



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

Notice of Decision

Decision Date: April, 08 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005687

[REDACTED]

Dear [REDACTED],

On March 9, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 15, 2015 eligibility determination notice and December 24, 2015 enrollment confirmation 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 and the NY State of Health Account ID number at the top of this notice.

Legal Authority

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

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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Issues

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

Did the Marketplace properly determine that the enrollment of your newborn son in his Medicaid Managed Care plan began as of February 1, 2016, rather than his date of birth?

Did the Marketplace properly determine that your newborn son's Medicaid fee-for-service coverage began no earlier than December 1, 2015?

Was your newborn son eligible for any other coverage prior to December 1, 2015?

Procedural History

On November 4, 2014, the Marketplace issued a renewal and eligibility determination notice stating that you and your spouse were eligible to receive up to \$345.03 per month in advance payments of the premium tax credit and, if you selected a silver-level plan, cost-sharing reductions, effective January 1, 2015.

On December 9, 2014, the Marketplace issued an enrollment confirmation notice stating that you and your spouse were enrolled in a qualified health plan through MVP and that your coverage would be effective as early as January 1, 2015.

On December 11, 2015, your newborn son was added to your Marketplace account and an application was submitted on his behalf.

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On December 12, 2015 and December 14, 2015, you revised your application.

On December 15, 2015 the Marketplace issued an eligibility determination stating that your child was eligible for Medicaid, effective December 1, 2015.

Also on December 15, 2015, the Marketplace issued an enrollment confirmation notice stating your child was enrolled in Medicaid, but also instructed you to select a health plan or one would be chosen for him.

The enrollment details in your Marketplace account reflect that you had selected Fidelis Care as your son's Medicaid Managed care (MMC) plan. The start date of his coverage with Fidelis Care was determined to be February 1, 2016.

In your application of December 22, 2015, for the first time, you requested assistance in paying for medical bills for the last three months.

On December 22, 2015, you spoke with the Marketplace's Account Review Unit and appealed the start date of coverage for your newborn son because you wanted his MMC coverage to begin as of the date of his birth.

On December 24, 2015, the Marketplace issued an additional enrollment confirmation notice verifying that as of December 22, 2015, you had selected Fidelis Care as your son's Medicaid Managed Care (MMC) plan. The notice further stated that his coverage under Fidelis Care would begin February 1, 2016.

On January 13, 2016, the Marketplace received several medical invoices reflecting the charges assessed for the post-natal care of your newborn son.

Also on January 13, 2016, the Marketplace received several earnings statements issued to your spouse by his employers, [REDACTED], and [REDACTED], between November 25, 2015 and December 17, 2015.

On February 22, 2016, the Marketplace received several earnings statements issued to you by your employer, [REDACTED], between December 25, 2015 and January 29, 2016.

Also on February 22, 2016, the Marketplace received several earnings statements issued to your spouse by his employers, [REDACTED], [REDACTED], and [REDACTED], between January 6, 2016 and February 4, 2016.

On March 10, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

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Findings of Fact

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

- 1) You testified that you are appealing because the Marketplace failed to add your newborn to your qualified health plan as of his date of birth.
- 2) You testified, and the record reflects, that your child was born on [REDACTED].
- 3) You testified that you contacted your insurance carrier, MVP, on or about October 13, 2015 to ensure that your son would be coverage at the start of his birth since you were scheduled to give birth via C-Section on [REDACTED]. You further testified that the MVP representative stated that you did not need to do anything further, and that he would be covered under your policy.
- 4) You testified that after you son was born, you began to receive bills reflecting that your son was in fact not covered through your MVP policy.
- 5) You testified that you called MVP again during November 2015 to inquire about the status of the bills. At that time, a separate MVP representative stated that you needed to update your account through the Marketplace, not through MVP to include your son on your policy.
- 6) You testified, and the record reflects, that you called the Marketplace on December 14, 2015 to add your child to your Marketplace account. At that time you requested that your child be added to your health plan, and that you were seeking coverage under that plan to be backdated to the date of his birth.
- 7) You testified that you were never informed by MVP that you needed to update your account through the Marketplace in order to include him on your health plan.
- 8) On December 15, 2015, the Marketplace found your newborn son eligible for Medicaid, effective December 1, 2015.
- 9) You subsequently selected Fidelis Care as his Medicaid Managed Care (MMC) plan on December 22, 2015. His coverage under this MMC plan was effective February 1, 2016.
- 10) On January 13, 2016, the Marketplace received several earnings statements issued to your spouse by his employers, [REDACTED], reflecting that he received: (1) \$520.00 on November 25, 2015, (2) \$174.25 on November

25, 2015, (3) \$36.65 on December 3, 2015, (4) \$520.00 on December 9, 2015, (5) \$118.15 on December 10, 2015, (6) \$520.00 on December 16, 2015, and (7) \$68.85 on December 17, 2015.

11) On February 22, 2016, the Marketplace received several earnings statements issued to you by your employer, [REDACTED], reflecting that you received: (1) \$36.00 on December 25, 2015, (2) \$36.36 on January 1, 2016, (3) \$24.00 on January 22, 2016, and (4) \$222.65 on January 29, 2016.

12) On February 22, 2016, the Marketplace received several earnings statements issued to your spouse by his employers reflecting that you received: (1) \$520.00 on January 6, 2016, (2) \$50.55 on January 7, 2016, (3) \$520.00 on January 13, 2016, (4) \$42.65 on January 14, 2016, (5) \$520.00 on January 20, 2016, (6) \$46.33 on January 21, 2016, (7) \$520.00 on January 27, 2016, and (8) \$112.13 on February 4, 2016.

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

Applicable Law and Regulations

Medicaid

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 (MMC) 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, §1115 Soc. Sec. Act; N.Y. Soc. Serv. Law §364-j(1)(c); 18 NYCRR 360-10.3(h)).

Newborn Child – Effective Date of Coverage for Medicaid

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 (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; provided, however, that the mother herself must have been enrolled in the MMC at the time of birth (Medicaid Managed Care Model Contract (Appendix H-3, effective 3/1/2014 – 2/28/2019)).

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Medicaid for Children

A child who is under one year of age is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 223% of the FPL for the applicable family size (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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 2015 FPL, which is \$24,250.00 for a four-person household (80 Fed. Reg. 3236, 3237).

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 March 19, 2014). Family size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

The Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of application if the individual received medical services that would have been covered under Medicaid and the individual 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)).

Newborn Child – Effective Date of Coverage

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

In addition, there are special effective dates in the case of birth, adoption, placement for adoption, or placement in foster care of a child. The Marketplace must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, or it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following the date of birth, adoption, placement for adoption, or placement in foster care (45 CFR § 155.420(b)(2); NYS Insurance Law § 4304(d)(1)(C)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that the enrollment of your newborn son in his Medicaid Managed Care (MMC) plan began effective February 1, 2016, rather than his date of birth.

You testified that you contacted your insurance carrier, MVP, on or about October 13, 2015 to ensure that your son would be coverage at the start of his birth since you were scheduled to give birth via C-Section on [REDACTED]. You further testified that the MVP representative stated that you did not need to do anything further, and that he would be covered under your policy.

However, when you started receiving bills from your providers that that did not indicate that your son was covered under your policy, you again contacted MVP during November 2015 to inquire as to the status of his health insurance. It was then that you were instructed by a separate MVP representative that you needed to contact the Marketplace to include your newborn son on your Marketplace account.

The record reflects that you initially contacted the Marketplace on November 14, 2015 to include your son on your Marketplace account, but did not select an MMC plan for your newborn son's enrollment until December 22, 2015.

The date on which an MMC plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected between the first day and fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected between the sixteenth day of the month and the end of the month goes into effect on the first day of the second following month.

On December 22, 2015, you selected an MMC plan for your newborn son, so it properly took effect on the first day of the second month following after December 22, 2015; that is, on February 1, 2016.

Furthermore, a newborn child's MMC plan start date can only be backdated to the date of his or her birth when the mother had also been enrolled in an MMC plan at the time of his or her birth. The record reflects that you were enrolled in a qualified health plan issued by MVP during the entirety of 2015, not an MMC plan; therefore, a backdating of your newborn son's coverage on that basis is not appropriate.

Therefore, the December 22, 2015 enrollment confirmation notice stating that your newborn son's enrollment in his Medicaid Managed Care plan was effective February 1, 2016, is correct and must be AFFIRMED.

The second is whether the Marketplace properly determined that your newborn son's enrollment in Medicaid fee-for-service coverage began on December 1, 2015.

You are in a four-person household; you file your taxes with a tax filing status of married filing jointly and claim two dependent on your tax return.

Your newborn son was initially found eligible for Medicaid in the December 15, 2015 eligibility determination notice. According to this notice, your newborn son's coverage with Medicaid began December 1, 2015.

You testified that you are seeking to have your newborn son's Medicaid coverage retroactively applied for the months of October and November 2015, since this would cover the period between his date of birth on [REDACTED] and his current Medicaid eligibility which begins December 1, 2015.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual's application if the individual received medical services that would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. To be eligible for Medicaid during October and November 2015, son would have needed to meet the non-financial criteria and have an income no greater than 223% of the FPL, which is \$4,506.49 per month, during each of these months. There is no indication in the record that your newborn son would have been ineligible for Medicaid based on non-financial criteria during either October or November 2015; therefore, your household income for those months is the only pertinent factor regarding this issue.

While you provided earnings statements issued to both you and your spouse between November 25, 2015 and February 4, 2016, there is insufficient documentation to confirm the total gross earnings of you and your spouse during the months of October and November 2015 in order to find your newborn son eligible for Medicaid on a retroactive basis during either of those months.

Therefore, the December 15, 2015 eligibility determination notice stating that your newborn son was eligible for Medicaid on December 1, 2015, is correct and must be AFFIRMED.

However, in New York State special exceptions have been made for newborns seeking coverage through so-called qualified health plans as of the newborn's date of birth; newborns are generally permitted to enroll in coverage that is guaranteed to begin as of their date of birth.

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The record reflects that you clearly expressed your need for your son to be covered as of the date of his birth to your carrier. Furthermore, you clearly contacted the Marketplace within the 60 day time frame seeking coverage for your child as of the date of his birth, and the Marketplace erred in not enrolling your son into your own plan as you requested, as of his date of birth.

Therefore, your case is RETURNED to the Marketplace to enroll your child into your own qualified health plan as the first of his month of birth, until his own coverage through his MMC plan became effective on February 1, 2016.

You will be responsible for any premium due for your newborn's coverage in August 2015.

Decision

The December 22, 2015 enrollment confirmation notice is AFFIRMED.

The December 15, 2015 eligibility determination notice is AFFIRMED.

Your case is RETURNED to the Marketplace to enroll your child into your own qualified health plan as the first of his month of birth, until his own coverage through his MMC plan became effective on February 1, 2016.

Effective Date of this Decision: April, 08 2016

How this Decision Affects Your Eligibility

Your newborn son's Medicaid fee-for-service coverage began December 1, 2015.

Your newborn son's MMC plan coverage began February 1, 2016.

However, the case is RETURNED to the Marketplace to enroll your child into your own qualified health plan as the first of his month of birth, until his own coverage through his MMC plan became effective on February 1, 2016.

You will be responsible for any outstanding premiums to cover your son's additional coverage through your qualified health plan.

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 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 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 22, 2015 enrollment confirmation notice is **AFFIRMED**.

The December 15, 2015 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to the Marketplace to enroll your child into your own qualified health plan as the first of his month of birth, until his own coverage through his MMC plan became effective on February 1, 2016.

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Your newborn son's Medicaid fee-for-service coverage began December 1, 2015.

Your newborn son's MMC plan coverage began February 1, 2016.

However, the case is RETURNED to the Marketplace to enroll your child into your own qualified health plan as the first of his month of birth, until his own coverage through his MMC plan became effective on February 1, 2016.

You will be responsible for any outstanding premiums to cover your son's additional coverage through your qualified health plan.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

