



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

Notice of Decision

Decision Date: December 9, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009764

[REDACTED]

Dear [REDACTED],

On November 18, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 18, 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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009764

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Issue

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

Did NY State of Health properly determine that your child was not eligible for Medicaid for the months of May 2016 and June 2016?

Procedural History

On May 17, 2016, NYSOH received your initial application for health insurance for you and your son.

On May 18, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating in part that your child was eligible for Child Health Plus, effective July 1, 2016. That notice further acknowledged your request for help paying your and your child's medical bills for the three-month period prior to your application. The notice also stated that you were eligible for Medicaid coverage for the treatment of emergency medical conditions due to your citizenship status, effective as of May 1, 2016.

Also on May 18, 2016, NYSOH issued an enrollment confirmation notice stating that your child was enrolled in Child Health Plus, effective July 1, 2016.

Also on May 18, 2016, NYSOH issued a notice of eligibility determination stating that you and your child were eligible for Retroactive Emergency Medicaid for February 2016, March 2016, and April 2016.

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On May 20, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as it left your child with a gap in medical coverage for the months of May 2016 and June 2016.

On November 18, 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 are appealing because, although you were found Emergency Medicaid eligible effective May 1, 2016, your child was determined eligible for Child Health Plus, effective July 1, 2016.
- 2) According to your NYSOH account, you and your child were also found eligible for retroactive Medicaid for the months of February 2016, March 2016 and April 2016.
- 3) According to your NYSOH account, your child had a gap in coverage for the months of May 2016 and June 2016. You testified you are seeking health insurance coverage for your child for those two months.
- 4) According to your NYSOH account, your child was 15 years of age at all times relevant.
- 5) According to your NYSOH account and your testimony, you are head of household with only your one child as your dependent and do not plan on filing a federal tax return for 2016.
- 6) According to your NYSOH account and your testimony, you are unemployed, have no income, and there have been no changes in your income status since you applied in May 2016. You testified that you and your child are supported by your family members.
- 7) According to your NYSOH account, at the time of the initial application, you were a temporary non-immigrant with a R-B1/B2 Visa.
- 8) You testified that your child's [REDACTED] passport is the only form of citizenship documentation that he possesses (see Document # [REDACTED]).
- 9) You testified that your child was in the hospital in May 2016 and you have hospital bills from his stay that you need help paying.

- 10) According to your NYSOH account and testimony, you and your child reside in Bronx County, New York.

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 (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). 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)).

Most children 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. 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)).

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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).

Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (a) Placing the patient’s health in serious jeopardy; (b) Serious impairment of bodily functions; or (c) Serious dysfunction of any bodily organ or part (42 CFR § 435.930(c)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

Legal Analysis

The issue under review is whether NYSOH properly determined whether or not your child was eligible for Medicaid from May 1, 2016 through June 30, 2016.

On May 20, 2016, you spoke with NYSOH’s Account Review Unit and requested that your child be determined eligible for Medicaid for May 2016 and June 2016. The record contains a May 18, 2016 notice of eligibility determination, which states that you were eligible for Emergency Medicaid, effective May 1, 2016, and your child was eligible for Child Health Plus, effective July 1, 2016. That notice is silent as to whether or not your child was eligible for Medicaid in May 2016 and June 2016. The record also contains a May 21, 2016 notice in which the NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as “Eligibility determination” as it relates to your child. Additionally, at the hearing, you testified that you wanted your child to be determined eligible for Medicaid for those two months.

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Here, the lack of a notice of eligibility determination on the issue of Medicaid eligibility 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. The text of the May 21, 2016 notice, which acknowledges the appeal on the issue of your child's eligibility, along with your NYSOH application and your testimony that you wanted Medicaid coverage for him, permits an inference that NYSOH did deny your request for Medicaid for your child for the months he was without any coverage; that is, May 2016 and June 2016.

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.

You testified and according to your NYSOH application, you are head of household and do not plan on filing a federal tax return for 2016. You have one dependent.

Although you were initially found eligible for Emergency Medicaid, effective May 1, 2016 in the May 18, 2016 eligibility determination notice, your child was only found eligible for and enrolled in Child Health Plus beginning on July 1, 2016. Since that eligibility determination is silent as to whether your child qualified for Medicaid in May 2016 and June 2016, as a result, your child had a gap in coverage for the months of May 2016 and June 2016, during which months you are seeking coverage in Medicaid for him.

Medicaid can be provided through NYSOH to children between the ages of one and nineteen who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 154% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,020.00 for a two-person household. The record reflects that you are unemployed and have no income, your income has not changed since your initial application, and you and your child are supported by your family members. Since \$0.00 is 0.00% of the 2016 FPL, your child would have been eligible for Medicaid on a financial basis, using the information provided in your application.

However, in order to be eligible for full Medicaid through the NYSOH, your child must also meet the non-financial requirements. Your child must have documents to prove his citizenship or immigration status. At the time of the application, you were a temporary non-immigrant with a R-B1/B2 Visa. According to your NYSOH account, you uploaded your visa and your child's [REDACTED] passport as proof of citizenship on May 20, 2016 (Document # [REDACTED]). You credibly testified that the only citizenship documentation you have for your child is his [REDACTED] passport. Therefore, your child was not eligible for full Medicaid through

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NYSOH. However, since you are a temporary non-immigrant alien residing in the state of New York with your child and have a household income of \$0.00, he is eligible for Emergency Medicaid for May 2016 and June 2016 if he meets all the non-financial Medicaid eligibility requirements.

There is no indication that your child does not meet all the non-financial Medicaid eligibility requirements, including age of 15, proof of identity, income, and State residence. In fact, your child was found eligible for retroactive Emergency Medicaid 2016 for the months of February 2016, March 2016 and April 2016. Since your child meets all of the financial and non-financial requirements for Emergency Medicaid, your case is RETURNED to NYSOH to extend his Emergency Medicaid from May 1, 2016 through June 30, 2016, thus closing the gap in coverage he had for those months.

Decision

Your case is RETURNED to NYSOH to extend your child's Emergency Medicaid from May 1, 2016 through June 30, 2016, and to notify you accordingly.

Effective Date of this Decision: December 9, 2016

How this Decision Affects Your Eligibility

Your case is being returned to NYSOH to extend your child's Emergency Medicaid from May 1, 2016 through June 30, 2016. NYSOH will notify you once this has been completed.

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

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

Summary

Your case is RETURNED to NYSOH to extend your child's Emergency Medicaid from May 1, 2016 through June 30, 2016.

NYSOH will notify you once this has been completed.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

