



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

Notice of Decision

Decision Date: June 24, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005848

[REDACTED]

Dear [REDACTED],

On March 24, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's October 5, 2015 disenrollment notice regarding your coverage, and October 5, 2015 eligibility determination regarding your newborn.

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 Account ID 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(b).

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Issues

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

Did NYSOH properly determine that your Medicaid coverage and your enrollment in Medicaid and your Medicaid Managed Care plan were terminated effective October 31, 2015?

Should NYSOH have found that your newborn was eligible for Medicaid as of his birth?

Did NYSOH properly determine that your newborn child's Child Health Plus coverage began on November 1, 2015?

Procedural History

On February 17, 2015, you updated your NYSOH account, and indicated that you were pregnant and expecting to give birth to one child on [REDACTED]

On February 18, 2015, NYSOH issued a notice of eligibility determination that stated you, [REDACTED] were *conditionally* eligible for Medicaid, effective February 1, 2015, and your two children were eligible for coverage through Child Health Plus effective April 1, 2015. You were directed to submit proof of your household income by March 6, 2015, or your eligibility to enroll in coverage or to receive financial assistance might end.

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On February 21, 2015, NYSOH issued an enrollment confirmation notice stating that you were enrolled in Medicaid effective February 1, 2015, and that you were enrolled in a Medicaid Managed Care (MMC) plan effective April 1, 2015. Your children were enrolled in a plan through Child Health Plus effective January 1, 2015, if you paid the first month's premium.

No income documentation was submitted by March 6, 2015.

On October 4, 2015, you updated your NYSOH account and added your newborn son to your account.

On October 5, 2015, NYSOH issued a notice of eligibility determination stating that you were newly conditionally eligible to enroll in a qualified health plan and to receive up to \$91.00 per month in advance payments of the premium tax credit (APTC), effective November 1, 2015.

The same eligibility determination notice stated that your three children, including your newborn son, were conditionally eligible for Child Health Plus coverage with a \$30.00 monthly premium each, effective November 1, 2015. You were directed to submit income documentation for your household, as well as citizenship status and a Social Security number for your newborn son, or your eligibility to enroll or to receive financial assistance might end. Two deadlines were given for submitting this documentation, December 3, 2015 and January 2, 2016.

Also on October 5, 2015, NYSOH issued an enrollment confirmation notice stating that your newborn son was enrolled in a Child Health Plus plan, effective January 1, 2015.

On October 5, 2015, NYSOH also issued a disenrollment notice stating that your [REDACTED] coverage through your Medicaid Managed Care plan would end effective October 31, 2015 because you were no longer eligible to remain enrolled in your current health insurance. You were directed to select a new plan right away, or there might be a gap in coverage.

On December 30, 2015, you spoke with NYSOH's Account Review Unit and appealed the October 5, 2015 disenrollment notice, the October 5, 2015 eligibility determination that stated you were eligible for APTC effective November 1, 2015, and the gap in coverage before your son's CHP plan start date of November 1, 2015.

No additional documentation was received by either December 3, 2015 or January 2, 2016.

On March 24, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing left open at the end of the hearing so that you could submit proof of your spouse's income

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for the month of October 2015. On April 4, 2016, you faxed a two page document to NYSOH consisting of a letter from your spouse's employer and a fax cover page. The record is now closed.

Findings of Fact

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

- 1) When you updated your account on February 17, 2015, you indicated that your expected annual household income was \$54,398.00 and that you were pregnant and expecting one child. This included \$12,000.00 in deductions for [REDACTED] for "Tuition & fees" and \$11,102.00 in deductions for [REDACTED] for "Other Adjustments: Charitable Contributions." You, [REDACTED], then became eligible for Medicaid; however, this eligibility was conditional upon your submitting adequate documentation of your household income.
- 2) According to the record and your testimony, your son was born on [REDACTED]
- 3) You testified and the record reflects that you updated your NYSOH account on October 4, 2015 to add your newborn son to your account and apply for coverage on his behalf.
- 4) When you updated your account on October 4, 2015, you also increased your family's expected annual household income to \$82,898.00. This income included deductions for [REDACTED] of \$12,000.00 and \$12,102.00 in deductions for your spouse. As a result, you were found to be no longer eligible for Medicaid, even conditionally.
- 5) You testified that you are appealing NYSOH's determination that your Medicaid eligibility ended on October 31, 2015 and the lack of Medicaid coverage for your newborn, from the date of his birth until his November 1, 2015 enrollment in CHP coverage.
- 6) You testified that you do not recall when you first tried to enroll your son in a CHP plan, but that you thought he would have Medicaid coverage because that is the coverage you had when he was born, and because your older children were given Medicaid coverage when they were born.
- 7) The record reflects that, on October 4, 2015, you attempted to add your newborn to the CHP plan your two older children were already enrolled in.
- 8) You testified that you have had problems with your newborn son's enrollment in his CHP coverage, and did not start paying premiums for

him until February 2016 because of these problems, and because you believed he may be eligible for Medicaid.

- 9) You testified that you understand you need to pay premiums before your newborn son would have coverage for November 2015, December 2015, and January 2016.
- 10) On April 4, 2016, you faxed a letter to the Appeals Unit from your husband's employer, stating that he earned a gross income of \$3,000.00 in October 2015. This letter, along with the fax cover sheet, is marked "Appellant's Exhibit 1."
- 11) You testified that you have unpaid bills for yourself for the months of September and October, and also bills for your son for those two months.

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 NYSOH 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 FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4), NY Social Services Law § 366(1)(b)).

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).

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 \$28,410.00 for a five-person household (80 Federal Register 3236, 3237).

Generally, Medicaid coverage begins on the first day of the month in which the applicant was found eligible (42 CFR § 435.915(b)).

People who receive or are eligible for Medicaid will remain eligible for Medicaid for 12 months, with limited exceptions, including entering prison or another facility

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that provides medical care, moving out of state, failing to provide a valid Social Security number, or having third party health insurance (NY Social Services Law § 366(4)(c)).

Pregnant women who, while pregnant, applied for, were eligible for, and received Medicaid services on the day that their pregnancy ends also remain eligible for Medicaid for a 60-day period that begins on the last day of pregnancy and ends on the last day of the month in which the 60-day period ends. This eligibility exists regardless of changes in the woman's financial circumstances during the 60-day period, and includes all services that are pregnancy-related (42 CFR § 435.170).

Medicaid - Household Composition

For purposes of Medicaid eligibility, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman, but also 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).

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); NY Social Services Law § 366-g(3)).

Child Health Plus Effective Date - General

In New York State, Child Health Plus benefits are furnished “By the first day of the month after the application is received if prior to the 15th of the month or the first day after the second subsequent month if after the 15th of the month” (Selection made on Form CS 18, Separate Child Health Insurance Program Non-Financial Eligibility – Citizenship. Sections: 2105(c)(9) and 2107(e)(1)(J) of the SPA and 42 CFR 457.320(b)(6), (c) and (d); see e.g. State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Modified Adjusted Gross Income and Deductions

The Marketplace bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term

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“modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, and deductions attributable to royalties (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

Subject to some limitations, tuition and fees for a dependent’s higher education paid by the tax payer to a qualified educational institution can be deducted from adjusted gross income in an amount up to \$4,000.00, provided the tax payer’s yearly income does not exceed \$80,000.00 for a single individual or \$160,000.00 if married filing jointly (26 USC § 222; see Publication 970, Tax Benefits for Education (IRS.gov)).

Legal Analysis

The first issue under review is whether NYSOH properly disenrolled you from your MMC plan and Medicaid coverage, effective October 31, 2015.

NYSOH found you only *conditionally* eligible for Medicaid as of February 1, 2015. You were found only conditionally eligible because your reported earnings were inconsistent with income reported on federal and state data sources. It is further noted that you decreased your estimated household earnings by \$12,000.00 for “Tuition & fees” and another \$11,102.00 for charitable deductions.

As noted above, the maximum amount an individual can deduct under 26 USC § 222 is \$4,000.00. Even if both you and your spouse were entitled to this deduction, it would only total \$8,000.00. Moreover, charitable deductions are deducted from your income on your federal tax return after your adjusted gross income is calculated; therefore, they may not be deducted from your income for the purpose of determining your eligibility for financial assistance through NYSOH. It is not clear whether, had you timely submitted the proper income documentation, you would have been found eligible for Medicaid.

In any event, you were directed to provide documentation to confirm that the income you claimed on your application was accurate; but in order to avoid any delay on your ability to obtain health insurance, you were allowed to temporarily enroll in Medicaid until you could prove your income.

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Ordinarily, once an individual was found eligible for Medicaid, that eligibility would continue for a full 12 months, as noted above. Pregnant woman would also be eligible for coverage extending beyond the date of delivery.

However, because you never submitted the appropriate documentation regarding your household income, you were never found eligible for Medicaid, and you were therefore not entitled to continuous coverage under Medicaid for 12 months.

When you updated your application on October 4, 2015, you were found no longer even conditionally eligible for Medicaid, based on your reported household income at that time.

Even assuming your estimated annual household income of \$82,898.00 was correctly reported, this would equal 291.79% of the FPL for a family of five, and you would not be eligible for Medicaid.

Therefore, NYSOH correctly disenrolled you from Medicaid.

The second issue under review is whether your newborn should have been found eligible for Medicaid as of the date of his birth. Although a child born to a woman who has applied for, has been determined eligible for, and is receiving Medicaid on the date of the child's birth is also eligible for Medicaid, your newborn was not eligible for Medicaid because you were never found eligible yourself.

Therefore, your newborn did not qualify for eligibility for Medicaid based on your previous eligibility.

The third issue under review is whether NYSOH properly determined that your newborn son's eligibility for CHP, and his enrollment in his CHP plan, were effective no earlier than November 1, 2015.

You testified, and the record reflects, that you updated your NYSOH account to add your newborn son and enroll him in coverage on October 4, 2015. In New York State, if an application for CHP coverage is received between the first and fifteenth of the month, coverage will begin the first day of the following month. Therefore, your son's eligibility for CHP coverage, and his enrollment date, were November 1, 2015.

Decision

The October 5, 2015 disenrollment notice is **AFFIRMED**.

The October 5, 2015 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: June 24, 2016

How this Decision Affects Your Eligibility

Your [REDACTED] eligibility for and enrollment in Medicaid properly ended October 31, 2015.

Your newborn child became eligible for CHP effective November 1, 2015.

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:
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Summary

The October 5, 2015 disenrollment notice is AFFIRMED.

The October 5, 2015 eligibility determination is AFFIRMED.

Your [REDACTED] eligibility for and enrollment in Medicaid properly ended October 31, 2015.

Your newborn child became eligible for CHP effective November 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:

