



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

## Notice of Decision

Decision Date: September 30, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007883

[REDACTED]

[REDACTED]

Dear [REDACTED],

On September 8, 2016, [REDACTED] appeared by telephone on your behalf as your authorized representative at a hearing on your appeal of NYS Department of Health's December 10, 2015 response to your request for retroactive Medicaid during the months of January, February, and March 2014 [sic].

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

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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.

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## Decision

Decision Date: September 30, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007883

[REDACTED]

## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NYS Department of Health, on behalf of NY State of Health, properly determine that you were not eligible for retroactive Medicaid during the month of January 2015?

## Procedural History

On April 28, 2015, NY State of Health (NYSOH) received your initial application for health insurance in 2015. In that application, you indicated that you were requesting help with paying for medical bills for the three previous months.

On May 1, 2015, and several dates in June 2015 thereafter, as well as August 1, 2015, NYSOH issued eligibility determination notices that stated you were not eligible to receive help to pay for health coverage or to enroll in a qualified health plan at full cost through NYSOH because they were unable to verify your citizenship or immigration status.

On August 8, 2015, NYSOH issued an eligibility determination notice that stated you were not eligible for Medicaid from April 1, 2015 through May 31, 2015, because you were over-income during those months.

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A copy of a NYS Department of Health report, dated December 10, 2015, was uploaded to your NYSOH account on January 29, 2016 (see Document [REDACTED])

On March 11, 2016, you and/or your certified application counselor spoke to NYSOH's Account Review Unit and appealed being denied retroactive Medicaid for the month of January 2015.

On March 12, 2016, NYSOH issued a letter confirming that you had requested a telephone hearing to review its "[d]enial of retro MA coverage for January 2016" [sic].

On September 8, 2016, Ms. Murphy, acting as your authorized representative, 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) According to your NYSOH application, you are single and did not file a federal tax return for 2015. No one else is listed on your account.
- 2) According to your authorized representative, you are seeking retroactive Medicaid coverage for the month of January 2015 because you were hospitalized that month and incurred related medical expenses.
- 3) According to an employment verification letter, dated January 8, 2015, you work full-time, 40 hours per week, and have a weekly gross salary of \$400.00 per week.
- 4) According to a handwritten letter in Spanish, dated April 28, 2015 and submitted over your signature, you worked one week in January 2015 and earned \$400.00 dollars, had no income in February 2015, and returned to work on March 23, 2015, worked through March 29, 2015, and earned \$400.00 that month (Translated from Spanish to English by the Appeals Unit; see Document [REDACTED])
- 5) A verification of employment document that was uploaded to your NYSOH account on July 7, 2015, states that you were paid \$400.00 on January 3, 2015, had no other earnings that month or in February 2015, and earned \$400.00 in March 2015 (see Document [REDACTED])

- 6) Your authorized representative confirmed that you only earned \$400.00 in January 2015, because you became ill and had to be hospitalized on January 5, 2015.
- 7) According to your NYSOH account, your income in April 2015 and May 2015 was calculated by its system to be \$1,733.33 gross earnings per month.
- 8) Your authorized representative testified that the system-calculated income amount was representative of your gross earnings in those months.
- 9) An April 28, 2015 facsimile for identity proofing purposes contained your attestation of identity, which included your residence address in Bronx, New York. Attached was a copy of your Mexican passport with an expiration date of November 6, 2014 (see Document [REDACTED])
- 10) Your authorized representative testified that your expired Mexican passport is the only form of picture identification you possess.
- 11) A NYS Department of Health report, dated December 10, 2015, states that you are requesting retroactive Medicaid for January 2015 and it was “[n]ot providing retro MA for the month of January, February and March ’14 due to consumer never had a determination in the Marketplace.” It has a hand written note stating “Received on 1/11/16” (see Document [REDACTED])
- 12) Your authorized representative stated that one reason for the appeal is that your request for Medicaid was reviewed for 2014, when the request was for 2015.
- 13) According to the Appeal Summary, dated August 15, 2016 and prepared by NYSOH in contemplation of the hearing, an entry dated “03/11/2016” and numbered “[REDACTED]” states that:

On 04/28/2015 the appellant, [ ] went to an in person assistor to obtain coverage. The appellant was determined not eligible to receive help to pay for health coverage or to enroll in to health coverage due to NYSOH not being able to verify his citizenship or immigration status. The appellant, [ ] is disputing denial of help paying for medical bills for January 2015; requesting to be determined eligible to get help paying for medical bills.

(see Document [REDACTED] p. 2).

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

A person who meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard is eligible for Medicaid benefits (45 CFR § 155.305(c)). One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. A person is eligible for Medicaid when his or her immigration status is satisfactory and he or she meets all other requirements for Medicaid.

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 \$11,770.00 for a one-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).

### De Novo Review

The NYSOH 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).

### Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the

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person cannot get full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment of bodily functions; or
- (c) Serious dysfunction of any bodily organ or part

(42 CFR § 435.930(c)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

### Retroactive Medicaid

The Department of Health must make Medicaid coverage, including Emergency Medicaid, start retroactively for up to three months prior to the month of an initial 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 USCA § 1396A(34); 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)).

## **Legal Analysis**

Initially, to be eligible for full Medicaid through NYSOH, you must have documents to prove your citizenship or immigration status. Based on your NYSOH application of April 28, 2015, and your attestation of identity, including your residence address and expired passport, NYSOH could not determine your citizenship/immigration status. In addition, your authorized representative credibly testified that you do not have any other immigration documents. Therefore, it is concluded that you were considered an otherwise undocumented alien residing in the State of New York and the NYSOH May 1, 2015, June 2015, and August 1, 2015 eligibility determination notices to this effect were correct.



Notwithstanding, on March 11, 2016, you or someone on your behalf spoke with NYSOH's Account Review Unit and requested review on the basis that you were denied retroactive Medicaid coverage for January 2015, as noted in the DOH December 10, 2015 report marked "Received on 1/11/16." Your NYSOH account does not contain a notice of eligibility determination or redetermination on this issue. It does contain a March 12, 2016 letter in which NYSOH acknowledges receipt of an appeal request and identifies the issue on appeal as "[d]enial of retro MA coverage for January 2016." It is noted that the record is clear that the denial relates to the month of January 2015, and this decision is based on retroactive Medicaid coverage for only that month.

Here, the lack of a notice of eligibility determination on the issue of retroactive Medicaid for the month of January 2015 does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the March 12, 2016, which acknowledges the appeal on the issue of denial of retroactive Medicaid, permits an inference that NYSOH did deny your request for retroactive Medicaid. As corrected herein, it relates only to the month of January 2015.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you were properly denied retroactive Medicaid coverage for January 2015.

For purposes of this analysis, you are in a one-person household as a single individual who did not expect to file federal income taxes in 2015.

The record reflects that you submitted your initial application on April 28, 2015 and, as noted above, were determined to be ineligible for Medicaid due to not meeting all non-financial requirement; specifically, in that your immigration status could not be verified.

Notwithstanding, when an individual files an initial application for Medicaid, his or her eligibility for retroactive Medicaid depends solely on the date of application. To this end, it does not matter whether or not that initial application resulted in Medicaid going forward. Instead, an individual, who has filed an initial application for Medicaid through NYSOH, has the right to be evaluated for Medicaid for the three months before the month of his or her application. This right included being evaluated for Emergency Medicaid retroactively from the month of one's initial application.

Due to your immigration status not being verified, you do not meet the nonfinancial criteria to be eligible for Medicaid Fee-For-Service. However, to get treatment for an emergency medical condition, known as Emergency Medicaid,

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an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence. The record reflects that you provided proof of your identity, albeit an expired Mexican passport, as well as proof of income and proof that you resided in the State of New York in 2015.

Medicaid coverage, including Emergency Medicaid, can be made effective retroactively for up to three months prior to an individual's initial 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 Emergency Medicaid in the three months prior to April 28, 2015, your income during those months could be no greater than 138% of the FPL, which at the time of your application was \$1,354.00 per month.

The record reflects, through adequate documentary evidence, your attestation, and your authorized representative's testimony, that you earned \$400.00 in January 2015, had no income in February 2015, and earned \$400.00 in March 2015.

Since the record now contains a more accurate representation of what your income was for the month of January 2015, the only month in which you are seeking retroactive Medicaid, your case is RETURNED to NYSOH to consider your request for retroactive coverage via Emergency Medicaid for January 2015 based on a household size of one-person and household income of \$400.00 for that month.

## **Decision**

The May 1, 2015, June 2015, and August 1, 2015 eligibility determination notices were correct when made and will not be disturbed.

Your case is RETURNED to NYSOH to consider your request for retroactive coverage via Emergency Medicaid for January 2015 based on a household size of one-person and household income of \$400.00 for that month. NYSOH will notify you accordingly of its redetermination.

**Effective Date of this Decision:** September 30, 2016

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

You were not eligible for Medicaid or Emergency Medicaid in the month of April 2015 and did not have Medicaid coverage that month through NYSOH.

Your case is being returned to NYSOH to redetermine your eligibility for Emergency Medicaid for the month of January 2015, based on your initial application of April 28, 2015, and a one-person household with a monthly income of \$400.00 in January 2015. NYSOH will notify you once this redetermination has been made.

## **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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- By fax: 1-855-900-5557

## **Summary**

The May 1, 2015, June 2015, and August 1, 2015 eligibility determination notices were correct when made and will not be disturbed.

Your case is RETURNED to NYSOH to consider your request for retroactive coverage via Emergency Medicaid for January 2015 based on a household size of one-person and household income of \$400.00 for that month. NYSOH will notify you accordingly of its redetermination.

You were not eligible for Medicaid or Emergency Medicaid in the month of April 2015 and did not have Medicaid coverage that month through NYSOH.

Your case is being returned to NYSOH to redetermine your eligibility for Emergency Medicaid for the month of January 2015, based on your initial application of April 28, 2015, and a one-person household with a monthly income of \$400.00 in January 2015. NYSOH will notify you once this redetermination has been made.

## **Legal Authority**

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

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

[REDACTED]

[REDACTED]