be made as to whether or not the appellant qualified for financial help. The notice further instructed the appellant to update his Marketplace account with current information by June 15, 2015 and, if he missed this deadline, the financial assistance he was getting might end.

On June 17, 2015, the Marketplace issued a notice of eligibility redetermination that the appellant was no longer eligible for Medicaid, Child Health, Plus, or to receive tax credits or cost sharing reductions and cannot enroll in a qualified health plan at full cost through the Marketplace because the Marketplace was unable to verify his citizenship or immigration status.

On June 18, 2015, the Marketplace issued a disenrollment notice that the appellant's insurance through Medicaid Fee-For-Service, Emergency Benefits only, will be discontinued as of June 30, 2015.

In a June 26, 2015 letter from [REDACTED] of the law firm of [REDACTED], [REDACTED] the firm's representation of the appellant was denoted by [REDACTED] and an appeal of the appellant's disenrollment from Emergency Medicaid was requested. The letter further stated that, "[w]e intend to rely on eligibility standards set forth in 45 CFR including regulation 18 NYCRR 360-3.2(j) and sections 122 and 366 (1)(b) of the Social Services Law. We also intend on raising all issues pertaining to PRUCOL which permit a determination of Medicaid eligibility."

On June 27, 2015, the Marketplace issued another notice of eligibility redetermination that the appellant was eligible for Emergency Medicaid benefits only, effective June 1, 2015, on the basis that he is not a citizen, qualified alien, or permanently residing in the United States under PRUCOL.

On September 23, 2015, acting as the attorney for and on behalf of the appellant, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open up to October 7, 2015 to allow you to submit a transcript of the Article 81 Guardianship proceeding, which included the Court's Order on the record.

On September 24, 2015, the Appeal's Unit received a six page, one-sided fax from you consisting of (1) A cover page; and (2) a copy of the August 4, 2015 transcript including an Order issued by the Supreme Court of the State of New York, County of Kings: Civil Term. This six page fax was made part of the record as "Appellant's Exhibit A."

This being the only document you were directed to provide, the record was closed that same day.

Findings of Fact

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

- 1) According to the Supreme Court, Kings County: Civil Term transcript, dated August 4, 2015, and your statement at the hearing, the appellant is a long-term patient at [REDACTED] since June 2014, is completely dependent on hospital care, and unable to communicate (Appellant's Exhibit A, p. 3).

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- 2) According to the Supreme Court, Kings County: Civil Term transcript, dated August 4, 2015, the Court found the appellant incapacitated pursuant to Mental Hygiene Law Article 81 (Appellant's Exhibit A, p.3).
- 3) You indicated during the hearing that the appellant has been appointed an Article 81 Guardian, which information was confirmed by the Court Order contained in the Supreme Court, Kings County: Civil Term August 4, 2015 transcript (Appellant's Exhibit A, p. 4).
- 4) According to the appellant's Marketplace account, he had \$0.00 annual household income as of his July 16, 2014 application and was not filing taxes that year; and had \$0.00 annual household income as of June 26, 2015 updated application and did not expect to file taxes in 2015.
- 5) According to a May 21, 2014 fax contained in the appellant's Marketplace account, he provided a picture identification card in his name issued by the [REDACTED] located in New York on September 21, 2004, with an expiration date of September 21, 2009 (Appellant's Exhibit B, p. 5).
- 6) You indicated during the hearing that you have no other documentation to demonstrate the appellant's citizenship status and there is no other immigration information available.
- 7) You further indicated at the hearing that you want to preserve the appellant's Emergency Medicaid benefits to the fullest extent possible because he needs assistance with all aspects of his care due to his permanent disability and hospitalization.
- 8) According to the Marketplace application and the appellant's identification card, his date of birth is listed as [REDACTED] and he was 54 years old in June 2015 when his eligibility for financial assistance through NY State of Health was redetermined.

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 that is at or below 138% of the federal poverty 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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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).

A PRUCOL alien is a person who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the United States such agency does not contemplate enforcing (18 NYCRR §360-3.2(j)).

The New York Department of Health regards aliens who have filed official applications on federal immigration agency forms for one of the many types of immigration statuses or relief to be PRUCOL during the period of time the federal agency is determining whether to approve the application (08 OHIP/INF-4, dated August 4, 2008)).

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

(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)).

Legal Analysis

To be eligible for full Medicaid through the Marketplace, an individual must have documents to prove their citizenship or immigration status, in addition to other nonfinancial criteria such as residing in New York State. Since you credibly testified that there are no documents regarding the appellant's citizenship status and no other immigration information, he has not satisfied this requirement and is not eligible for full Medicaid through the Marketplace.

However, the appellant does qualify as an undocumented alien since he resides in the State of New York and has an income of \$0.00 according to his Marketplace application, which status is corroborated by other credible evidence adduced at the hearing, including the information contained in the Article 81 guardianship proceeding transcript, dated August 4, 2015. As such, the appellant is an otherwise eligible undocumented alien and qualifies for Emergency Medicaid.

Therefore, the June 17, 2015 notice of eligibility redetermination finding the appellant ineligible for financial assistance through the Marketplace was incorrect and is **RESCINDED**. Similarly, the corresponding June 18, 2015 disenrollment notice that the appellant's insurance through Medicaid Fee-For-Service, Emergency Benefits only, will be discontinued as of June 30, 2015 was incorrect and is **RESCINDED**.

Since these notices were issued and the appeal was requested, however, the Marketplace issued a June 27, 2015 notice of eligibility redetermination that correctly stated the appellant is eligible for Emergency Medicaid effective June 1, 2015, such that there is no gap in his Emergency Medicaid benefits. This eligibility redetermination continues in effect.

Decision

The Marketplace's June 17, 2015 notice of eligibility redetermination is **RESCINDED**.

The Marketplace's June 18, 2015 disenrollment notice is **RESCINDED**

The Marketplace's June 27, 2015 notice of eligibility redetermination continues in effect.

Effective Date of this Decision: October 28, 2015

How this Decision Affects Your Eligibility

The appellant is eligible for Emergency Medicaid benefits only, effective June 1, 2015.

There has been no gap in his coverage through Emergency Medicaid.

For additional information regarding coverage through Emergency Medicaid in New York, go to:

https://www.health.ny.gov/health_care/medicaid/emergency_medical_condition_faq.htm

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
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Summary

The Marketplace's June 17, 2015 notice of eligibility redetermination is RESCINDED.

The Marketplace's June 18, 2015 disenrollment notice is RESCINDED

The Marketplace's June 27, 2015 notice of eligibility redetermination continues in effect.

The appellant is eligible for Emergency Medicaid benefits only, effective June 1, 2015.

There has been no gap in his coverage through Emergency Medicaid.

For additional information regarding coverage through Emergency Medicaid in New York, go to:

https://www.health.ny.gov/health_care/medicaid/emergency_medical_condition_faq.htm

Legal Authority

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

A Copy of this Decision Has Been Provided To:

