



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

## Notice of Decision

Decision Date: April 25, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006100

[REDACTED]

Dear [REDACTED],

On April 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's January 9, 2016 eligibility determination.

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 NY State of Health 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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## Decision

Decision Date: April 25, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006100

[REDACTED]

## Issues

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

Did NYSOH properly determine that you were not eligible for Medicaid, as of January 31, 2016?

Did NYSOH properly determine that you were eligible to enroll in the Essential Plan, effective February 1, 2016?

## Procedural History

On January 8, 2016, NYSOH received your updated application for financial assistance.

On January 8, 2016, NYSOH issued a preliminary eligibility determination based on the January 8, 2016 application, stating that you are eligible to enroll in the Essential Plan, effective February 1, 2016.

Also on January 8, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not eligible for Medicaid.

On January 9, 2016, NYSOH issued a notice of eligibility determination based on the January 8, 2016 application, stating that you are eligible to enroll in the Essential Plan, effective February 1, 2016. It further stated that you no longer qualify for Medicaid as of January 31, 2016.

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On April 8, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your mother, [REDACTED], was also present with you for the hearing, and was placed under oath. 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 testified that you are appealing because you want to be eligible for Medicaid, and not for the Essential Plan, because you have a chronic medical condition that requires you to regularly take medication and see your doctors.
- 2) You testified that, even though the premium for the Essential Plan is low, because you require frequent medical treatment and prescriptions, the out of pocket expenses in the Essential Plan are unaffordable.
- 3) You testified that you have been paying your Essential Plan premiums and using your coverage.
- 4) The application that was submitted on January 8, 2016, which requested financial assistance, listed annual household income of \$21,692.00, consisting of \$7,496.00 you earn from your employment and \$14,196.00 you receive in Social Security Disability benefits. You testified that this amount was correct.
- 5) Your application of January 8, 2016 states that you have been certified disabled by the Social Security Administration.
- 6) On February 11, 2016, a Notice of Award letter (Document [REDACTED]) was scanned by NYSOH into your account from the Social Security Administration (SSA). The letter stated that you became disabled under SSA's rules on July 22, 2014. It further stated that you were eligible for monthly benefits of \$1,092.00, and would begin receiving these benefits on a monthly basis beginning in August 2015.
- 7) Your application states that you plan to file your 2016 tax return as single, and you do not plan to claim any dependents on your tax return.
- 8) You testified that it is possible that your earned income may decrease because you have been experiencing more physical symptoms of your illness.

- 9) Your application states that you will not be taking any deductions on your 2016 tax return.
- 10) Your application states that you live in Ontario County.
- 11) You testified that, approximately two months ago, you applied for Medicaid through the Ontario County Department of Social Services, and specifically tried to apply for the Medicaid Buy-In Program for Working People with Disabilities, but you have not received a response on your application.
- 12) The record contains a copy of an Access NY Health Care application from the Ontario County Department of Social Services (Document [REDACTED] that is signed by you and dated January 28, 2016. The document appears to be stamped "Feb 11, 2016" by NYSOH, and was uploaded to your account on March 10, 2016.
- 13) Page four of the Access NY Health Care application, Section F, Number 2 states "Are you or anyone who lives with you blind, disabled, or chronically ill?" The box next to "yes" is checked. (Document [REDACTED])
- 14) Page nine of document [REDACTED] is the "Access NY Supplement A," which states that it must be completed if anyone who is applying is over 65, certified blind or certified disabled, not certified disabled but chronically ill, or institutionalized and applying for coverage of nursing home care. Section B, Number 3 of the Supplement asks "If you are disabled and working, are you interested in applying for the MBI-WPD program?" The box next to "Yes" is checked.
- 15) The record contains a document ([REDACTED] dated February 17, 2016 and uploaded to your account on February 19, 2016, which states that NYSOH received your application dated February 11, 2016, but that a determination or redetermination could not be made until you contacted NYSOH to review your account, since you already had an account through NYSOH. The notice states that you needed to contact NYSOH by March 3, 2016.
- 16) The record also contains a document ([REDACTED] dated March 9, 2016 and uploaded to your account on March 15, 2016, which states that NYSOH has denied the February 11, 2016 application for health insurance because you were sent a letter asking you to contact NYSOH to review the information in your application, and you did not do so.

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

## **Applicable Law and Regulations**

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), N.Y. Soc. Serv. Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL for the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

### Medicaid

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)), N.Y. Soc. Serv. Law § 366(1)(b)).

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 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

In general, to qualify for MAGI-based Medicaid through the Marketplace, you must also be one of the following:

- An adult aged 19-64 who is not eligible for Medicare Part A or Part B,

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- A pregnant woman or infant,
- A child aged 1-18, or
- A parent or caretaker relative

(45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

If an individual does not fall into one of these categories, he or she may still be eligible for non-MAGI-based Medicaid coverage through their Local Department of Social Services or the New York City Human Resources Administration (see N.Y. Soc. Serv. Law § 366(1)(c)).

In the case of an individual who was enrolled in Medicaid through NYSOH, but who is determined to be no longer eligible for MAGI-based Medicaid, NYSOH must generally make such a referral for an individual who is not eligible for MAGI-based Medicaid through NYSOH if he or she is in receipt of Medicare, is disabled, or is over the age of 65, but is not a parent/caretaker relative. During the referral process, an individual's Medicaid eligibility through NYSOH, including their enrollment in a Medicaid Managed Care plan or receipt of Premium Payment Assistance, continues until such a time as their eligibility can be redetermined on a non-MAGI Medicaid basis (14 OHIP/LCM-2 effective as of December 1, 2014; GIS 16 MA/04 effective as of January 1, 2016; see *generally* 42 CFR § 435.1200, 42 CFR § 435.930).

## Legal Analysis

The first issue under review is whether NYSOH properly determined that you were not eligible for Medicaid.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,880.00 for a one-person household. Since \$21,692.00 is 182.59% of the 2016 FPL, NYSOH properly found you to be not eligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the January 9, 2016 eligibility determination properly stated that, based on the information you provided, you were eligible for the Essential Plan, and no longer qualified for Medicaid as of January 31, 2016, it was correct and is **AFFIRMED**.

However, individuals who are no longer eligible for MAGI-based Medicaid because they are receiving Medicare, are over the age of 65, or are disabled may qualify for Medicaid under non-MAGI standards. NYSOH is required to refer these individuals to the Local Department of Social Services (LDSS) or the New

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York City Human Resources Administration for redetermination of their Medicaid eligibility.

Once a case is referred, NYSOH and the LDSS must ensure that an individual's Medicaid is maintained throughout the redetermination process to prevent any gaps in coverage. This includes maintaining an individual's coverage through their Medicaid Managed Care plan or their receipt of Medicaid Premium Assistance payments.

In this case, it appears that Ontario County Department of Social Services sent a January 28, 2016 application, in which you indicated that you were disabled, to NYSOH instead of processing it using non-MAGI standards. The record contains notices from NYSOH ( [REDACTED] ) and ( [REDACTED] ) indicating that this application was denied by NYSOH. However, before this happened, you had already completed your renewal application with NYSOH and been found eligible for the Essential Plan, effective February 1, 2016.

At the time of your renewal in January 2016, since you indicated that you were disabled and identified Social Security Disability benefits as a source of income, NYSOH should have referred your application to LDSS to see if you qualified for non-MAGI Medicaid on the basis of your disability. NYSOH failed to do this, and instead placed you in the Essential Plan.

Therefore, your case is being RETURNED to NYSOH to effectuate an immediate referral of your application to LDSS for a determination as to your eligibility for Medicaid using non-MAGI standards.

In the meantime, NYSOH is directed to facilitate your reinstatement in Medicaid and enrollment in a Managed Care Plan, as of May 1, 2016 or a later month of your choosing, while your eligibility for non-MAGI Medicaid is being determined by LDSS.

The second issue under review is whether NYSOH properly determined that you were eligible for the Essential Plan, effective February 1, 2016.

The application that was submitted on January 8, 2016 listed an annual household income of \$21,692.00, and the eligibility determination relied upon that information.

You are in a one-person household. You expect to file your 2016 income taxes as single and to claim zero dependents on that tax return.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,770.00 for a one-

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person household. Since an annual household income of \$21,692.00 is 184.30% of the 2015 FPL, NYSOH properly found you to be eligible for the Essential Plan.

## **Decision**

The January 9, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to make an immediate referral to LDSS to determine your eligibility for Medicaid using non-MAGI criteria.

NYSOH is directed to facilitate your re-enrollment in Medicaid and a Medicaid Managed Care plan while your eligibility with LDSS is pending, effective May 1, 2016 or a later month of your choosing and continuing until an eligibility determination is made by LDSS.

**Effective Date of this Decision:** April 25, 2016

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

You remain eligible for the Essential Plan.

You are not eligible for MAGI-based Medicaid through NYSOH, as of your January 8, 2016 application.

Your case is being sent back to NYSOH to refer your application to LDSS for a determination as to your eligibility for non-MAGI Medicaid on the basis of your disability.

NYSOH will assist you in re-enrolling in Medicaid coverage and a Medicaid Managed Care plan while your eligibility is being determined by LDSS. This coverage will begin May 1, 2016, or a later month of your choosing, and continue until a decision is made by LDSS.

## **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

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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 January 9, 2016 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to make an immediate referral to LDSS to determine your eligibility for Medicaid using non-MAGI criteria.

NYSOH is directed to facilitate your re-enrollment in Medicaid and a Medicaid Managed Care plan while your eligibility with LDSS is pending, effective May 1, 2016 or a later month of your choosing and continuing until an eligibility determination is made by LDSS.

You remain eligible for the Essential Plan.

You are not eligible for MAGI-based Medicaid through NYSOH, as of your January 8, 2016 application.

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Your case is being sent back to NYSOH to refer your application to LDSS for a determination as to your eligibility for non-MAGI Medicaid on the basis of your disability.

NYSOH will assist you in re-enrolling in Medicaid coverage and a Medicaid Managed Care plan while your eligibility is being determined by LDSS. This coverage will begin May 1, 2016, or a later month of your choosing, and continue until a decision is made by LDSS.

## **Legal Authority**

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

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

