



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

## Notice of Decision

Decision Date: April 27, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP00000005472

[REDACTED]

Dear [REDACTED],

On February 24, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 15, 2015 enrollment notice.

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 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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DEPARTMENT OF HEALTH  
P.O. Box 11729  
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## Decision

Decision Date: April 27, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP00000005472



## Issue

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

Did NY State of Health properly determine that your spouse and newborn child's Medicaid Managed Care plan began September 1, 2015 and not August 1, 2015?

## Procedural History

On March 21, 2015, NY State of Health (NYSOH) issued an eligibility determination notice finding your spouse conditionally eligible for Medicaid, effective March 1, 2015, based on your March 20, 2015 updated application. In that application, you reported that she was pregnant with one child and due on August 23, 2015. The March 21, 2015 notice also instructed you to provide documentation to confirm her immigration status by June 18, 2015.

On March 27, 2015, NYSOH issued an enrollment confirmation notice that stated your spouse had Medicaid fee-for-service as of March 1, 2015 and was enrolled in EmblemHealth, a Medicaid Managed Care (MMC) plan, effective May 1, 2015.

On June 26, 2015, NYSOH issued an eligibility redetermination notice again finding your spouse conditionally eligible for Medicaid effective June 1, 2015. You were again instructed to provide documentation to confirm her immigration status, this time by September 15, 2015.

On June 27, 2015, an enrollment confirmation notice was issued stating your spouse must pick a health plan soon or one would be chosen for her. In the

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meantime she would continue to have coverage through Medicaid fee-for-service.

Thereafter, you uploaded your spouse's I-155 Permanent Resident card on July 27, 2015. Your application was updated by NYSOH and your spouse was listed as not pregnant. Your household income remained listed as \$37,350.00.

This update resulted in a July 29, 2015 eligibility redetermination notice being issued that stated your spouse was newly eligible to receive advance premium tax credits in the amount of \$505.00 per month and cost sharing reductions, effective September 1, 2015.

On July 30, 2015, a disenrollment notice was issued ending your spouse's Medicaid fee-for-service coverage, effective August 31, 2015.

On August 12, 2015, another eligibility redetermination notice was issued finding your spouse newly eligible to receive advance premium tax credits in the amount of \$505.00 per month and cost sharing reductions, effective September 1, 2015.

Also on August 12, 2015, an enrollment confirmation notice was issued confirming your and your spouse's enrollment in a silver-level health plan with a premium responsibility of \$238.50 per month effective September 1, 2015.

On August 15, 2015, based on your August 14, 2015 updated application, NYSOH issued another eligibility redetermination notice that stated your spouse remained eligible for Medicaid, effective September 1, 2015.

Also on August 15, 2015, an enrollment confirmation notice was issued confirming your spouse's enrollment in EmblemHealth MMC plan with an enrollment start date of September 1, 2015.

On August 15, 2015, a cancellation notice was issued confirming that your spouse's coverage under her silver-level qualified health plan with a September 1, 2015 effective date was cancelled as of September 1, 2015.

On September 1, 2015, an eligibility determination notice was issued stating that your spouse no longer eligible for Medicaid but that her Medicaid coverage would continue until July 31, 2016. Her eligibility remained effective September 1, 2015.

By that same notice, your newborn child was found conditionally eligible for Medicaid effective August 1, 2015, and you were instructed to confirm your newborn child's citizenship status and Social Security number by November 29, 2015.

No corresponding enrollment confirmation notice was issued.

On December 8, 2015, you requested a telephone hearing to request that your spouse's coverage under her EmblemHealth MMC plan be backdated to August 1, 2015, so that your newborn would have coverage in that same MMC plan as of her date of birth.

On February 24, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) You are seeking insurance for your spouse and your newborn for the month of August, 2015 in Emblem Health MMC plan.
- 2) According to your March 20, 2015 updated application, you reported that your spouse was pregnant with one child and due on August 23, 2015. Your household income was listed as \$37,350.00.
- 3) According to your March 20, 2015 updated application, your spouse was a non-immigrant visa holder with an I-94 Arrival/Departure Record that expired on October 19, 2007.
- 4) According to your NYSOH account, on March 20, 2015, April 21, 2015, and April 27, 2015, you uploaded to your account copies of the front of your spouse's Permanent Resident Card showing that she has been a resident since "09/17/14" and her card was to expire on "09/17/16" (see, Documents [REDACTED] [REDACTED] and [REDACTED]).
- 5) According to your NYSOH account, on June 10, 2015, these uploaded documents were determined to be invalid proof of immigration because only the front of your spouse's permanent resident card was provided, which NYSOH determined it was not acceptable to verify immigration status.
- 6) That same day, NYSOH issued a letter informing you that the documentation you submitted was insufficient to resolve your spouse's immigration status and that you needed to submit additional documentation. The attached list referenced that for Immigrant Non-Citizen or Non-Immigrant Visa holder, an "I-551 resident alien card (green card)" would suffice.
- 7) Proof of your spouse's immigration status was not provided by June 18, 2015, so NYSOH redetermined her eligibility on June 25, 2015 and found

her conditionally eligible for Medicaid fee-for-service effective June 1, 2015.

- 8) On July 27, 2015, you uploaded to your NYSOH account a copy of the front and back of your spouse's I-155 permanent resident card after you became aware that both sides of the card were needed (see, Document [REDACTED]). The front side of the card listed the same information on the front of the cards previously provided (see, Documents [REDACTED] and [REDACTED]).
- 9) On July 28, 2015, your NYSOH account was updated by a representative from NYSOH to indicate that your spouse was not pregnant when she was still pregnant at that time, which changed your household size from three people back to two people. The household income on your application remained at \$37,350.00.
- 10) According to your NYSOH account, the July 28, 2015 update to your NYSOH application resulted in your spouse being determined eligible for advance premium tax credits and cost-sharing reductions and enrolled in a silver-level qualified health plan, effective September 1, 2015.
- 11) According to your Marketplace account, this update also resulted in your spouse being disenrolled from Medicaid fee-for-service effective August 31, 2015.
- 12) You testified and the record supports that you successfully updated your NYSOH application for financial assistance on August 14, 2015, and listed your spouse as pregnant and your annual household income of \$37,350.00. This update resulted in NYSOH redetermining your spouse eligible for Medicaid fee-for-services as of August 1, 2015.
- 13) You chose an EmblemHealth MMC plan on August 14, 2015 for your spouse with a September 1, 2015 start date.
- 14) On August 15, 2015, NYSOH issued a notice of eligibility redetermination that stated your spouse was eligible for Medicaid and an enrollment notice confirming her enrollment in an EmblemHealth MMC plan, effective September 1, 2015.
- 15) Your child was born on [REDACTED], and determined eligible for Medicaid fee-for-service as of [REDACTED] and enrolled in EmblemHealth MMC plan, effective September 1, 2015.

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

## **Applicable Law and Regulations**

### Timely Determination for Medicaid Eligibility

NYSOH must determine eligibility for Medicaid promptly and without undue delay, and not deny services to an otherwise eligible individual pending submission of required documentation to verify their eligibility for Medicaid (42 CFR § 435.910). NYSOH has elected to provide 90 days for an individual to submit proof of his or her Social Security Number, citizenship or immigration status, New York State residency, and incarceration status in order to determine his or her eligibility for Medicaid (42 CFR § 435.910(f); 42 CFR § 435.911(c)(1); 42 CFR § 435.936(c); and 42 CFR § 435.952(c)(2)(iii)).

### Eligibility for Enrollment in Medicaid

An individual is eligible for enrollment in Medicaid through NYSOH (called MAGI-based Medicaid) when he or she meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard (45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

To enroll in Medicaid through NYSOH, one of the nonfinancial criteria is that an applicant must be a citizen or national of the United States, qualified alien, or a non-citizen lawfully present in the United States (45 CFR § 155.305(c)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in Medicaid, including citizenship, status as a national, or lawful presence and may require documentation as acceptable proof (42 CFR § 435.406; 42 CFR § 435.407).

If an application filer submits an application that does not include sufficient information for NYSOH to conduct an eligibility determination for enrollment in a qualified health plan through NYSOH or for insurance affordability programs, NYSOH must provide notice to the applicant indicating that information necessary to complete an eligibility determination is missing, specifying the missing information, and providing instructions on how to provide the missing information within a 90-day period (45 CFR § 155.310(k)).

If NYSOH remains unable to verify the attestation after the 90-day period ends, then it must determine the applicant's eligibility based on the information available in the data sources (45 CFR § 155.315(f)(5)).

A person whose Medicaid eligibility is based on the modified adjusted gross income of the person or the person's household remains Medicaid eligible for 12 months unless the person becomes ineligible due to "citizenship status, lack of

[New York] state residence, or failure to provide a valid social security number” (N.Y. Social Services Law § 366.4(c)).

In New York, a pregnant woman is eligible for Medicaid at a household income of 223% of the federal poverty level (FPL) (42 CFR §435.116 (c)(2); NY Department of Social Services Administrative Directive 13ADM-03).

“Family size” means the number of persons counted as members of an individual’s household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

For purposes of Medicaid eligibility, the family size of a pregnant woman includes the pregnant woman and the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

#### Medicaid – Effective Dates of Coverage

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b)).

Medicaid Managed Care plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract (Appendix H-6(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019; see 42 USC § 1315; § 364-j(1)(c); 18 NYCRR § 360-10.3(h)).

#### Newborn Child – Effective Date of Coverage for Medicaid

NYSOH must provide Medicaid eligibility to a child born to a woman who has applied for, has been determined eligible and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible for one year so long as the woman remains (or would remain if pregnant) eligible and the child is a member of the woman's household. This provision applies in instances where the labor and delivery services were furnished prior to the date of application and covered by Medicaid based on retroactive eligibility (42 CFR § 435.117(a); N.Y. Soc. Serv. Law § 366-g(3)).

Additionally, Medicaid MMCs are contractually obligated to provide coverage to eligible newborns from the date of birth (Medicaid Managed Care Model Contract (Appendix H-3(a), effective 3/1/2014 – 2/28/2019).

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## Legal Analysis

Initially, the record reflects that incorrect information was updated to your NYSOH account on July 27, 2015 resulting in redeterminations, as issued in the July 29, 2015 and August 12, 2015 notices of eligibility redetermination, finding your spouse eligible for advance premium tax credits and cost-sharing reductions, effective September 1, 2015. This also resulted in an August 12, 2015 enrollment confirmation notice being issued in error that confirmed her enrollment in a silver-level qualified health plan as of September 1, 2015. These notices were premised on your spouse not being pregnant when she was, which changed your household size from a three-person household, which included your unborn child, to a two-person household.

Although these notices did not change her Medicaid eligibility and coverage and her MMC plan enrollment dates that are at issue, it still was incorrect and led to much confusion. Since the household size relied upon by NYSOH was incorrect in issuing these notices of eligibility redetermination and enrollment confirmation, the July 29, 2015 and August 12, 2015 notices of eligibility redetermination and the August 12, 2015 enrollment confirmation notice are RESCINDED.

Turning to the issues, the first issue under review is whether NYSOH properly determined that your spouse's enrollment in her MMC plan was effective September 1, 2015.

According to your NYSOH account, on March 20, 2015, you reported that your spouse was pregnant with one child and was due on [REDACTED] 2015. As a result, your spouse was found conditionally eligible for Medicaid and you submitted her selection of an MMC plan in EmblemHealth, with a May 1, 2015 enrollment start date.

At the time of your March 20, 2015 application, your spouse had a family size of three people because she was pregnant with one child and your NYSOH application indicated that you both file your taxes as married filing jointly.

Medicaid can be provided through NYSOH to pregnant women who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 223% of the FPL for the applicable family size. On the date of your application, 100% of the relevant FPL for a three-person household was \$20,090.00. Your household income at that time was listed as \$37,500.00, which for a three-person household is 185.91% of the applicable FPL for Medicaid eligibility. Since your household's FPL of 185.91% was below 223% of that FPL of \$44,801.00, your spouse was found conditionally eligible for Medicaid as of the first day of that month, March 1, 2015.

Your spouse's eligibility was conditioned upon you providing proof of her immigration status and you were given 90 days to provide documentation, which as the notice stated was before June 18, 2015. If NYSOH remains unable to verify the attestation after the 90-day period ends, then it must determine the applicant's eligibility based on the information available in the data sources. On June 10, 2015, NYSOH deemed the three copies of your spouse's permanent resident card (I-155 card known as a green card) in your NYSOH account to be insufficient and sent a notice indicating that additional proof of her immigration status was needed. Since additional proof was not provided by June 18, 2015, your spouse's eligibility was redetermined based on the available information as of that date and she was put back into Medicaid fee-for-services, effective the first day of that month, which was June 1, 2015. You were again given another 90 day period to submit documentation to prove her immigration status by September 15, 2015.

NYSOH must provide notice to the applicant indicating that information necessary to complete an eligibility determination is missing, specifying the missing information, and providing instructions on how to provide the missing information within a 90-day period in accordance with the law. However, the eligibility redetermination notices issued on March 21, 2015 and June 27, 2015 and the June 10, 2015 letter did not specify that you needed to provide the front and back of your spouse's I-155 card (green card). The attached list to those notices stated only that for Immigrant Non-Citizen or Non-Immigrant Visa holder, an "I-551 resident alien card (green card)" would suffice. Therefore, these notices are deficient and it is reasonable to infer that you would have included the back side of your spouse's permanent resident card (I-155) had you known it was required when you uploaded the front side of this document on March 20, 2015, April 21, 2015 and April 27, 2015, as you did on July 27, 2015, once you became aware that both sides of your spouse's I-155 permanent resident card were needed.

For this reason, it is concluded that full documentation confirming your spouse's immigration status would have been provided as of March 20, 2015, April 21, 2015 and April 27, 2015, had NYSOH provided adequate notice specifying that you had to include the front and back of your spouse's I-155 permanent resident card. Since the document uploaded on July 27, 2015 contained the same front side of her I-155 permanent resident card, it is reasonable to conclude that the information contained on the back side of her I-155 permanent resident card would have been the same, too.

Therefore, the June 26, 2015 eligibility redetermination notice is MODIFIED to state that your spouse is eligible for Medicaid without condition as of June 1, 2015.

At your option, your spouse's enrollment in her EmblemHealth MMC plan can be made effective June 1, 2015 or August 1, 2015, depending on whether claims for

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medical services she received in the months of June 2015 and July 2015 have already been processed through Medicaid fee-for-services. In this regard, your case is RETURNED to NYSOH to contact you and confirm your preference of her re-instatement date and to facilitate her re-enrollment in EmblemHealth's MMC plan as of the date you choose.

In addition, the July 30, 2015 disenrollment notice is RESCINDED; and the August 15, 2015 notices of eligibility redetermination and enrollment confirmation as those notices relate to your spouse are rendered moot in relevant part.

The second issue under review is whether NYSOH properly determined that your newborn had health insurance under Medicaid fee-for-service as of [REDACTED], 2015 and was enrolled in her mother's EmblemHealth MMC plan as of September 1, 2015.

Initially, Medicaid coverage must be provided to a child born to a woman who has been determined eligible and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible for one year so long as the woman remains eligible and the child is a member of the woman's household. Also, Medicaid MMCs are contractually obligated to provide coverage to eligible newborns from the date of birth.

The record reflects that your newborn child was born on [REDACTED], and by this Decision, you are being given the option to choose a June 1, 2015 or August 1, 2015 MMC re-enrollment date for your spouse. Either way, your spouse will be re-enrolled in EmblemHealth MMC as of August 1, 2015. Therefore, your newborn child was deemed to have coverage in her mother's EmblemHealth MMC plan as of the date of his birth, [REDACTED].

Therefore, the September 1, 2015 eligibility redetermination notice is MODIFIED in part to state that your newborn child was conditionally eligible for Medicaid as of August 1, 2015. Since no corresponding enrollment confirmation notice was issued by NYSOH, by this Decision, your newborn child is determined to be enrolled in the same EmblemHealth MMC plan that his mother had in August 2015, as of his date of birth, [REDACTED].

Your case is RETURNED to NYSOH to effectuate the EmblemHealth MMC plan enrollment of your spouse as of the first of June 2015 or August 2015, depending on your choice, and of your newborn, as of [REDACTED].

## **Decision**

The June 26, 2015 eligibility redetermination notice is MODIFIED to state that your spouse is eligible for Medicaid without condition as of June 1, 2015.

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At your option, your spouse's enrollment in her EmblemHealth MMC plan can be made effective June 1, 2015 or August 1, 2015.

In this regard, your case is RETURNED to NYSOH to contact you and confirm your preference of her re-instatement date of either June 1, 2015 or August 1, 2015, and to facilitate her re-enrollment in EmblemHealth's MMC plan as of the date you choose.

The July 30, 2015 disenrollment notice is RESCINDED

The August 15, 2015 notices of eligibility redetermination and enrollment confirmation as those notices relate to your spouse are rendered moot in relevant part.

The September 1, 2015 eligibility redetermination notice is MODIFIED in part to state that your newborn child was conditionally eligible for Medicaid as of August 1, 2015.

By this Decision, your newborn child is determined to be enrolled in the same EmblemHealth MMC plan as his mother was in [REDACTED] 2015, as of his date of birth, [REDACTED]

**Effective Date of this Decision:** April 27, 2016

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

Your spouse is Medicaid eligible without condition as of June 1, 2015.

At your option, your spouse's enrollment in her EmblemHealth MMC plan can be made effective June 1, 2015 or August 1, 2015, depending on whether claims for medical services she received in the months of June 2015 and July 2015 have already been processed through Medicaid fee-for-services.

Your case is RETURNED to NYSOH to contact you and confirm your preference of her re-instatement date of either June 10, 2015 or August 1, 2015, and to facilitate her re-enrollment in EmblemHealth's MMC plan as of the date you choose.

Your newborn child is eligible for enrollment in her Medicaid managed care plan effective August 1, 2015.

## **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 June 26, 2015 eligibility redetermination notice is MODIFIED to state that your spouse is eligible for Medicaid without condition as of June 1, 2015.

At your option, your spouse's enrollment in her EmblemHealth MMC plan can be made effective June 1, 2015 or August 1, 2015.

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In this regard, your case is RETURNED to NYSOH to contact you and confirm your preference of her re-instatement date of either June 1, 2015 or August 1, 2015, and to facilitate her re-enrollment in EmblemHealth's MMC plan as of the date you choose.

The July 30, 2015 disenrollment notice is RESCINDED

The August 15, 2015 notices of eligibility redetermination and enrollment confirmation as those notices relate to your spouse are rendered moot in relevant part.

The September 1, 2015 eligibility redetermination notice is MODIFIED in part to state that your newborn child was conditionally eligible for Medicaid as of August 1, 2015.

By this Decision, your newborn child is determined to be enrolled in the same EmblemHealth MMC plan as his mother was in August 2015, as of his date of birth, [REDACTED].

Your spouse is Medicaid eligible without condition as of June 1, 2015.

At your option, your spouse's enrollment in her EmblemHealth MMC plan can be made effective June 1, 2015 or August 1, 2015, depending on whether claims for medical services she received in the months of June 2015 and July 2015 have already been processed through Medicaid fee-for-services.

Your case is RETURNED to NYSOH to contact you and confirm your preference of her re-instatement date of either June 10, 2015 or August 1, 2015, and to facilitate her re-enrollment in EmblemHealth's MMC plan as of the date you choose.

Your newborn child is eligible for enrollment in her Medicaid managed care plan effective August 1, 2015.

## **Legal Authority**

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

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

