



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

Notice of Decision

Decision Date: March 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010186

[REDACTED]

Dear [REDACTED]

On January 26, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's May 24, 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 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: March 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010186



Issues

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

Did NY State of Health properly determine that you and your spouse were eligible to enroll in the Essential Plan effective July 1, 2016?

Did NY State of Health properly determine that your children were eligible to enroll in Child Health Plus with a \$0.00 per month premium, effective July 1, 2016?

Did NY State of Health properly determine that you, your spouse, and your children were not eligible for Medicaid?

Procedural History

On December 14, 2015, NY State of Health (NYSOH) received your completed application for health insurance.

On December 15, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were conditionally eligible to receive advance payments of the premium tax credit of up to \$463.00 per month and cost-sharing reductions if you selected a silver level qualified health plan, effective January 1, 2016, and that your children were conditionally eligible to enroll in Child Health Plus for a cost of \$9.00 per month, effective January 1, 2016. This same notice directed you to submit income documentation for your household by February 12,

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2016 in order for your children's eligibility to be confirmed and by March 13, 2016 in order for your and your spouse's eligibility to be confirmed.

Also on December 15, 2015, NYSOH issued a notice of enrollment confirming your and your spouse's enrollment in a qualified health plan, effective January 1, 2016, and your children's enrollment in a Child Health Plus plan, effective January 1, 2016.

On March 10, 2016, you updated your household's application for financial assistance with health insurance and income documentation was uploaded to your NYSOH account.

On March 11, 2016, NYSOH issued a notice advising you that the income documentation you provided did not match what NYSOH had obtained from State and Federal data sources and that income documentation was required before an eligibility determination could be issued with regard to yourself, your spouse, and your children. This same notice requested that you submit income documentation for your household by March 26, 2016.

Also on March 11, 2016, NYSOH issued a disenrollment notice stating that your and your spouse's enrollment in your qualified health plan would end effective March 31, 2016, and that your children's enrollment in their Child Health Plus plan would end effective March 31, 2016.

On March 17, 2016, NYSOH reviewed the income documentation that was uploaded on March 10, 2016 and determined that this documentation was invalid proof of income as there was an attestation to self-employment and therefore a tax return was required in order to determine eligibility.

Also on March 17, 2016, NYSOH issued a notice advising you that the documentation you submitted was insufficient to resolve the inconsistency in your account and that additional proof of income was required in order to determine your household's eligibility for financial assistance with health insurance.

On March 30, 2016, additional income documentation was uploaded to your NYSOH account.

On April 18, 2016, NYSOH reviewed the income documentation that was uploaded on March 30, 2016 and determined that this documentation was invalid proof of income as you had submitted a letter from your spouse's employer stating that your spouse was employed as an independent contractor, therefore your tax return was needed or a detailed record of earnings and expenses for a period of at least three months.

On April 21, 2016, NYSOH redetermined your household's eligibility for financial assistance with health insurance.

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On April 21, 2016, NYSOH issued a notice advising you that the income documentation you provided did not match what NYSOH had obtained from State and Federal data sources and that income documentation was required before an eligibility determination could be issued with regard to yourself, your spouse, and your children. This same notice requested that you submit income documentation for your household by May 7, 2016.

On April 28, 2016, additional income documentation was uploaded to your NYSOH account.

On May 14, 2016, NYSOH redetermined your household's eligibility for financial assistance.

On May 15, 2016, NYSOH issued a notice of eligibility determination stating that you, your spouse, and your children were eligible to purchase a qualified health plan at full cost through NYSOH, effective June 1, 2016.

On May 23, 2016, NYSOH verified the income documentation that was submitted on April 28, 2016. The income in your account was updated based upon this documentation, and a new application was submitted on your household's behalf.

Also on May 23, 2016, NYSOH redetermined your household's eligibility for financial assistance.

On May 24, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to enroll in the Essential Plan, effective July 1, 2016, and that your children were eligible for Child Health Plus with a \$0.00 premium, effective July 1, 2016.

Also on May 24, 2016, NYSOH issued a notice of eligibility determination stating that you were not eligible for Medicaid for February 1, 2016 through April 30, 2016.

On June 4, 2016, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in your Essential Plan with a plan enrollment start date of July 1, 2016, and that your children were enrolled in their Child Health Plus plan with a plan enrollment start date of July 1, 2016.

On June 9, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as you, your spouse, and your children were not found eligible for Medicaid as of January 1, 2016, or in the alternative, that your and your spouse's Essential Plan did not begin as of January 1, 2016.

On July 6, 2016, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in your Essential Plan with a plan enrollment

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start date of May 1, 2016, and that your children were enrolled in their Child Health Plus plan with a plan enrollment start date of April 1, 2016.

On January 20, 2017, you were scheduled for a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your authorized representative requested that day that the hearing be adjourned to a later date.

On January 26, 2017, you had an adjourned hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to formal notice of the hearing. During the hearing, [REDACTED] your spouse acted as your authorized representative and provided testimony.

The record was developed during the hearing and left open for 20 days to allow you time to submit supporting documentation. No documentation was received within the allotted time. The record is now closed.

Findings of Fact

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

- 1) You testified that you expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim two dependents on that tax return.
- 2) You testified that your dependents do not have any income.
- 3) You testified that you were out of work and did not have any income until October 2016. You testified that in 2016 you did not collect any Unemployment Insurance Benefits or Social Security Disability.
- 4) You testified that you did not have any income in the months of January 2016, February 2016, March 2016, April 2016, or May 2016.
- 5) You testified that your annual income for 2016 was approximately \$20,000.00.
- 6) Your spouse testified that she had one employer in 2016. She further testified that she received one paycheck in January 2016 and three paychecks in February 2016. She further testified that she was not sure if she had received any pay in March 2016, April 2016, or May 2016. Your spouse explained that certain business expenses, such as advertising, are deducted from her paycheck, however, taxes are not deducted.
- 7) Your spouse testified that she is a real estate broker and receives a 1099 at the end of the year. As of the hearing, she had not yet received her 2016 1099.

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- 8) Your spouse testified that she believes her annual income for 2016 was approximately \$38,000.00.
- 9) Your spouse testified that you live in ██████████ County.
- 10) Your spouse testified that you and your spouse will take business expense deductions in 2016, which will be similar to the deductions you claimed in 2015.
- 11) The application that was submitted on your household's behalf on May 23, 2016 listed annual household income of \$38,837.00.
- 12) Your spouse testified that you are seeking to have Medicaid for your entire family as of January 1, 2016 or in the alternative, the Essential Plan for yourself and your spouse as of January 1, 2016.
- 13) Your spouse testified that you believe that your children's coverage was adjusted so that they have had coverage under Child Health Plus since January 1, 2016. She further testified that you have no outstanding bills for your children.
- 14) You testified that you do have outstanding medical bills for January 2016, February 2016, and March 2016.
- 15) Your spouse testified that you effectively did not have any coverage until July 2016 as your qualified health plan did not begin as of January 1, 2016.
- 16) On March 10, 2016, you submitted two signed and dated letters. The first letter is dated March 10, 2016 and indicates that you have not had any earned income since August 2015. The second letter is dated March 10, 2016 and indicates that you were employed as an independent contractor, and therefore you were ineligible for Unemployment Insurance Benefits.
- 17) On March 10, 2016 you submitted four paystubs for your spouse. The first is for pay date January 5, 2016 for a gross pay amount of \$863.85; the second is for pay date February 9, 2016 for a gross pay amount of \$674.70; the third is pay date February 16, 2016 for a gross pay amount of \$226.69; and the fourth is for pay date February 23, 2016 for a gross pay amount of \$1,841.78.
- 18) On March 24, 2016 you submitted a letter from your spouse's employer indicating that her pay is entirely based upon commission and that she earned a minimum of \$2,500.00 per month.

19) On April 28, 2016 you submitted a copy of your 2015 tax return, which indicates total income of \$38,837.00.

20) On February 24, 2016 you placed two calls to NYSOH. A review of the recordings of those phone calls reveals that during both phone calls you advised the NYSOH representatives that you would like to submit a new application and that your household's income was different than what was reported on your December 14, 2015 application. Both representatives advised you that it was not possible to update your application with the new income information as the open enrollment period for 2016 had ended.

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

Applicable Law and Regulations

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$24,250.00 for a two-person household (80 Fed. Reg. 3236, 3237).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

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The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

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 \$24,300.00 for a four-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).

Child Health Plus

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

A child who meets the eligibility requirements for 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) (NY 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 PHL § 2511(2)(b)).

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in a CHP plan depends upon the child's family household income (NY PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL (NY PHL §

2510(9)(d)(1)). If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (NY PHL § 2510(9)(d)).

In an analysis of Child Health Plus 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 was \$24,300.00 for a four-person household (81 Fed. Reg. 4036).

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 State Department of Social Services Administrative Directive 13 OHIP/ADM-03).

In the case of an individual who expects to file a tax return and does not expect to be claimed by another taxpayer, the household consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1)).

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 was \$24,300.00 for a four-person household (81 Federal Register 4036).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were eligible for the Essential Plan, effective July 1, 2016.

The application that was submitted on your behalf on May 23, 2016 listed an annual household income of \$38,837.00 and the eligibility determination relied upon that information.

You and your spouse are in a four-person household. You expect to file your 2016 income taxes as married filing jointly and will claim two dependents on that tax return.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$24,250.00 for a four-person household. Since an annual household income of \$38,837.00 is 160.15%

of the 2015 FPL, NYSOH properly found you and your spouse to be eligible for the Essential Plan on an expected annual income basis.

The second issue under review is whether NYSOH properly determined that your children were eligible to enroll in Child Health Plus with a \$0.00 per month premium, effective July 1, 2016.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the 2016 FPL. Households with an income less than 160% of the FPL are responsible for a \$0.00 per month Child Health Plus premium payment. On the date of your application, the relevant FPL was \$24,300.00 for a four-person household. Since \$38,837.00 is 159.82% of the 2016 FPL, NYSOH properly found your child to be eligible for Child Health Plus with a \$0.00 per month premium payment.

The third issue is whether NYSOH properly determined that you, your spouse, and your children were not eligible for Medicaid.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (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 \$24,300.00 for a four-person household. Since \$38,837.00 is 159.82% of the 2016 FPL, NYSOH properly found you and your spouse to be ineligible for Medicaid on an expected annual income basis.

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. Since \$38,837.00 is 159.82% of the 2016 FPL for a four-person household, NYSOH properly found your children to be ineligible for Medicaid on an expected annual income basis.

However, 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 letters that show that in February 2016 you had no income and your spouse received \$2,743.17.

To be eligible for Medicaid, you and your spouse would need to meet the non-financial criteria and have an income no greater than 138% of the 2016 FPL, which is \$2,795.00.00 per month, and your children would need to meet the non-financial criteria and have an income no greater than 154% of the 2016 FPL, which is \$3,119.00.

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Although no application was submitted in February 2016, during the phone calls you placed to NYSOH on February 24, 2016, you requested that a new application be submitted and advised the NYSOH representatives that your household income was different than the income that was provided on your household's December 14, 2015 application. The NYSOH representatives advised you that a new application could not be submitted on your household's behalf.

Therefore, NYSOH should have allowed you to update the income information in your account and submit a new application on February 24, 2016 and your household's eligibility for Medicaid should have been determined on a monthly income analysis basis for February 2016.

Therefore, the May 24, 2016 eligibility determination notice is RESCINDED.

The case is RETURNED to NYSOH to redetermine your, your spouse's, and your children's eligibility as of February 1, 2016 based on a household of four residing in ██████████ County with a monthly income for February 2016 of \$2,743.17.

Decision

The May 24, 2016 eligibility determination notice is RESCINDED.

The case is RETURNED to NYSOH to redetermine your, your spouse's, and your children's eligibility as of February 1, 2016 based on a household of four residing in ██████████ County and a monthly income for February 2016 of \$2,743.17.

Effective Date of this Decision: March 3, 2017

How this Decision Affects Your Eligibility

This is not a final determination on your, your spouse's, or your children's eligibility.

Your case is being sent back to redetermine your, your spouse's, and your children's eligibility as of February 1, 2016 based on a household of four residing in ██████████ County with a monthly income for February 2016 of \$2,743.17.

If You Disagree with this Decision (Appeal Rights)

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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

Summary

The May 24, 2016 eligibility determination notice is **RESCINDED**.

This is not a final determination on your, your spouse's, or your children's eligibility.

The case is **RETURNED** to NYSOH to redetermine your, your spouse's, and your children's eligibility as of February 1, 2016 based on a household of four

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residing in [REDACTED] County and a monthly income for February 2016 of \$2,743.17.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

