



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

Notice of Decision

Decision Date: November 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008839

[REDACTED]

Dear [REDACTED]

On October 20, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 3, 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 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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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 eldest child was eligible for Child Health Plus with a premium of \$45.00 per month, effective April 1, 2016?

Did NY State of Health properly determine that your younger child was eligible for Medicaid, effective March 1, 2016?

Procedural History

On March 2, 2016, NY State of Health (NYSOH) received your completed application for health insurance.

On March 3, 2016, NYSOH issued an eligibility determination, based on your March 2, 2016 application, stating that your eldest child was eligible for Child Health Plus with a premium of \$45.00 per month, effective April 1, 2016. That notice also stated that your younger child was eligible for Medicaid, effective March 1, 2016.

On April 11, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination as it related to both your children having incorrect coverage.

On October 20, 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.

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Findings of Fact

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

- 1) According to your NYSOH account, you expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim your younger child only as a dependent on that tax return.
- 2) You testified that your younger child resides with you and your spouse and, according to your NYSOH account, has \$0.00 household income and is eligible for Medicaid and, therefore, not eligible for Child Health Plus.
- 3) You testified that your eldest child resides with her biological mother and, according to your NYSOH account, she is eligible for Child Health Plus and over-income for Medicaid.
- 4) You are seeking insurance for both your children.
- 5) The application that was submitted on March 2, 2016 listed annual household income of \$60,880.00, consisting of \$46,880.00 you earn from your employment and \$14,000.00 your spouse receives from employment.
- 6) According to your NYSOH account, you will be taking your student loan interest deduction in the amount of \$960.00 per year and your spouse's business expense deduction in the amount of \$1000.00 per year.
- 7) Your application states that you, your spouse, and your younger child reside in Schenectady County, New York.
- 8) You testified that when you applied for health insurance both children were on your account, but the eligibility for each child was determined by NYSOH based on the opposite custodial parent's income.
- 9) You testified that NYSOH placed your younger child, who resides with you, in Medicaid, based on the income of your eldest child's mother.
- 10) You testified your eldest child, who resides with her mother, was placed in Child Health Plus, based on your and your spouse's household income and not based on her own mother's income.
- 11) You testified that your eldest child should have been found eligible for Medicaid based on her mother's household income and household size and your younger child should have been found eligible for Child Health Plus based on your household income and household size.

12) You would like both your children's eligibilities redetermined and to have both of your children placed in proper programs.

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

Applicable Law and Regulations

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 \$ 16,020.00 for a two-person household and \$20,160 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). 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)).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with

subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

CHP is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child’s family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL (PHL § 2510(9)(d)(ii)).

The CHP premium is \$15.00 per month for a child whose family household income is between 223% and 250% of the FPL (PHL § 2510(9)(d)(iii)).

The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL (PHL § 2510(9)(d)(iv)).

The CHP premium is \$45.00 per month for a child whose family household income is between 301% and 350% of the FPL (PHL § 2510(9)(d)(v)).

The CHP premium is \$60.00 per month for a child whose family household income is between 351% and 400% of the FPL (PHL § 2510(9)(d)(vi)).

In an analysis of Child Health Plus 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 was \$24,250.00 for a four-person household (80 Fed. Reg. 3236, 3237).

Legal Analysis

Initially, according to your NYSOH account and your testimony, you expect to file a joint federal income tax return for the 2016 tax year and claim your younger child, who resides with you, as a dependent. Your eldest child does not reside with you, but lives with her mother and will be claimed as a dependent on her mother’s tax return. Therefore, your eldest child’s household size and income necessarily depends on the household as listed in her mother’s NYSOH account.

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The first issue under review is whether NYSOH properly determined that your eldest child was eligible for Child Health Plus with a premium of \$45.00 per month, effective April 1, 2016.

The application that was submitted on March 2, 2016 listed an annual household income of \$60,880.00 and stated that your eldest child was 8 years old and resided in a three-person household. NYSOH relied upon that information.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the federal poverty level (FPL). Household income between 300% and 350% of that FPL are responsible for a \$45.00 per month Child Health Plus premium payment. It appears from your NYSOH account that, on the date of your application, your eldest child's eligibility for financial assistance was determined using a three-person household and an income of \$60,880.00. The relevant FPL was \$20,090.00 for a three-person household. Since \$60,880.00 is 303.04% of the 2015 FPL, is between 301% and 350% of the FPL, NYSOH found your eldest child to be eligible for Child Health Plus with a \$45.00 per month premium payment.

However, you testified that the income relied upon by NYSOH in your March 2, 2016 application was incorrect because your eldest child resides with her mother, not you, and you do not claim her on your tax return as a dependent. Since, your eldest child resides with her mother, who is her custodial parent, your eldest child's eligibility needs to be redetermined based on her mother's income and household size. According to NYSOH Marketplace, your eldest child's mother has a corresponding account ([REDACTED]), which contains her income information and household size.

Since NYSOH should have utilized the income information and household size in determining your eldest child's eligibility for financial assistance, your case is RETURNED to NYSOH to redetermine her eligibility based on the information in her mother's NYSOH account ([REDACTED]).

The second issue is whether NYSOH properly determined that your younger child was eligible for Medicaid, effective March 1, 2016.

You testified and according to your NYSOH account, you expect to file a joint federal income tax return for the 2016 tax year and claim your younger child, who resides with you, as a dependent. Your eldest child does not reside with you. Therefore, your younger child is in a three-person household.

The application that was submitted on March 2, 2016 listed an annual household income of \$60,880.00, after deducting your student loan interest of amount of \$960.00 per year and your spouse's business expenses of \$1000.00 per year. However, in determining your younger child's eligibility for financial assistance,

NYSOH relied upon an incorrect household size and income of \$0.00 and determined her eligible for Medicaid.

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 Medicaid in March 2016, your child would have needed to meet the non-financial criteria and have an income no greater than 154% of the FPL, which is \$2,318.40 per month. Although there is no indication that your younger child did not meet any non-financial criteria, her household income for the month of March 2016 was \$5,073.33 (\$60,880.00/12) based on your and your spouse's listed incomes, and not \$0.00 as used by NYSOH. Therefore, NYSOH should not have found your younger child Medicaid eligible.

Since the record now contains a more accurate representation of what your younger child's household income was for the month of March 2016 and annually in 2016, your case is RETURNED to NYSOH to redetermine your younger child's eligibility for financial assistance based on a household size of three people and an annual household income of \$60,880.00.

Decision

The March 3, 2016 eligibility determination notice will not be disturbed until NYSOH has redetermined the eligibility of both of your children based on their respective household size and income. NYSOH is directed to contact you so you can select health plans for your children based on their respective eligibility for financial assistance programs with enrollment dates that does not create a gap in coverage.

Your case is RETURNED to NYSOH to redetermine your eldest child's eligibility for financial assistance based on the income information and household size contained in her mother's corresponding account (██████████); and to redetermine your younger child's eligibility for financial assistance based on a three-person household and a household income of \$60,880.00 for a child residing in Schenectady County, New York.

Effective Date of this Decision: November 1, 2016

How this Decision Affects Your Eligibility

This decision is not a final determination of your children's eligibility.

Your case is RETURNED to NYSOH to redetermine of your eldest child's eligibility for financial assistance based on the income information and household

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size contained in her mother's corresponding account ([REDACTED]); and to redetermine your younger child's eligibility for financial assistance based on a three-person household and a household income of \$60,880.00 for a child residing in Schenectady County, New York.

NYSOH will contact you to facilitate the selection of your children's health plans based on their respective eligibility for financial assistance programs to avoid a gap in coverage for either child.

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:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

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Summary

The March 3, 2016 eligibility determination notice will not be disturbed until NYSOH has redetermined the eligibility of both of your children based on their respective household size and income. NYSOH is directed to contact you so you can select health plans for your children based on their respective eligibility for financial assistance programs with enrollment dates that does not create a gap in coverage.

This decision is not a final determination of your children's eligibility.

Your case is RETURNED to NYSOH to redetermine of your eldest child's eligibility for financial assistance based on the income information and household size contained in her mother's corresponding account ([REDACTED]); and to redetermine your younger child's eligibility for financial assistance based on a three-person household and a household income of \$60,880.00 for a child residing in Schenectady County, New York.

NYSOH will contact you to facilitate the selection of your children's health plans based on their respective eligibility for financial assistance programs so as to avoid a gap in coverage for either child.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

