



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: AP000000009410

[REDACTED]

Dear [REDACTED],

On November 9, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 5, 2016 eligibility determination notice.

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: AP000000009410

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) properly determine the level of financial assistance you were eligible for in the month of June 2016?

Procedural History

On April 23, 2015, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid effective April 1, 2015. You subsequently enrolled into a Medicaid Managed Care plan.

On April 28, 2016, you updated your NYSOH account to reflect an expected yearly income of \$12,500.00.

On April 29, 2016, NYSOH issued a disenrollment notice stating that your coverage through your Medicaid Managed Care plan would end effective May 31, 2016 because you were no longer eligible to remain enrolled in that plan.

Also on April 29, 2016, NYSOH issued a notice stating that you may be eligible for health insurance through NYSOH but more information was needed to make a determination. You were asked to provide income documentation to NYSOH.

Finally on April 29, 2016 you uploaded two letters and a copy of your 2015 income tax return to your NYSOH account.

On May 2, 2016, an NYSOH representative updated the income information in your NYSOH account to \$44,651.00. The application stated that your average monthly income was the same as your income in the current month.

On May 4, 2016, a preliminary eligibility determination was prepared stating that you were eligible to receive up to \$9.00 per month in advance premium tax credits. That day, you enrolled into a platinum level qualified health plan.

Also on May 4, 2016, you spoke to NYSOH's Account Review Unit and appealed the disenrollment from your Medicaid Managed Care plan as well as your ineligibility for Medicaid.

On May 5, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to receive up to \$9.00 per month in advance premium tax credits, effective June 1, 2016. You were not eligible for Medicaid because your income was over the allowable income limit for that program.

Also on May 5, 2016 NYSOH issued an enrollment confirmation notice stating that you were enrolled in platinum level qualified health plan with a \$496.65 premium and that your coverage would start June 1, 2016.

On June 1, 2016 an NYSOH representative updated the income information in your NYSOH Account. That application listed an expected yearly income of \$18,533.00 and a monthly income of \$0.00. That application further stated that you wanted to have your eligibility determined using your current monthly income.

On June 2, 2016, NYSOH issued an eligibility redetermination notice stating that you were eligible for Medicaid effective June 1, 2016. This eligibility was based on the \$0.00 monthly income listed in your June 1, 2016 application.

On June 4, 2016, NYSOH issued a disenrollment notice stating that you were disenrolled from your platinum level qualified health plan effective June 30, 2016.

Also on June 4, 2016, an enrollment confirmation notice was issued that stated that you had selected a Medicaid Managed Care Plan and the effective date of that plan was July 1, 2016.

On November 9, 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:

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- 1) You testified that through your appeal you were looking to be reimbursed the premium from your qualified health plan from the month June 2016.
- 2) You testified that you used your qualified health plan two or three times in the month of June 2016.
- 3) The record does not contain any evidence that a renewal notice was mailed to you in the spring of 2016.
- 4) On April 29, 2016, you uploaded documentation in support of your expected 2016 income. That documentation included:
 - i. A letter on [REDACTED] letterhead stating that you are a self-employed, independent contractor and that you predict your income level to be about \$1,500.00 per month and that your total projected level of income for 2016 is \$18,000.00.
 - ii. A letter on [REDACTED] letterhead stating that you did not receive a renewal application this year and initiated the process on your own. The letter further stated that at the end of 2015 your income level was higher than the prior two years which is unusual.
 - iii. A copy of your 2015 income tax return stating that your adjusted gross income was \$44,177.00.
- 5) You testified that your income consist of income you receive from your consulting business and that you do not get paid at regular intervals because your paychecks are contingent on when a client pays.
- 6) You testified that in 2016 the first time you received a paycheck from your job was in August 2016 for approximately \$10,000.00. You testified that the second time you got a paycheck in 2016 was in October 2016 for approximately \$8,500.00.
- 7) You testified that the \$44,651.00 in expected income listed on the May 2, 2016 and the May 4, 2016 application was from 2015 and not what you expected to earn in 2016.
- 8) You testified that you expect to file your 2016 taxes with tax filings status of single and will claim no dependents on that tax return.

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

Applicable Law and Regulations

Medicaid Renewal

In general, NYSOH must review Medicaid eligibility once every twelve months or “whenever it receives information about a change in a beneficiary’s circumstances that may affect eligibility” (42 CFR § 435.916(a)(1), (d)). NYSOH must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual’s account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (42 CFR § 435.916(a)(2)).

NYSOH must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, NYSOH must issue a redetermination as provided by the notice, with consideration given to any updates provided by the individual (45 CFR §155.335(h)).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through the NYSOH, a tax filer’s household income includes the MAGI of all the individuals in the taxpayer’s household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)).

The term “MAGI” 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)).

Advance Premium Tax Credit

The advance premium tax credit (APTC) is available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable poverty level (FPL) (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual

market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

Eligibility for APTC is based on the taxpayer's modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a)). Generally, MAGI is your adjusted gross income plus any non-taxable Social Security income, non-taxable interest income, and non-taxable foreign income that you receive (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2015 FPL, which is \$11,770.00 for a one-person household (80 Federal Register 3236, 3237).

Medicaid

Medicaid can be provided through NYSOH 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)), NY Social Services 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 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

Financial eligibility for Medicaid for applicants can be 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).

People who receive or are eligible for Medicaid are not eligible for APTC since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan for 12 months, with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid Social Security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

Legal Analysis

The issue under review is whether NYSOH properly determined the level of financial assistance you were eligible for in the month of June 2016

You were originally found eligible for Medicaid effective April 1, 2015.

Generally, NYSOH must redetermine a qualified individual's eligibility for Medicaid once every 12 months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH is required to provide an annual renewal notice to an applicant in order to inform the consumer of what their eligibility is and request additional information if necessary. NYSOH must provide a 30 day window to an individual to allow time for any updates that may be required.

Since you were found eligible for Medicaid as of April 1, 2015, your 12 month period of eligibility would have lasted until March 31, 2016. NYSOH should have issued a renewal notice to you in February 2016 in order to provide you with enough time to make any updates that would have been needed. You testified that you never received a renewal notice. The record does not contain any evidence that a renewal notice was mailed to you in the spring of 2016.

On April 28, 2016 you initiated the renewal process on your own and updated your NYSOH account to reflect an expected 2016 income of \$12,500.00. NYSOH issued a notice stating that additional documentation of your income was needed in order for a determination to be made.

On April 29, 2016, you uploaded documentation in support of your expected 2016 income. On May 2, 2016, an NYSOH representative updated the income information in your NYSOH account to \$44,651.00 based on the documentation you had submitted. The application stated that your average monthly income was the same as your income in the current month. As a result, you were found not eligible for Medicaid and your enrollment in your Medicaid Managed Care plan was terminated as of May 31, 2016. For the month of June 2016 you were enrolled in a qualified health plan with \$9.00 advance premium tax credit through NYSOH.

You testified that the \$44,651.00 in expected income listed on the May 2, 2016 was from 2015 and not what you expected to earn in 2016. Included in the documentation that was submitted on April 29, 2016 that NYSOH used to update your account, was a copy of your 2015 income tax return stating that your adjusted gross income was \$44,177.00 as well as a letter from you explaining that your 2015 income was higher than usual and that your total projected level of income for 2016 is \$18,000.00. You further testified that the first time you received a payment from your job was August 2016.

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Therefore, it is determined that NYSOH incorrectly updated your expected 2016 income to \$44,651.00 because they did not take into consideration all of the information contained in the documentation you submitted. Further, the statement in that application indicating that your average monthly income was the same as your income in the current month was also incorrect.

Since you did not receive a renewal notice as required by federal regulation and because an NYSOH representative incorrectly used your 2015 annual income instead of your 2016 annual or monthly income, the May 5, 2016 eligibility determination notice is RESCINDED.

On June 1, 2016, an NYSOH representative updated the income information in your NYSOH Account. That application listed an expected yearly income of \$18,533.00 and a monthly income of \$0.00. That application further stated that you wanted to have your eligibility determined using your current monthly income. Your credible testimony during the hearing confirmed that the information that was contained in the application was and continues to be accurate. On June 2, 2016, NYSOH issued an eligibility redetermination notice stating that you were eligible for Medicaid effective June 1, 2016.

Since you were subsequently determined eligible for Medicaid as of June 1, 2016 based on the same criteria that was contained in the documentation you submitted in April and confirmed by your testimony, your Medicaid Managed Care Plan should not have been disrupted for the month of June 2016. However, you testified that you used your qualified health plan two or three times in the month of June 2016. Therefore, your case is RETURNED to NYSOH to determine if you should have been eligible for greater financial assistance for the qualified health plan.

Decision

The May 5, 2016 eligibility determination notice is RESCINDED.

Your Medicaid Managed Care Plan should not have been disrupted for the month of June 2016. Your case is RETURNED to NYSOH to determine if you should have been eligible for greater financial assistance for the qualified health plan you were enrolled in for June 2016.

Effective Date of this Decision: November 18, 2016

How this Decision Affects Your Eligibility

NYSOH failed to send you a renewal notice.

NYSOH incorrectly updated your income.

Your case is being sent back to NYSOH to determine if you should have received greater financial assistance in the month of June 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.

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 May 5, 2016 eligibility determination notice is RESCINDED.

NYSOH failed to send you a renewal notice.

NYSOH incorrectly updated your income.

Your case is being sent back to NYSOH to determine if you should have received greater financial assistance in the month of June 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

