



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

Notice of Decision

Decision Date: July 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007006

[REDACTED]

Dear [REDACTED]

On June 16, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's January 28, 2016 eligibility determination 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 NY State of Health 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.

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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NY State of Health Account ID: [REDACTED]
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[REDACTED]

Issues

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

Did NY State of Health properly determine that your sister, [REDACTED], was eligible to enroll in the Essential Plan, effective March 1, 2016?

Did NY State of Health properly determine that your sister was not eligible for Medicaid?

Procedural History

On January 27, 2016, NY State of Health (NYSOH) received your initial application for financial assistance.

On January 28, 2016, NYSOH issued an eligibility determination based on the January 27, 2016 application, stating that your sister was eligible to enroll in the Essential Plan, effective March 1, 2016.

On February 10, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination notice insofar as your sister was not found eligible for Medicaid.

On June 16, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and remained open for the sole purpose of providing you an opportunity to submit as additional evidence: (1) copies of the two Social Security Administration (SSA) award letters reflecting SSDI and survivors benefits issued to you on behalf of

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your sister during 2016, (2) a scanned copy of your unemployment benefits history reflecting payments you received after filing your claim against [REDACTED], and (3) a copy of your monetary determination letter associated with that claim. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On June 28, 2016, you provided to the Appeals Unit through facsimile: (1) a Notice of Award issued by the SSA to your sister for 2016, (2) Statement of Survivor Annuity Paid (Form CSF 1099R) issued to your sister for 2015, (3) two Unemployment Insurance Monetary Benefit Determination letters issued to you by New York State Department of Labor on May 27, 2016 and June 7, 2016, (4) an Online Benefit Payment History screenshot reflecting unemployment benefits remitted to you between June 2, 2016 and June 27, 2016, (5) a Calvary Hospital Hospice Aide Care Plan, dated as of April 12, 2016, issued for the care of your sister, and (6) a letter issued by New York Presbyterian Hospital, dated as of February 19, 2016, requesting that your sister's Medicaid be reinstated.

Accordingly, the record was closed on June 28, 2016.

Findings of Fact

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

- 1) You testified that you expect to file your 2016 taxes with a tax filing status of head of household. You will claim your sister as your sole dependent on that tax return.
- 2) You are seeking insurance for your sister alone since both you and your son are currently enrolled in Medicaid through the Westchester Department of Social Services.
- 3) The application that was submitted on January 27, 2016, which requested financial assistance, listed annual household income for your sister of \$21,000.00, which consisted of (1) \$1,143.00 per month your sister receives as part of her Social Security benefits, and (2) \$607.00 per month you sister receives in a pension or annuity. You clarified that the amount referenced as a pension or annuity is actually a separate survivor's pension benefit your sister has received since your father passed. You testified that this amount was correct when your application was submitted.
- 4) You also attested in your application that you expected to receive \$400.00 once every two weeks from your employer, [REDACTED]

- 5) You testified that on or about February 18, 2016, your position at [REDACTED] ended. You further testified that you filed for unemployment benefits shortly after that date, and were awarded approximately \$400.00 per week in benefits at that time.
- 6) On June 28, 2016, you provided a copy of the Notice of Award issued by the SSA to your sister for 2016. The notice reflects that the monthly award during 2016 is \$1,247.90 (before deductions) which is reduced by \$104.90 for Medicare insurance. Finally, the notice stated that your sister would receive \$1,143.00, after giving effect to all deductions.
- 7) On June 28, 2016, you provided a Statement of Survivor Annuity Paid (Form CSF 1099R) issued to your sister for 2015. Your sister received a total of \$7,284.00 during 2015 in connection with this pension. You testified that she currently receives \$607.00 per month under this benefit.
- 8) Your application states that you will not be taking any deductions on your 2016 tax return.
- 9) You live in Westchester County, New York.
- 10) You testified that you were seeking for your sister to be determined eligible for Medicaid rather than the Essential Plan, since your understanding is that the coverage offered by Medicaid would be of greater benefit for your sister, who currently has [REDACTED] and requires in home hospice care.

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), NY Social Services Law § 369-gg(3), 42 USC § 18051).

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In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on 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 \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

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)), NY Social Services 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 2015 FPL, which is \$15,930.00 for a two-person household (80 Federal Register 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).

Minimum Essential Coverage

Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f)).

According to 26 USC § 5000A, which is part of the Internal Revenue Code, various government-sponsored plans provide minimum essential coverage,

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including the Medicare program under part A of title XVIII of the Social Security Act (26 USC § 5000A(f)(1)(A)(i), 42 USCS §§ 1395c et seq.).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your sister was eligible for the Essential Plan, effective March 1, 2016.

The application that was submitted on January 27, 2016 listed an annual household income for your sister of \$21,000.00, which was comprised of (1) \$13,716.00 (\$1,143.00 x 12 months) your sister would be receiving in Social Security benefits from her disability, and (2) \$7,284.00 (\$607.00 x 12 months) per month you sister expects to receive in Social Security survivor's benefits associated with the passing of your father. The eligibility determination relied on that information.

Your sister is in a one-person household, since she is not filing taxes and is being claimed as a dependent by someone other than a spouse or biological, adopted or step parent.

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-person household. Since an annual household income of \$21,000.00 is 178.42% of the 2015 FPL, based on the information you provided in your application, NYSOH found your sister to be eligible for the Essential Plan.

However, based on the credible evidence of record, your sister was eligible for and enrolled in Medicare during 2016, as reflected in the Notice of Award issued by the SSA to your sister for 2016. Individuals who are enrolled in minimum essential coverage other than in the individual market are not eligible for the Essential Plan. Since Medicare is deemed to be minimum essential coverage, your sister is not eligible for the Essential Plan through NYSOH.

The second issue under review is whether NYSOH properly determined your sister was 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. One of the non-financial requirements to be eligible for enrollment in Medicaid through NYSOH is to not be eligible for or enrolled in Medicare. Since the credible evidence of record reflects that your sister was enrolled in Medicare

as of your January 27, 2016 application, she is not entitled to Medicaid through the NYSOH.

Therefore, the January 28, 2016 eligibility determination notice finding your sister eligible for the Essential Plan is no longer supported by the record, based on her coverage through Medicare, it must be RESCINDED.

Your case is RETURNED to NYSOH for a redetermination of your sister's eligibility based on the now available record and to refer your sister's case to her Local Department of Social Services to determine her eligibility for Medicaid through that NYS Agency.

Decision

The January 28, 2016 eligibility determination notice is RESCINDED, because she is not eligible for coverage through NYSOH if she has coverage through Medicare.

Your case is RETURNED to NYSOH for a redetermination of your sister's eligibility based on the now available record and to refer your sister's case to her Local Department of Social Services to determine her eligibility for financial assistance.

Effective Date of this Decision: July 22, 2016

How this Decision Affects Your Eligibility

Your sister is not eligible for either the Essential Plan or Medicaid through NYSOH.

Your sister's case is being referred to your Local Department of Social Services to determine her eligibility for financial assistance.

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 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 January 28, 2016 eligibility determination notice is RESCINDED.

Your sister is not eligible for either the Essential Plan or Medicaid through NYSOH, because she is currently covered through Medicare.

Your sister's case is being referred to your Local Department of Social Services to determine her eligibility for financial assistance.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

