



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

## Notice of Decision

Decision Date: November 23, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009252

[REDACTED]

Dear [REDACTED]

On November 10, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's March 2, 2016, March 24, 2016 and March 28, 2016 eligibility determination and April 20, 2016 disenrollment notices.

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.

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## Decision

Decision Date: November 23, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009252



## Issues

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

Did NY State of Health (NYSOH) properly determine that you were eligible for Medicaid effective March 1, 2016?

Did NYSOH properly determine that you were no longer eligible for Medicaid effective May 31, 2016?

## Procedural History

On March 1, 2016, you updated your application for financial assistance. Initially, you reported an expected yearly income of \$7,500.00 for yourself and \$41,500.00 for your spouse. That application resulted in a preliminary eligibility determination stating that your eligibility could not be determined as the information you provided did not match what NYSOH had obtained from State and Federal data sources.

Later that day, you updated your application for financial assistance to report an expected yearly income of \$11,500.00 for yourself and \$41,500.00 for your spouse. That application resulted in a preliminary eligibility determination stating that you were not eligible to receive help paying for your health insurance coverage, however you could purchase a qualified health plan through NYSOH at full cost.

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Again on March 1, 2016, you updated your application for financial assistance. On this application, your spouse was not included. You reported an expected yearly income for yourself of \$11,500.00.

On March 2, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid because your household income of \$11,500.00 was at or below the allowable income limit. This eligibility was effective as of March 1, 2016.

On March 23, 2016, NYSOH received your updated application for health insurance; wherein your income was updated to reflect an expected yearly income of \$-13,735.50 and your spouse's expected yearly income was included at \$24.50.

On March 24, 2016, NYSOH issued a notice of eligibility determination stating that you were no longer eligible for Medicaid. However, your Medicaid coverage would continue until February 28, 2017 because certain individuals determined eligible for Medicaid remain eligible for benefits for 12 continuous months from the date that they were determined eligible. This eligibility was effective as of March 1, 2016.

On March 27, 2016 you updated your application for health insurance. In this application, your expected yearly income was reported as \$-11,900.00 and your spouse's expected yearly income was reported as \$12,103.00.

On March 28, 2016, NYSOH issued a notice of eligibility determination stating that you were no longer eligible for Medicaid. However, your Medicaid coverage would continue until February 28, 2017 because certain individuals determined eligible for Medicaid remain eligible for benefits for 12 continuous months from the date that they were determined eligible. This eligibility was effective as of March 1, 2016.

On April 19, 2016, NYSOH received your updated application for health insurance; wherein your application was changed to a non-financial application. This resulted in a preliminary determination that you were eligible to enroll in a qualified health plan through NYSOH.

On April 19, 2016, your application was changed six additional times to indicate expected yearly incomes for yourself ranging from \$-5,550.00 to \$-1,850.00 and for your spouse ranging from \$19,210.00 to \$29,410.00.

On April 20, 2016, NYSOH issued a notice advising that income information you provided did not match what NYSOH had obtained from State and Federal data sources and requested that you provide income documentation for yourself and your spouse by May 5, 2016.

Also on April 20, 2016, NYSOH issued a disenrollment notice advising that your enrollment in your Medicaid Managed Care plan would end May 31, 2016 as you were no longer eligible to remain enrolled in your current health insurance.

Also on April 20, 2016 your application was changed six times to indicate expected yearly incomes for yourself ranging from \$-2,050 to \$-50.00 and for your spouse ranging from \$22,040.00 to \$29,410.00.

Finally on April 20, 2016, NYSOH issued a disenrollment notice stating that your enrollment in your Medicaid Managed Care plan would end May 31, 2016 as you were no longer eligible to remain enrolled in your current health insurance.

On April 21, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for the Essential Plan for a limited time, effective June 1, 2016. This same notice directed you to submit income documentation for yourself and your spouse before July 19, 2016.

On April 28, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the April 20, 2016 disenrollment notice insofar as your Medicaid coverage was terminated effective May 31, 2016.

On November 10, 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 supports the following findings of fact:

- 1) You testified that you and your spouse were married on June 7, 2015 and have resided together throughout 2016.
- 2) You testified that you reside in Albany County and have resided in Albany County throughout 2016.
- 3) You testified that you are appealing only your coverage and are seeking to have Medicaid reinstated through February 28, 2017.
- 4) You testified that you originally intended to file your 2016 Federal income tax return as married filing single, however, as you are now receiving advanced payments of the premium tax credits you will be filing your 2016 Federal income tax return as married filing jointly.
- 5) You expect to claim no dependents on your 2016 Federal income tax return.

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- 6) You testified that your annual expected income for 2016 is currently between \$13,000.00 and \$14,000.00. You testified that this consists of earned income from [REDACTED] of approximately \$10,000.00; earned income from [REDACTED] of approximately \$2,000.00; and approximately \$1,600.00 for four weeks of Unemployment benefits. You testified that you also worked for another temp agency in 2016, however, you have been unable to get paystubs from that employer, and that all you were able to produce were spreadsheets showing the hours you worked. You testified that you have had no other income in 2016. You testified that you last worked for [REDACTED] on or around November 9, 2016.
- 7) You testified that your spouse's annual expected income for 2016 is currently between \$24,000.00 and \$25,000.00. You testified that your spouse worked at [REDACTED] through mid-March 2016. You further testified that your spouse began working for [REDACTED] shortly after leaving [REDACTED]. You testified that your spouse now works for [REDACTED]. You testified that your spouse was paid weekly by [REDACTED] and by [REDACTED]. You further testified that your spouse is paid on the 15<sup>th</sup> and the 30<sup>th</sup> of the month by [REDACTED]. You also testified that your spouse is being paid the same amount by [REDACTED] that he was being paid by [REDACTED].
- 8) You testified that on your 2016 Federal income tax return you plan on taking \$1,500 in deductions for student loan interest, medical expense deductions of between \$3,000.00 and \$4,000.00, and charitable donations of \$750.00.
- 9) You testified that on his 2016 Federal income tax return your spouse plans to take approximately \$2,000.00 in student loan interest deductions.
- 10) On March 27, 2016 you uploaded time sheets to your NYSOH account, which, in conjunction with your testimony, show that you worked 36.25 hours from February 21, 2016 to February 27, 2016; 25 hours from February 28, 2016 to March 5, 2016; 24 hours from March 6, 2016 to March 12, 2016; 21.45 hours from March 13, 2016 to March 19, 2016; 16 hours from March 20, 2016 to March 26, 2016; and 0 hours from March 27, 2016 to April 2, 2016.
- 11) On May 3, 2016, you uploaded three paystubs for yourself from [REDACTED] to your NYSOH account. The first was dated April 15, 2016 for a gross pay amount of \$431.25 and a gross year to date amount of \$431.25; the second was dated April 22, 2016 for a gross pay amount of \$313.38; the third was dated

April 29, 2016 for a gross pay amount of \$112.13 and a gross year to date amount of \$856.76.

- 12) On June 29, 2016 you uploaded four paystubs for yourself from [REDACTED] to your NYSOH account. The first was dated June 10, 2016 for a gross pay amount of \$448.00 and a gross year to date amount of \$448.00; the second was dated June 17, 2016 for a gross pay amount of \$560.00; the third was dated June 24, 2016 for a gross pay amount of \$504.00; the fourth was dated July 1, 2016 for a gross pay amount of \$399.00 for a gross pay amount of \$1,911.00.
- 13) On March 29, 2016 you uploaded two paystubs for your spouse from [REDACTED] to your NYSOH account. The first was dated March 11, 2016 for a gross pay amount of \$801.80 and a gross year to date amount of \$9,047.55; the second was dated March 18, 2016 for a gross pay amount of \$805.45 and a gross year to date amount of \$10,603.00.
- 14) On April 11, 2016, May 3, 2016, and June 29, 2016 you uploaded paystubs for your spouse from [REDACTED] to your NYSOH account. You uploaded a total of ten paystubs for your spouse from [REDACTED]. The first is dated March 25, 2016 for a gross pay amount of \$580.00 and a gross year to date amount of \$580.00; the second is dated April 1, 2016 for a gross pay amount of \$580.00; the third is dated April 8, 2016 for a gross pay amount of \$580.00; the fourth is dated April 15, 2016 for a gross pay amount of \$580.00; the fifth is dated April 22, 2016 for a gross pay amount of \$576.38; the sixth is dated April 29, 2016 for a gross pay amount of \$596.31; the seventh is dated June 3, 2016 for a gross pay amount of \$596.31; the eighth is dated June 10, 2016 for a gross pay amount of \$500.25; the ninth is dated June 17, 2016 for a gross pay amount of \$596.31; the tenth is dated June 24, 2016 for a gross pay amount of \$612.63 and a gross year to date amount of \$8,078.32.

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

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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); NY Social Services Law § 366(1)(b)).

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).

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 \$22,180.00 for a two-person household (81 Federal Register 4036).

Most adults determined eligible for Medicaid are guaranteed 12 months of Medicaid coverage even if they lose Medicaid eligibility because of any changes or updates they make to their NYSOH account. For example, even if income increases above the Medicaid limit allowed for the household size, the insured will remain covered under Medicaid for a 12-month period. This 12-month period is referred to as “continuous coverage” and is set based on the start date of the original Medicaid eligibility determination or the date of a subsequent Medicaid eligibility determination based on modified adjusted gross income (NY Social Services Law § 366(4)(c)).

An individual will be enrolled or remain in their Medicaid plan with limited exceptions, including entering prison or another facility that provides medical care, lack of state residence, failing to provide a valid social security number, or having third party health insurance (NY Social Services Law § 366(4)(c)).

#### Family Size

"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)).

In the case of a married couple living together, each spouse is included in the Medicaid household of the other spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4)).

In general, household income means the aggregate modified adjusted gross income of every person who is included in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)).

#### Modified Adjusted Gross Income

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NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” 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)).

“Adjusted gross income” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, interest on a qualified educational loan can be deducted from adjusted gross income in an amount up to \$2,500 in interest paid by taxpayers during the taxable year, whose yearly income does not exceed \$160,000 (26 USC § 221; see also 26 USC § 62 (17)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that you were eligible for Medicaid effective March 1, 2016.

According to the record, at the time of your March 1, 2016 application, you expected to file your 2016 tax return as married filing single and claim no dependents.

On your March 1, 2016 application, you attested to an expected household income of \$11,500.00 and that you were in a single person household.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 64 who meet the non-financial requirements and have a household MAGI that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,395.00 for a one-person household. Since \$11,500.00 is 97.71% of the 2016 FPL, NYSOH properly found you to be eligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, the income and household size listed on that application were not correct because your spouse and his income were not included on the application. You testified that you and your spouse have been married since June 7, 2015. You further testified that you and your spouse have resided together throughout 2016.

For purposes of determining Medicaid eligibility, there are two people in your household: yourself, and your spouse. Although you and your spouse did not plan to file a joint tax return at the time of your March 1, 2016 application for

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financial assistance, your spouse is counted as a household member because you are married and reside together.

You are therefore in a two-person household.

Household income consists of the aggregate modified adjusted gross income of every person in the household who is required to file a federal tax return. Here, your household income consists of your own income plus your spouse's income, because both you and your spouse will be filing federal tax returns. Although you and your spouse intended to file separately, NYSOH must include your spouse's income in this analysis.

The March 2, 2016 eligibility determination was based on information in your application as of March 1, 2015. To be eligible for Medicaid, your income could be no higher than 138% of the federal poverty level for a two-person household. Since the 2016 poverty level for a two-person household is \$16,020.00, the maximum income level at which you could qualify for Medicaid was \$22,108.00.

Between March 1, 2016 and April 20, 2016 you updated your application 18 times. The applications contain income figures for yourself ranging from \$-5,550.00 to \$11,500.00 and for your spouse ranging from \$19,210.00 to \$41,500.00. Since the income information in your various applications is conflicting and unreliable, it cannot provide a basis for any reliable eligibility determination.

However, your testimony and the income evidence you submitted permits a reasonable estimate of your and your spouse's expected 2016 income. You testified that in 2016 you received income from four sources. You testified that you received approximately \$1,600.00 in unemployment benefits. You produced documentation showing that you earned \$856.76 from [REDACTED]. You produced paystubs that showed you earned \$1,911.00 over the course of the four weeks from 5/29/2016 to 6/25/2016 working for [REDACTED], and you testified that you continued to work for [REDACTED] until November 9, 2016. Based upon the paystubs you presented, you earned an average of \$477.75 per week. Based upon your testimony you worked for [REDACTED] for 23 weeks, therefore, your projected earnings from [REDACTED] were approximately \$10,988.25. You testified that you worked for one additional temp agency in 2016, but were unable to produce paystubs, however you were able to produce a spreadsheet indicating weekly hours worked. You testified that your annual expected income for 2016 is between \$13,000.00 and \$14,000.00. Based upon the income documentation that you submitted as well as your testimony, this yields an annual expected income for 2016 of \$14,000.00.

You testified that you plan on claiming \$1,500.00 in student loan interest deductions, between \$3,000.00 and \$4,000.00 in medical expenses and \$750.00 in charitable donations. However, of these deductions, only the student loan

interest may be taken into account when determining your household modified adjusted gross income. Therefore, when taking into account permissible deductions, your expected modified adjusted gross income for 2016 is \$12,500.00.

You testified that your spouse has received income from three sources in 2016. You testified that your spouse worked for [REDACTED] prior to beginning work at [REDACTED]. The paystubs you submitted from [REDACTED] show a gross year to date payment amount of \$10,603.00 through March 13, 2016. You submitted paystubs from [REDACTED] from March 13, 2016 to June 18, 2016 which show a gross year to date payment amount of \$8,078.32. You testified that your spouse has been hired on by [REDACTED] directly, and that his rate of pay has remained the same. Based upon the paystubs you submitted, he earned an average of \$577.02 per week for 14 weeks. As of the date of the hearing, 34 weeks had passed since the first paystub from [REDACTED] for an approximate year to date gross of \$19,618.78. Taken together this yields an approximate gross income of \$30,221.78 for 2016.

You testified that your spouse plans to claim approximately \$2,000.00 in student loan interest deductions. This yields an approximate modified adjusted gross income of \$28,221.78 for 2016 for your spouse.

Therefore, your annual expected household income was \$40,721.78. Since \$40,721.78 is 254.19% of the 2016 FPL, it is greater than the allowable Medicaid limit.

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

You submitted paystubs from [REDACTED] that show your spouse was paid a gross amount of \$801.80 on March 11, 2016 and a gross amount of \$805.45 on March 18, 2016. As well as a paystub that shows your spouse received a gross amount of \$580.00 from [REDACTED] on March 25, 2016.

You testified that your spouse was paid weekly by [REDACTED]. As the first paystub is for payment date March 11, 2016, it appears that at least one paystub from [REDACTED] for March 2016 has not been submitted. You testified that you were working March of 2016 and produced spreadsheets showing hours worked. However, you testified that you were unable to produce paystubs from this employer, therefore, it is not clear that you received payments in March 2016.

Based upon the documentation submitted, your household income for March 2016 was at least \$2,187.25.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL for a two-person household, which is \$1,843.00 per month. Since the documentation you provided shows that your household income for March 2016 was at least \$2,187.25 you do not qualify for Medicaid on the basis of monthly income as of the date of your March 1, 2016 application.

Therefore, the March 2, 2016 eligibility determination notice finding you eligible for Medicaid is not supported by the record and is RESCINDED.

The second issue is whether NYSOH properly determined that you were no longer eligible for Medicaid, but would continue to receive Medicaid coverage until February 28, 2017.

Once a person is found eligible for Medicaid, they remain eligible for Medicaid for 12 continuous months whether or not their income increases. This is referred to as “continuous coverage.”

Since the March 2, 2016 eligibility determination was issued based on incorrect information and is not supported by the record, and there was no other determination finding you eligible for Medicaid, the continuous coverage policy should not have been applied to you. Therefore, the March 24, 2016 and March 28, 2016 eligibility determination notices are also RESCINDED.

Accordingly, the April 20, 2016 NYSOH disenrollment notice stating that your enrollment in your Medicaid Managed Care plan would end May 31, 2016 as you were no longer eligible to remain enrolled in your current health insurance, is AFFIRMED.

## **Decision**

The March 2, 2016, March 24, 2016, and March 28, 2016 eligibility determination notices are RESCINDED.

The April 20, 2016 disenrollment notice is AFFIRMED.

**Effective Date of this Decision:** November 23, 2016

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

You were incorrectly found eligible for Medicaid and as such the continuous coverage policy does not apply.

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## **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):**

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- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
NY State of Health Appeals  
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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The March 2, 2016, March 24, 2016, and March 28, 2016 eligibility determination notices are **RESCINDED**.

The April 20, 2016 disenrollment notice is **AFFIRMED**.

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You were correctly found ineligible for Medicaid and as such the continuous coverage policy does not apply.

### **Legal Authority**

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

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

