



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

Notice of Decision

Decision Date: November 16, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008378

[REDACTED]

Dear [REDACTED],

On September 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 23, 2016 enrollment confirmation notice and your child's eligibility for retroactive Medicaid.

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.

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Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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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 child's enrollment in her Child Health Plus plan was effective April 1, 2016 and, thereafter, as of February 1, 2016?

Did NY State of Health properly determine that your child was not eligible for retroactive Medicaid for the three month period prior to February 2016?

Procedural History

On February 23, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination, based on your February 22, 2016, application, stating that your child was eligible to enroll in Child Health Plus with a \$9.00 monthly premium, effective April 1, 2016.

Also on February 23, 2016, NYSOH issued a notice of enrollment, based on your plan selection on February 22, 2016, stating that your child was enrolled in a Child Health Plus plan, and that her enrollment in the plan would start April 1, 2016.

Also on February 23, 2016, a notice was issued that stated NYSOH had received your request for help with paying medical bills for your child in the three months prior to your February 22, 2016 application for health insurance. That notice further stated that additional information was required in order to determine her eligibility for Medicaid coverage for the period of November 1, 2015 to December

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31, 2015, and you needed to submit income documentation for that time period by March 8, 2016.

No documents were submitted by March 8, 2016.

On March 29, 2016, you spoke to NYSOH's Account Review Unit and appealed the start date of your child's Child Health Plus plan insofar as it did not begin October 1, 2015.

On April 19, 2016, NYSOH issued an enrollment notice that confirmed your child's Child Health Plus plan, with a \$9.00 monthly premium, with an enrollment start date of February 1, 2016.

On September 29, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and left open for 15 days to allow you the opportunity to submit weekly earnings statements for the months of October 2015, November 2015, December 2015 and January 2016.

On September 29, 2016 the Appeals Unit received via fax copies of weekly earnings statements dated 10/01/2015, 10/08/2015, 10/15/2015, 10/22/2015, 10/29/2015, 11/05/2015, 11/12/2015, 11/19/2015, 11/25/2015, 12/03/2015, 12/10/2015, 12/17/2015, 12/24/2015, 12/31/2015, 01/07/2016, 01/14/2016, 01/21/2016 and 01/28/2016. These documents were made part of the record collectively as "Appellant's Exhibit # 1." The record remained open until the end of the 15 day time frame and no other documents were submitted. The record is now closed.

Findings of Fact

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

- 1) You testified that you are appealing only your child's eligibility and enrollment.
- 2) According to your NYSOH account, you child turned one year old on [REDACTED]
- 3) You testified that early in the year, on a date you can't recall exactly, that you went to a location where someone assisted you in setting up an account with NYSOH. You testified that there was a glitch in the system and it would not allow you to register your child.

- 4) According to your NYSOH account, there was an error message that showed up when you tried to access your account and this error was resolved February 22, 2016.
- 5) According to your NYSOH account, you submitted an application to NYSOH for financial assistance on February 22, 2016.
- 6) According to your NYSOH account and your testimony, you enrolled your child into a Child Health Plus plan on February 22, 2016.
- 7) According to your NYSOH account, your child's Child Health Plus plan enrollment start date was adjusted from April 1, 2016 to February 1, 2016.
- 8) According to your NYSOH account, you never submitted proof of income documentation by March 8, 2016, as requested, so as to determine your child's eligibility for financial assistance for the three months prior to your February 2016 application.
- 9) You testified that you are looking for financial assistance retroactively for your child from October 1, 2015 through January 31, 2016.
- 10) You testified that you have steady employment and work a 40 hour week and earn \$14.50/hour.
- 11) The earning statements you submitted show that you received earnings from your employment of \$2,900.00 in October 2016; \$2,320.00 in November 2015; \$2,900.00 in December 2015 and \$2,320.00 in January 2016.
- 12) You testified that your spouse does not work, earns no income, and had no other sources of income for the period at issue.
- 13) According to your application for financial assistance submitted on February 22, 2016, your household expected yearly income was \$33,280.00. You testified that this was accurate.
- 14) You testified that you need to have your child's Child Health Plus plan begin on October 1, 2015 because she has a lot of outstanding medical bills for the months of October 2015, November 2015, December 2015 and January 2016.

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

Applicable Law and Regulations

De Novo Review

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).

Child Health Plus

The “period of eligibility” for Child Health Plus is “that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date,” unless the CHP premiums are not timely paid or the child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law § 2510(6)).

“A State must specify a method for determining the effective date of eligibility for [Child Health Plus], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between [Child Health Plus] and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage” (42 CFR § 457.340(f)).

The State of New York has provided that a child’s period of eligibility for Child Health Plus begins on the first day of the month during which a child is eligible. A child will become eligible on the first day of the next month, if the application is received by the 15th of the month; applications received after the 15th day of the month will be processed for the first day of the second following month (see e.g. State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Medicaid for Children

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York 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 2016 FPL, which is \$20,160.00 for a three-person household (81 Fed. Reg. 4036).

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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). Family size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

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)).

Legal Analysis

The first issue is whether NYSOH properly determined that your child's enrollment in her Child Health Plus plan was effective April 1, 2016.

You testified that you contacted NYSOH on February 22, 2016 and enrolled your child into a Child Health Plus plan.

Generally, the date on which a Child Health Plus plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected between the first day and fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month and the end of the month goes into effect on the first day of the second following month.

On February 22, 2016, you selected a Child Health Plus plan and, strictly adhering to the law, it was to take effect on the first day of the second month following after February 2016; that is, on April 1, 2016 as reflected in the February 23, 2016 enrollment confirmation notice.

However, due to the documented system error, NYSOH changed your child's Child Health Plus plan start date from April 1, 2016 to a February 1, 2016 start date.

Therefore, the April 19, 2016 enrollment confirmation notice stating, in relevant part, that your child's Child Health Plus plan with a \$9.00 per month premium and a plan enrollment start date of February 1, 2016 is **AFFIRMED**.

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The record reflects that, on March 29, 2016, you spoke with NYSOH's Account Review Unit and requested to backdate your child's Child Health Plus plan to October 1, 2015. Prior to your appeal and since you had not provided the income documents by March 8, 2016, as requested, NYSOH properly took no action on your initial request for financial assistance to help pay for child's medical bills for the three months before your February 22, 2016 application.

As a result, the record does not contain a notice of eligibility determination or redetermination on the issue of your request for help with paying medical bills for your child during the three month period prior to the application for health insurance dated February 22, 2016. However, the record does contain a March 29, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Requesting to backdate CHPlus to 10/01/2015" and, therefore, this Decision will address the issue.

In this regard, the lack of a notice of eligibility determination on the issue of help paying with medical bills for the period of October 2015, November 2015, December 2015 and January 2016 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 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 29, 2016 notice, which acknowledges the appeal on the issue of back dating the Child Health Plus plan to October 1, 2015, permits an inference that NYSOH did deny your request.

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 second issue under review is whether your child was properly denied financial assistance retroactive, that is, Medicaid coverage, for the months of October 2015, November 2015, December 2015 and January 2016.

Initially, it is noted you have requested that your child be found eligible for retroactive Medicaid for October 2015, November 2015, December 2015 and January 2016. At most, the law allows for three months of retroactive coverage and therefore the month of October 2015 will not be considered.

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. There is no indication in the record that your child would have been ineligible for Medicaid based on any non-financial criteria during the three month period under review.

Therefore, the issue turns to your child's financial eligibility during that timeframe. Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

When calculating household size for a child who is living with both parents but only being claimed by one parent as a tax dependent, the household consists of the child, both parents and any siblings under the age of 19. On the date of your application, your child resided with you and your spouse only and, even though she will be claimed only by you as a tax dependent, her other parent counts toward her household size. Therefore, your child is in a three-person household.

To be eligible for Medicaid in the months of November, 2015, December 2015 and January 2016, your child would have needed to meet the non-financial criteria and have an income no greater than 154% of the federal poverty level (FPL), which is \$2,587.00 per month.

You testified that your spouse earned no income during those months and the record reflects that only you had income during the three months in question. Through Appellant's Exhibit 1 and your testimony, the record shows that your income for November 2015 was \$2,320.00, for December 2015 was \$2,900.00, and for January 2016 was \$2,320.00.

Since the record now contains a more accurate representation of what your income was for the months of November 2015, December 2015 and January 2016, your case is RETURNED to NYSOH to consider your request for retroactive coverage for Medicaid for your child during those three months, based on a household size of three-persons and a household income of \$2,320 for November 2015, \$2,900.00 for December 2015, and \$2,320.00 for January 2016.

Decision

The April 19, 2016 enrollment confirmation notice is AFFIRMED.

Your case is RETURNED to NYSOH to consider your request for retroactive Medicaid coverage for your child during November 2015, December 2015 and January 2016, based on a household size of three-persons and a household income of \$2,320.00 for November 2015, \$2,900.00 for December 2015 and \$2,320.00 for January 2016. NYSOH will notify you accordingly of its determination.

Effective Date of this Decision: November 16, 2016

How this Decision Affects Your Eligibility

The effective date of your child's Child Health Plus plan is February 1, 2016.

Your case is being RETURNED to NYSOH to redetermine your request for retroactive Medicaid coverage for your child during the months of November 2015, December 2015 and January 2016, based on a household size of three-persons and a household income of \$2,320.00 for November 2015, \$2,900.00 for December 2015 and \$2,320.00 for January 2016. 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 April 19, 2016 enrollment confirmation notice is AFFIRMED.

Your case is RETURNED to NYSOH to consider your request for retroactive Medicaid coverage for your daughter for November 2015, December 2015 and January 2016 based on a household size of three-persons and a household income of \$2,320.0 for November 2015, \$2,900.00 for December 2015 and \$2,320.00 for January 2016. NYSOH will notify you accordingly of its determination.

The effective date of your child's Child Health Plus plan is February 1, 2016.

Your case is being RETURNED to NYSOH to redetermine your request for retroactive Medicaid coverage for your daughter for November 2015, December 2015 and January 2016 based on a household size of three-persons and a household income of \$2,320.00 for November 2015, \$2,900.00 for December 2015 and \$2,320.00 for January 2016. 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:

