



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

Notice of Decision

Decision Date: February 22, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009579

[REDACTED]

Dear [REDACTED],

On December 6, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 5, 2016 eligibility determination and your child's eligibility for retroactive Medicaid 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 at the top of this notice.

Legal Authority

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

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Decision

Decision Date: February 22, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009579

[REDACTED]

Issues

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

Did New York State of Health (NYSOH) properly determine that your infant child was conditionally eligible to enroll in Child Health Plus plan as of February 5, 2016?

Whether your child was eligible for retroactive Medicaid for the month of January 2016?

Procedural History

On February 3, 2016, you submitted a financial assistance application through NYSOH.

On February 5, 2016, NYSOH issued an eligibility determination notice stating that your child was conditionally eligible to enroll in Child Health Plus for a cost of \$30.00 per month effective as of March 1, 2016.

Also on February 5, 2016, NYSOH issued an enrollment notice confirming that your child was enrolled in a Child Health Plus plan, with an enrollment start date of March 1, 2016.

On March 16, 2016, your NYSOH account was updated.

On March 17, 2016, NYSOH issued a notice stating that your infant child may be eligible for health insurance through NYSOH but more information was needed to make a determination. NYSOH directed you to submit additional income documentation by April 1, 2016, to confirm your child's eligibility.

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On March 23, 2016, your NYSOH account was updated.

On March 24, 2016, NYSOH issued a notice stating that your infant child may be eligible for health insurance through NYSOH but more information was needed to make a determination. NYSOH directed you to submit additional income documentation by April 8, 2016, to confirm your child's eligibility.

On March 30, 2016, your NYSOH account was updated.

On March 31, 2016, NYSOH issued a notice stating that your infant child may be eligible for health insurance through NYSOH but more information was needed to make a determination. NYSOH directed you to submit additional income documentation by April 15, 2016, to confirm your child's eligibility.

On April 1, 2016, your NYSOH account was updated. Documentation regarding your maternity leave and your January 15, 2016 earnings statement was uploaded to your account ([REDACTED] ; [REDACTED]).

On April 2, 2016, NYSOH issued a notice stating that your infant child may be eligible for health insurance through NYSOH but more information was needed to make a determination. NYSOH directed you to submit additional income documentation by April 17, 2016, to confirm your child's eligibility.

On April 8, 2016, you uploaded a Compensation Report, from your employer, for the period of January 1, 2016 through March 31, 2016 ([REDACTED]).

On May 3, 2016, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid effective as of May 1, 2016.

Also on May 3, 2016, NYSOH issued an enrollment notice confirming that as of May 2, 2016, your child was enrolled in a Medicaid Managed Care (MMC) plan with an enrollment start date of June 1, 2016.

On May 6, 2016, NYSOH issued an eligibility determination notice that your child was eligible for Medicaid for February 1, 2016 through February 29, 2016.

On May 12, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as the effective date of your child's Medicaid coverage and eligibility for retroactive Medicaid coverage for January 2016.

On October 5, 2016, documentation regarding your child's father's residency was uploaded to your account ([REDACTED]).

On December 6, 2016, you had a telephone hearing with a Hearing Officer from the NYSOH Appeals Unit. The record was developed during the hearing and closed at the end of the proceeding.

Findings of Fact

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

- 1) Your child was born on [REDACTED].
- 2) According to your NYSOH account, you expected to file your 2016 federal income tax return, with the tax status of Head of Household (with qualifying individual), and expected to claim your child as a dependent on that return.
- 3) According to your February 3, 2016, March 16, 2016, and March 30, 2016 NYSOH applications, your child's father resides with you and your child.
- 4) You testified that you were directed to include your child's father in your child's financial assistance applications by a navigator. However, your child's father has never resided with you or your child.
- 5) According to your March 16, 2016 NYSOH application, you were seeking help paying for medical bills from the last 3 months.
- 6) You testified that you are seeking Medicaid coverage, for your child, for January 1, 2016 through April 30, 2016.
- 7) According to Incident [REDACTED] in the Evidence Packet that was created in anticipation of your telephone hearing, "...requesting retro Medicaid for January 2016 for the child." ([REDACTED]).
- 8) You testified that you have incurred approximately \$1,000.00 in medical bills for your child and want Medicaid to cover those costs.
- 9) On April 1, 2016, a letter from your employer was uploaded to your NYSOH account. The letter states that you were on maternity leave from January 20, 2016 through March 17, 2016, and did not earn any wages for that period ([REDACTED]).
- 10) You submitted a Compensation Report from your employer for the period of January 1, 2016 through March 31, 2016. You were issued:
 - (a) \$993.13 in adjusted gross earnings on January 15, 2016;
 - (b) \$939.13 in adjusted gross earnings on January 29, 2016;
 - (c) PSP Non-Taxable \$265.20, PSP Taxable \$414.80 on March 11, 2016;

- (d) PSP Taxable \$48.57 on March 11, 2016;
- (e) \$236.25 in adjusted gross earnings on March 25, 2016;

([REDACTED]).

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

Applicable Law and Regulations

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)).

Medicaid- Newborn Child

A child who is under one year of age 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 223% of the FPL for the applicable family size. (42 CFR § 435.118(c); New York Department of Health Administrative Directive 13 OHIP/ADM-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 (81 Fed. Reg. 4036).

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).

Medicaid – 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 where a child, under the age of 19 or a full-time student under the age of 21, is claimed by one parent as a dependent and who is living with both

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parents who are not filing a joint tax return (42 CFR § 435.603(f)(2)(ii)), the child's family size includes, if living with the child: (1) the child's parents, (2) the child's spouse, (3) the child's children and siblings under the age of 19, or 21 if a full-time student (42 CFR § 435.603(f)(3)).

De Novo Review

The 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).

Medicaid Retroactive Coverage:

NYSOH must make Medicaid eligibility effective no later than the third month before the month of application if the individual received medical services that would have been covered under Medicaid and would have been eligible for Medicaid at the time he received the services if they had applied (42 CFR 435.915(a)). NYSOH 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 issue under review is whether NYSOH properly determined that your infant child was conditionally eligible to enroll in a Child Health Plus plan as of February 5, 2016.

Determining an applicant's eligibility for Child Health Plus or Medicaid is based on an applicant's current monthly household income and family size.

When calculating household size for a child who is living with both parents but only be 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 February 3, 2016, you attested that your child resided with you and your child's father. Consequently, NYSOH determined your child's eligibility using a three-person household.

However, you testified that you were directed to include your child's father in your child's financial assistance applications by a navigator. However, you testified that your child's father does not and has never resided with you or your child.

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. Your NYSOH account reflects that you expected to file your 2016 federal income tax return, with the tax

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status of Head of Household (with qualifying individual), and expected to claim your child as your only dependent. Therefore, you were in a two-person hold.

Based on your correct household size, your child would need to meet the non-financial criteria and have an income no greater than 223% of the FPL, which is \$2,978.00 per month.

The evidence supports that you were on maternity leave from January 20, 2016 through March 17, 2016, and did not earn any income in the month of February 2016. Therefore, your household income in February 2016 is \$0.00.

Under New York State's Public Health Law, a Medicaid-eligible child does not qualify to enroll in health insurance through Child Health Plus.

Therefore, the February 5, 2016, eligibility determination notice stating that your child was conditionally eligible to enroll in Child Health Plus is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your infant child's eligibility for financial assistance based on a two-person household with a February 2016 household income of \$0.00.

The second issue under review is whether your child was eligible for retroactive Medicaid coverage for January 2016.

The record does not contain a notice of eligibility determination or redetermination regarding the issue of whether or not you qualify for retroactive Medicaid for the month of January 2016. It does contain Incident [REDACTED], which demonstrates that on May 12, 2016, you contacted NYSOH to appeal your eligibility for retroactive Medicaid for the month of January 2016.

Here, the lack of a notice of eligibility determination on the issue of retroactive Medicaid for the month of 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's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

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 issue under review is whether you were properly denied retroactive Medicaid coverage for January 2016.

Based on the analysis above, your household size for Medicaid purposes was two. The record reflects you expect to file your 2016 federal income tax return, with the tax status of Head of Household (with qualifying individual), and expect to claim your child as a dependent on that return.

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Medicaid coverage can be made effective retroactively for up to three months prior to an individual's initial application if they would have been eligible for Medicaid in those three months had they applied.

The record supports that based on the financial assistance application that was submitted through NYSOH on March 16, 2016, you indicated that you were seeking help paying for medical bills for the last 3 months.

A child who is under one year of age 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 223% of the FPL for the applicable family size.

On the date of your application, the FPL was \$16,020.00 for a two-person household. Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits may be based on current monthly household income and family size. In order to be eligible for Medicaid a household of two must not exceed a monthly income limit of \$2,978.00.

On April 8, 2016, you uploaded your Compensation Report from your employer for the period of January 1, 2016 through March 31, 2016. The report demonstrates that you were issued (\$993.13 (+) \$939.13) \$1,932.26 in adjusted gross earnings in January 2016.

Since the record now contains an accurate representation of what your income was for the month of January 2016 your case is RETURNED to NYSOH to consider your request for retroactive Medicaid coverage for your child in January 2016 based on a two-person household and a household income of \$1,932.26 for January 2016.

Decision

The February 5, 2016, eligibility determination notice stating that your child was conditionally eligible to enroll in Child Health Plus is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your infant child's eligibility for financial assistance based on a two-person household with a February 2016 household income of \$0.00.

Your case is RETURNED to NYSOH to consider your request for retroactive Medicaid coverage for your child in January 2016 based on a two-person household and a household income of \$1,932.26 for January 2016.

Effective Date of this Decision: February 22, 2017

How this Decision Affects Your Eligibility

Your child was incorrectly determined conditionally eligible for Child Health Plus as of February 5, 2016.

Your case is returned to NYSOH to redetermine your infant child's eligibility for financial assistance based on a two-person household with a February 2016 household income of \$0.00.

Your case is returned to NYSOH to determine your child's eligibility for retroactive Medicaid for the month of January 2016 based on a two-person household with a monthly income of \$1,932.26.

NYSOH will issue a determination regarding your child's eligibility for retroactive Medicaid for the month of 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.

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 after the date 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 date 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

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- By mail at:
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- By fax: 1-855-900-5557

Summary

The February 5, 2016, eligibility determination notice stating that your child was conditionally eligible to enroll in Child Health Plus is **RESCINDED**.

Your child was incorrectly determined conditionally eligible for Child Health Plus as of February 5, 2016.

Your case is returned to NYSOH to redetermine your infant child's eligibility for financial assistance based on a two-person household with a February 2016 household income of \$0.00.

Your case is returned to NYSOH to determine your child's eligibility for retroactive Medicaid for the month of January 2016 based on a two-person household with a monthly income of \$1,932.26.

NYSOH will issue a determination regarding your child's eligibility for retroactive Medicaid for the month of January 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

