



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

## Notice of Decision

Decision Date: January 08, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004765



Dear [REDACTED],

On December 11, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 7, 2015 disenrollment and August 28, 2015 eligibility determination notices.

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).

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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## Decision

Decision Date: January 08, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004765



## Issue

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

Did the Marketplace properly determine that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective September 1, 2015?

Did the Marketplace properly disenroll you from your Medicaid Managed Care plan effective August 31, 2015?

## Procedural History

On July 14, 2015 the Marketplace issued a notice of eligibility determination that you are eligible for Medicaid effective as of July 1, 2015.

On the same day the Marketplace issued an enrollment notice confirming your enrollment as of July 13, 2015 with EmblemHealth.

On August 3, 2015, the July 14, 2015 enrollment notice was sent back to the Marketplace and stamped as "RETURN MAIL."

On August 6, 2015 the Marketplace issued an eligibility determination notice that you are not eligible for financial assistance and cannot enroll in a qualified health plan at full cost through the Marketplace, effective August 31, 2015. The notice stated that the Marketplace was unable to verify your citizenship or immigration status.

On August 7, 2015 the Marketplace issued a disenrollment notice stating that your Health Insurance Plan of Greater New York would end effective August 31, 2015.

On August 20, 2015, the August 6, 2015 eligibility determination notice was sent back to the Marketplace and stamped as "RETURN MAIL."

On August 28, 2015 the Marketplace issued an eligibility determination notice that you are eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective as of September 1, 2015. The notice further stated that you are only eligible for emergency medical care and services because you are not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL).

On September 23, 2015, you contacted the Marketplace's Account Review Unit and requested an appeal insofar as not being eligible for full Medicaid benefits and being disenrolled from your Medicaid Managed Care plan.

On December 11, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Testimony was taken and the record was developed during the hearing, with the assistance of Spanish Interpreter [REDACTED]. The record is now complete and closed.

## **Findings of Fact**

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

- 1) Your July 13, 2015 Marketplace application indicates that your immigration status is "Other."
- 2) Your July 13, 2015 Marketplace application indicates that you are "Not eligible for Social Security Number Due to Immigration Status."
- 3) Your July 13, 2015 Marketplace application indicates that you will not be filing a 2015 federal income tax return and have an expected income of \$0.00.
- 4) You testified that you entered the United States in July 2013.
- 5) You testified that you do not have any pending documentation from the United States Citizenship and Immigration Services (USCIS).
- 6) You testified that you have no citizenship or immigration status documentation, besides your passport from the [REDACTED].

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)).

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

(18 NYCRR § 360-3.2(j)(1)(iii)).

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)).

#### Exempted Individuals for Participation in Medicaid Managed Care Plans:

Generally, with regard to enrollment in a Medicaid Managed Care plan (MMC), Medicaid recipients, except for those who are eligible for an exemption or an exclusion, must enroll in an MMC. Excluded populations may not enroll in a MMCO (18 NYCRR § 360-10.4(a-b)).

The NY State of Health or the local department of Social Services is responsible for determining the Exemption and Exclusion status of individuals determined to be eligible for Medicaid. Excluded categories are individuals specified by New York State’s Operational Protocol for the Partnership Plan that that are precluded from participating in the MMC program. (Medicaid Managed Care Model Contract (Appendix H) H-3 (xi), March 1, 2014).

Individuals excluded from Managed Care Plans include individuals who are eligible for Emergency Medicaid (Partnership Plan Medicaid Section 1115 Demonstration, Table 6 pg. 12-13, December 31, 2014).

## **Legal Analysis**

The first issue under review is whether the Marketplace properly determined that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective September 1, 2015.

An individual seeking enrollment in Medicaid must have, and be able to demonstrate, satisfactory citizenship or immigration status. In the application that

you submitted to the Marketplace on July 13, 2015, your immigration status was entered as “Other.”

You credibility testified that you entered the United States in July 2013. Furthermore, you testified that besides your passport from the [REDACTED], you did not have any other documentation to show your immigration status.

Since the Marketplace did not have any further information on your immigration status, you were found eligible for Emergency Medicaid only. Therefore, the August 28, 2015, eligibility determination notice stating that you remain eligible for Medicaid coverage for the treatment of emergency medical conditions only is AFFIRMED.

The second issue under review is whether the Marketplace properly disenrolled you from your Medicaid Managed Care plan effective August 31, 2015.

Individuals are excluded from participating in an MMC plan if they fall into one of a series of defined categories, as provided by state regulation. An excluded category includes individuals who are eligible for Emergency Medicaid.

The Marketplace did not have sufficient information regarding your immigration status, therefore you were found eligible for Emergency Medicaid only. Since individuals who are only eligible for Emergency Medicaid are not eligible to enroll in a Medicaid Managed Care plan, the Marketplace properly disenrolled you from your Medicaid Managed Care plan effective August 31, 2015.

The August 7, 2015 disenrollment notice is AFFIRMED.

## **Decision**

The August 28, 2015 eligibility determination notice is AFFIRMED.

The August 7, 2015 disenrollment notice is AFFIRMED.

**Effective Date of this Decision:** January 08, 2016

## **How this Decision Affects Your Eligibility**

You are eligible for Emergency Medicaid benefits only, effective September 1, 2015.

You are not eligible to enroll in a Medicaid Managed Care plan.

## **If You Disagree with this Decision (Appeal Rights)**

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).

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 August 28, 2015 eligibility determination notice is **AFFIRMED**.

You are eligible for Emergency Medicaid benefits only, effective September 1, 2015.

You are not eligible to enroll in a Medicaid Managed Care plan.

### **Legal Authority**

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

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**A Copy of this Decision Has Been Provided To:**

