



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

Notice of Decision

Decision Date: November 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008911

[REDACTED]

Dear [REDACTED],

On October 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 14, 2016 denial of your request for retroactive Medicaid for your spouse for the month of January 2016.

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 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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Decision

Decision Date: November 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008911



Issue

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

Did NY State of Health (NYSOH) properly determine that your spouse was not eligible for retroactive Medicaid coverage for the month of January 2016?

Procedural History

On January 22, 2016, you updated your application for health insurance and added your newborn son to that application.

On January 23, 2016, NYSOH issued an eligibility determination notice, based on your January 22, 2016 updated application, stating that an eligibility determination could not be made based on the information provided to NYSOH. That notice also stated that the income information you provided does not match what NYSOH obtained from State and Federal data sources and that your spouse must provide proof of income before February 7, 2016.

Also on January 23, 2016, NYSOH issued a disenrollment notice, based on your January 22, 2016 update, stating that your spouse would be terminated from Medicaid Fee-For-Service, effective February 29, 2016.

On January 27, 2016 you again updated your application for health insurance.

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

Also on January 28, 2016, NYSOH issued an enrollment confirmation notice stating that your spouse needed to pick an Essential Plan for coverage to start. That notice also stated that your spouse was eligible for additional benefits through Medicaid.

On January 30, 2016, your spouse selected an Essential Plan.

On January 31, 2016, NYSOH issued an enrollment confirmation notice stating that your spouse was enrolled in an Essential Plan 3, with a premium of \$0.00, effective February 1, 2016, and your enrollment in the Essential Plan was slated to begin January 1, 2016.

On April 13, 2016, you again updated your application for health insurance and requested help paying for your medical bills, as well as your spouse's and eldest son's medical bills for the prior three months.

On April 14, 2016, NYSOH issues an eligibility determination notice stating your spouse was eligible to enroll in the Essential Plan, effective May 1, 2016. This same notice advised that you would receive a separate notice advising you if your family was eligible for Medicaid for the three-month period prior to your application.

Also on April 14, 2016, NYSOH issued an enrollment confirmation notice stating that your spouse remained enrolled in Essential Plan 3, with a premium of \$0.00, effective February 1, 2016.

On April 14, 2016, NYSOH issued an eligibility determination notice stating that your eldest son was eligible for retroactive Medicaid from January 1, 2016 through January 31, 2016. That notice did not state whether or not you or your spouse were also eligible for retroactive Medicaid.

On April 15, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as your spouse was not determined eligible for retroactive Medicaid benefits during the month of January 2016.

On October 27, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was kept open until November 8, 2016 for submission of proof of income for the month of January 2016. The Appeals Unit received a six-page facsimile from you on November 4, 2016, which was made part of the record as "Appellant's Exhibit 1." The record is now closed

Findings of Fact

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

- 1) According to your NYSOH account, your newborn child was born on [REDACTED], and you added him to your application on January 22, 2016.
- 2) According to your NYSOH account, you updated your account again on January 27, 2016. Your spouse, due to her citizenship status, was found eligible for the Essential Plan effective February 1, 2016.
- 3) According to your NYSOH account, you updated your account on April 13, 2016 and requested help paying for medical bills incurred in the three previous months for yourself, your spouse and your eldest son. Your spouse was no longer pregnant at the time of this updated application.
- 4) According to your NYSOH account, NYSOH did not determine your spouse's eligibility for retroactive Medicaid for the month of January 2016, but did determine your eldest son eligible that month.
- 5) You testified, and according to your NYSOH account, you expect to file your 2016 taxes with a tax filing status of married filing jointly and will claim two dependents on that tax return.
- 6) The application that was submitted on April 13, 2016 listed an annual household income of \$43,802.00. You testified that your household income consists of \$28,533.44 you earn from your employment and that amount is accurate. However, you were not sure of what your spouse's income would be for 2016.
- 7) You testified that your spouse did not work from the time of your newborn's birth until September 2016, but when she did work you thought she earned about \$400.00 per week.
- 8) You testified that you were not sure what your total household income was for the month of January 2016 because you did not know how much your spouse had earned working that month.
- 9) According to your NYSOH account, your spouse was determined eligible for and enrolled in an Essential Plan, effective February 1, 2016.

- 10) You testified that you are seeking to have your spouse determined eligible for retroactive Medicaid for the month of January 2016.
- 11) According to your NYSOH account, your spouse had presumptive Medicaid in January 2016.
- 12) You testified that the Medicaid coverage your spouse had did not cover certain labor and delivery charges and you want to appeal those charges not being covered; specifically, as those charges relate to your spouse's hospitalization during her labor and your newborn child's delivery.
- 13) On November 4, 2016, you submitted paystubs for you and your spouse for the month of January 2016. Your first paystub dated January 8, 2016, is for the gross pay amount of \$569.25 and shows year-to-date gross pay of \$569.25, the second paystub dated 1/22/2016 is for the gross pay amount of \$958.50 and shows year-to-date gross pay of \$2,410.00, the third paystub dated 1/29/2016 is for the gross pay amount of \$423.00 and shows year-to-date gross pay of \$2,833.88. Your spouse's paystub is dated January 29, 2016 and shows a gross amount of \$624.00 and year-to-date gross pay of \$1,288.00.

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

Applicable Law and Regulations

Retroactive Medicaid

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 she received the services if she 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)).

Household Composition

For purposes of Medicaid eligibility, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman, but also the number of children she expects to deliver (42

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CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

Medicaid for Pregnant Women

Medicaid can be provided through the Marketplace 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)), N.Y. Soc. Serv. Law § 366(1)(b)).

In New York, a pregnant woman is eligible for Medicaid at a household income of 223% of the federal poverty level (FPL) for the applicable family size (42 CFR §435.116 (c)(2); NY Department of Social Services Administrative Directive 13ADM-03).

“Family size” means the number of persons counted as members of an individual’s household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

For purposes of Medicaid eligibility, the family size of a pregnant woman includes the pregnant woman and the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

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 January 15, 2016 application under review, that was the 2016 FPL, which is \$24,300.00 for a four-person household (79 Fed. Reg. 3593).

Generally, Medicaid coverage begins on the first day of the month in which the applicant was found eligible (42 CFR § 435.915(b)).

De Novo Review

The Marketplace 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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Legal Analysis

The first issue under review is whether NYSOH properly determined that your spouse was not eligible for full retroactive Medicaid coverage for the month of January 2016.

The record reflects that you updated your account and applied for retroactive Medicaid for your spouse on April 13, 2016. However, NYSOH did not render a decision in the matter on your spouse's behalf. Your newborn son was not included in that application, however, your eldest son was approved for retroactive Medicaid.

On April 15, 2016, you spoke with NYSOH's Account Review Unit and again requested retroactive Medicaid benefits for your spouse during the month of January 2016. The record, although it contains an April 14, 2016 eligibility redetermination on the issue of retroactive Medicaid eligibility as to your eldest son, is silent as to your spouse's request for retroactive Medicaid. The record does contain your April 13, 2016 application that states your spouse requested help paying for medical bills for the prior three months, along with an April 16, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Eligibility Determination."

Here, the lack of a notice of eligibility determination on the issue of retroactive Medicaid for your spouse 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 April 16, 2016 notice, which acknowledges the appeal on the issue of your spouse's eligibility, along with your application dated April 13, 2016 and the notice of eligibility determination dated April 14, 2016 that states your spouse applied for retroactive Medicaid, permits an inference that the NYSOH did deny your spouse's request for retroactive Medicaid.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to an eligibility determination had it been issued. Therefore, the issue under review is refined to whether your spouse was properly denied retroactive Medicaid benefits for the month of January 2016.

You testified, and according to your NYSOH account, you will file your 2016 taxes with a tax filing status of married filing jointly and claim two dependents on your tax return. Also in January 2016, your spouse was pregnant with one child, who is now one of the two dependents in your household. Therefore, for purposes of this analysis and at all times relevant, you had a four-person household.

You testified that you are seeking to have your spouse's Medicaid coverage changed to full coverage that is retroactively applied for the month of January 2016.

The record reflects that, on April 13, 2016, you submitted your updated application for your spouse and requested she be considered for help paying for medical bills for the past three months; specifically for full Medicaid in January 2016. When an individual files an initial application for Medicaid, his or her eligibility for retroactive Medicaid depends on the date of application. To this end, it does not matter whether or not that 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.

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.

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 January 2016, your spouse, who was pregnant that month, would have needed to meet the non-financial criteria and have an income no greater than 223% of the 2016 FPL, which is \$4,515.75 per month for a four-person household size. Although your spouse was ultimately enrolled in an Essential Plan due to her citizenship status effective February 1, 2016, because she was pregnant in January 2016, she might have been eligible for full Medicaid in that month provided she met the nonfinancial and financial requirements. There is no indication in the record that your spouse would have been ineligible for Medicaid based on non-financial criteria during the month of January 2016. Therefore, the analysis turns to the financial requirements of Medicaid.

The record reflects that, on November 4, 2016, you submitted paystubs for you and your spouse for the month of January 2016. Your last paystub, dated January 29, 2016, shows your year-to-date gross earnings were \$2,833.88. Your spouse's paystub, also dated January 29, 2016, is for the gross amount of \$624.00 and shows a year-to-date amount of \$1,288.00. Although, you did not include all the paystubs you and your spouse received in the month of January 2016, it can be deduced from the last paystubs you did submit for you and your spouse, both dated January 29, 2016, that your household income was the year-to-date gross income for that month, which totaled \$4,121.88.

According to your NYSOH account, your spouse was found conditionally eligible for Medicaid in the month of January, therefore, your spouse's medical expenses for certain labor and delivery charges were not covered by Medicaid. However, the Department of Health will change the presumptive Medicaid eligibility to full

Medicaid eligibility provided documentary evidence supports such a determination. In addition, the Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of application if the medical services that would have been covered under Medicaid and the individual would have been eligible for Medicaid at the time she received the service had she applied. Although you applied for retroactive Medicaid for your spouse on April 13, 2016, the record supports a finding that NYSOH did not issue an eligibility determination notice based on your request for help in paying for her medical bills for the three months before the April 13, 2016 application

Since the record now contains a more accurate representation of what your household income was for the month of January 2016, your case is RETURNED to NYSOH to consider your request for full retroactive coverage in Medicaid for your spouse during that month, based on a four-person household, utilizing 223% of the FPL for a pregnant woman, and a monthly household income of \$4,121.88.

Decision

Your case is RETURNED to NYSOH to consider your request for full retroactive coverage in Medicaid for your spouse during January 2016, based on a four-person household, utilizing 223% of the FPL for a pregnant woman, and a monthly household income of \$4,121.88.

Effective Date of this Decision: November 18, 2016

How this Decision Affects Your Eligibility

This is not a final determination of your spouse's eligibility for financial assistance.

Your case is being sent back to NYSOH for a redetermination of your spouse's eligibility for full retroactive Medicaid coverage to cover the cost of uncovered medical expenses (due to your spouse's presumptive eligibility), for January 2016 based on a four-person household, utilizing 223% of the FPL for a pregnant woman, and a household income of \$4,121.88 for January 2016.

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.

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).

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

Summary

Your case is RETURNED to NYSOH to consider your request for full retroactive coverage in Medicaid for your spouse during January 2016, based on a four-person household, utilizing 223% of the FPL for a pregnant woman, and a monthly household income of \$4,121.88.

This is not a final determination of your spouse's eligibility for financial assistance.

Your case is being sent back to NYSOH for a redetermination of your spouse's eligibility for full retroactive Medicaid coverage to cover the cost of uncovered

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medical expenses (due to your spouse's presumptive eligibility), for January 2016 based on a four-person household, utilizing 223% of the FPL for a pregnant woman, and a household income of \$4,121.88 for January 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

