



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

Notice of Decision

Decision Date: August 04, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007216

[REDACTED]

Dear [REDACTED],

On July 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 19, 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 the 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: August 04, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007216



Issues

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

Did NY State of Health properly determine that you and your spouse were not eligible for Medicaid from December 1, 2015 through February 29, 2016 because the program you are eligible for cannot pay for any care you received in the past?

Did NY State of Health provide you with timely notice of your and your spouse's eligibility for financial assistance with Medicaid for a November 1, 2015 start date?

Procedural History

On October 9, 2015, NY State of Health (NYSOH) received your initial application for financial assistance for health insurance for you and your spouse.

On October 10, 2015, a notice was issued stating more information was needed to make a determination on whether or not you and your spouse qualified for financial assistance. The notice asked that you provide income documentation for you and your spouse by October 25, 2015 to confirm the information in your application.

On December 14, 2015, NYSOH received your updated application for financial assistance, including submission of your earning statements for November 2015.

On December 15, 2015, NYSOH issued another notice that stated more information was needed to make a determination on whether or not you and your

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spouse qualified for financial assistance. The notice asked that you provide income documentation for you and your spouse by December 30, 2015 to confirm the information in your application.

On February 17, 2016, NYSOH issued a third notice in response to the income documentation you provided on February 16, 2016, that again stated more information was needed to make a determination on whether or not you and your spouse qualified for financial assistance. The notice asked that you provide income documentation for you and your spouse by March 3, 2016 to confirm the information in your application.

On February 19, 2016, based on your February 18, 2016 application that was updated with the assistance of a navigator, NYSOH issued an eligibility redetermination notice that stated you and your spouse were eligible for the Essential Plan, effective April 1, 2016.

Also on February 19, 2016, NYSOH issued an enrollment notice confirming that you and your spouse were enrolled in an Essential Plan, effective April 1, 2016.

Also on February 19, 2016, NYSOH issued an eligibility determination notice denying your request for help paying medical bills for you and your spouse from November 1, 2015 through January 31, 2016. This was because the Essential Plan program you were both eligible for could not pay for any care you or your spouse received in the past.

On February 19, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as you did not receive timely notice of eligibility for Medicaid for you and your spouse as of December 14, 2015.

On July 27, 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 support the following findings of fact:

- 1) You testified that you expected to file your 2015 and 2016 federal income tax return with your spouse as married filing jointly and will claim your child as a dependent on that return.
- 2) According to your NYSOH account, you and your spouse were not determined eligible for any financial assistance programs when you submitted your initial application on October 9, 2015 or your updated

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applications on December 14, 2015 and February 14, 2016, because your household's income needed to be verified by supporting documentation.

- 3) You testified that you worked for a temp agency in 2015 sporadically and your employer refused to provide you with a statement of earnings.
- 4) You testified that you submitted a Department of Health "Form 4444," self-declaration of income affidavit, at the direction of a NYSOH representative, but were scolded over the telephone at a later date by another NYSOH representative who said it was illegal and not acceptable. There is no Form 4444 affidavit in your NYSOH account.
- 5) According to your NYSOH account and your testimony, your spouse had no income in 2015 or 2016, and your son receives Social Security Disability (SSD) benefits of \$586.00 per month, which you testified he continues to receive to date. This monthly amount totals \$7,032.00 annually.
- 6) According to your NYSOH account, on December 14, 2015, you submitted four consecutive weeks of earning statements from your employment during November 2015, which included a statement with a November 6, 2015 pay date and gross earnings of \$770.50; a statement with a November 13, 2015 pay date and gross earnings of \$138.00; a statement with a November 20, 2015 pay date and gross earnings of \$557.75; and a statement with a November 27, 2015 pay date with gross earnings of \$540.50, which total gross earnings of \$2,006.75 for November 2015.
- 7) According to your NYSOH account, on December 21, 2015, these documents were deemed invalid because a Social Security Disability (SSD) benefits award letter for your child was also needed.
- 8) None of the three notices issued on October 9, 2015, December 15, 2015, and February 17, 2016, indicate that income information was being requested with regard to your minor child's SSD benefits. These notices were directed to you and your spouse only.
- 9) You testified that you incurred medical costs during the months of November 2015, December 2015, January 2016, and February 2016, for which you are seeking reimbursement from Medicaid.
- 10) You testified that your income documents submitted on December 14, 2015 accurately reflects your household's income for November 2015;

and that your child's SSD benefits had been accurately reported at \$586.00 monthly on your application at all times.

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

Applicable Law and Regulations

Medicaid for Adults between the Ages of 19 and 65

Medicaid through NYSOH can be provided 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 federal poverty level (FPL) for the applicable family size (42 CFR §§ 435.119(b), 435.911(b)(1), 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 2015 FPL, which is \$20,090.00 for a three-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).

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)).

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

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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).

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 \$20,090.00 for a three-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).

Timely Notice

When an individual applies for insurance through the NYSOH, the NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, the NYSOH must base the time period from the date of application to the date the NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for the NYSOH to make an eligibility determination, then the NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

The NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

De Novo Review

NYSOH's Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "*De novo review* means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

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Household Income

NYSOH bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through NYSOH, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the *taxable* part of social security and pension payments (IRS Publication 929, p. 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term MAGI 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)).

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income sources that are not relevant here (26 USC § 86(b)(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 savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition,

there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Legal Analysis

The first issue is whether NYSOH properly determined that you and your spouse were not eligible for retroactive Medicaid from November 1, 2015 through January 31, 2016, because the program you were both eligible for cannot pay for any care either of you received in the past.

As a result of your updated application on February 18, 2016, you and your spouse were determined eligible for the Essential Plan, effective March 1, 2016. The next day an eligibility determination notice was issued denying your request for help paying medical bills for you and your spouse from November 1, 2015 through January 31, 2016 because the program you were both eligible for could not pay for any care either of you received in the past.

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. However, you and your spouse were found eligible for the Essential Plan effective April 1, 2016.

Since you and your spouse were not found eligible for Medicaid as a result of the February 18, 2016 application, you would not be eligible for three months of retroactive Medicaid coverage. Therefore, the record indicates that based upon your attested household income as of February 18, 2016 and the current program that you and your spouse were eligible for cannot retroactively pay for medical bills for up to three months prior to your application, the February 19, 2016 eligibility determination notice denying retroactive Medicaid was correct at the time.

However, you testified that you are seeking to have Medicaid coverage made effective as of November 1, 2015, on the basis that your household income for that month was available to NYSOH yet no timely eligibility determination notice was issued by NYSOH. Therefore, the next issued under review is whether NYSOH provided you with a timely notice of your and your spouse's eligibility for financial assistance with Medicaid based on the documentation you provided as of December 14, 2015.

You submitted an application for financial assistance on October 9, 2015. You were issued a notice on October 10, 2015, stating more information was needed to make a determination on whether or not you qualified for financial assistance. The notice asked that you provide income documentation by October 25, 2015 to confirm the information in your application. You testified that you worked sporadically at a temp agency and the employer refused to cooperate and issue a letter supporting your earnings. You further testified that you submitted a Form 4444 affidavit on October 25, 2015, at the direction of a NYSOH representative, in which you declared your household's 2015 income, but you were told at a later date by another NYSOH representative that your affidavit was not acceptable. That document is not available for review in your NYSOH account.

The record reflects that you provided copies of your earning statements for November 2015 on December 14, 2015, but your income documents were invalidated because you needed to submit an SSD award letter regarding your minor child's benefits.

However, as to your child's SSD benefits, household income for the purposes of calculating individuals' eligibility for financial assistance to help pay for the costs of health insurance through NYSOH, consists of the modified adjusted gross income of all **tax filers** in a household **who are required to file a tax return** (emphasis added).

The record reflects that your child's sole source of income in 2015 and to date is SSD benefits. A dependent is required to file a tax return in part when their unearned income is greater than \$1,000.00. Unearned income includes the taxable portion of Social Security benefits.

To estimate whether any portion of a person's expected Social Security benefits will be taxable, add one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, your child received \$7,032.00 in SSD benefits only. Therefore, \$3,516.00 (one-half the amount of Social Security he receives) with no earned income equals \$3,516.00. Since \$3,516.00 is less than \$25,000.00, your child has no taxable income from Social Security and was not in 2015 and is not in 2016 required to file a tax return on the basis of his unearned income.

Since your child was not required to file a tax return in 2015 according to the information provided to NYSOH, NYSOH should not have invalidated your income documents on December 21, 2015, because his SSD benefits did not count when determining the household's income and are deemed irrelevant.

According to your NYSOH account and your testimony, you expected to file your 2015 tax return as head of household with qualifying individuals; namely, your spouse and child.

After you submitted your income documents on December 14, 2015, on December 15, 2015, NYSOH issued a notice informing you that the documentation you submitted was insufficient to resolve the request. As stated above, the sole basis was because you had not provided your child's SSD award letter to prove his income, which by this decision is concluded to be irrelevant.

On February 14, 2016, you updated your NYSOH application. On February 17, 2016, NYSOH informed you again in a notice that the documentation you submitted was insufficient to resolve the request.

It is noted that there is nothing in the October 10, 2015, December 15, 2015, or February 17, 2016 notices to indicate that NYSOH issued a notice to inform you that you needed to submit an SSD award letter regarding your child's benefits. Further, as stated above, it is concluded that no such documentation was required. In fact, when you updated your NYSOH account on February 18, 2016 with the assistance of a navigator and reported your income from a new job you had started in January 2016, NYSOH no longer required information about your child's SSD benefits and redetermined your and your spouse's eligibility for financial assistance without such documentation and based it solely on your newly reported 2016 projected income.

When NYSOH cannot verify information that is required to make an eligibility determination, it must notify the applicant and allow the applicant time to submit satisfactory documentation. NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the completed application. The applicant must be notified if the application does not contain sufficient information to permit NYSOH to conduct an eligibility determination. To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of the completed application to the date NYSOH notifies the applicant of its decision.

Since your income document submission on December 14, 2015 should have completed your application, you were entitled to a determination as to your and your spouse's eligibility for Medicaid within 45 days. However, it took NYSOH until your February 18, 2016 application to provide you with an eligibility determination. This is a full 66 days after you uploaded satisfactory income documentation. Therefore, NYSOH's February 19, 2016 eligibility redetermination was untimely.

Based on its de novo review authority, NYSOH Appeals Unit is not precluded from rendering a decision based upon the information as if it were presented to it for the first time.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

You testified and provided documentary proof that only you worked in November 2015, such that your household's income that month was \$2,006.75. For a three-person household, the monthly gross income limit for Medicaid eligibility in 2015 was \$2,311.00. Your gross wages for the month of November 2015 were \$2,006.75 and, as such, you and your spouse were within the Medicaid limit for that month.

It is important to note that you and your spouse have had health insurance coverage under an Essential Plan as of April 1, 2016, which will not be disturbed by this decision.

Therefore, your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for Medicaid based on a three-person household with a monthly income of \$2,006.75 for a couple living in Rensselaer County beginning November 2015 and continuing through March 31, 2016.

If your circumstances have changed, as you testified your income has, you need to update your NYSOH account to reflect your household's income via online access to your account or by contacting NYSOH at the number listed in the footer below.

Decision

The February 19, 2016, eligibility redetermination and enrollment notices are AFFIRMED.

The February 19, 2016 eligibility determination notice as to your and your spouse's eligibility for retroactive Medicaid is rendered moot by this decision.

It is important to note that you and your spouse have had health insurance coverage under an Essential Plan as of April 1, 2016, which will not be disturbed by this decision.

Your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for Medicaid based on a three-person household with a monthly income

of \$2,006.75 in November 2015, for a couple living in Rensselaer County for the period of November 1, 2015 through March 31, 2016.

Effective Date of this Decision: August 04, 2016

How this Decision Affects Your Eligibility

You and your spouse may be eligible for Medicaid for the months of November 2015 and continuing through March 31, 2016.

So as not to disturb your current Essential Plan eligibility and enrollment as of April 1, 2016, your case is being sent back to NYSOH to verify your and your spouse's eligibility for Medicaid as of November 1, 2015 and continuing through March 31, 2016.

If your circumstances have changed, as you testified your income has, you need to update your NYSOH account to reflect your household's income via online access to your account or by contacting NYSOH at the number listed in the footer below.

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 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).

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 February 19, 2016, eligibility redetermination and enrollment notices are **AFFIRMED**.

The February 19, 2016 eligibility determination notice as to your and your spouse's eligibility for retroactive Medicaid is rendered moot by this decision.

It is important to note that you and your spouse have had health insurance coverage under an Essential Plan as of April 1, 2016, which will not be disturbed by this decision.

Your case is **RETURNED** to NYSOH to redetermine your and your spouse's eligibility for Medicaid based on a three-person household with a monthly income of \$2,006.75 in November 2015, for a couple living in Rensselaer County for the period of November 1, 2015 through March 31, 2016.

You and your spouse may be eligible for Medicaid for the months of November 2015 and continuing through March 31, 2016.

So as not to disturb your current Essential Plan eligibility and enrollment as of April 1, 2016, your case is being sent back to NYSOH to verify your and your spouse's eligibility for Medicaid as of November 1, 2015 and continuing through March 31, 2016.

If your circumstances have changed, as you testified your income has, you need to update your NYSOH account to reflect your household's income via online access to your account or by contacting NYSOH at the number listed in the footer below.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

