



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

Notice of Decision

Decision Date: January 5, 2017

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000010926

[REDACTED]

[REDACTED]

On December 15, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 21, 2014, August 20, 2015, and June 1, 2016 eligibility determinations.

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 Date: January 5, 2017

NY State of Health Number: [REDACTED]
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Issues

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

Was your appeal of NY State of Health's (NYSOH) June 21, 2014 eligibility determination notice and August 20, 2015 eligibility determination notice timely?

Did NYSOH properly determine that you were ineligible for Medicaid for February 1, 2016 through April 30, 2016?

Procedural History

On May 7, 2014, NYSOH received your completed application for health insurance.

On June 21, 2014, NYSOH issued a notice of eligibility determination stating that you were not qualified to enroll through NYSOH because based on information from Federal and State data sources, you were already enrolled in or eligible for a public insurance program such as Medicaid, Tricare, Veteran's or another program.

On August 19, 2015 you updated your application for health insurance.

On August 20, 2015, NYSOH issued a notice of eligibility determination stating that you were not qualified to enroll through NYSOH because based on information from Federal and State data sources, you were already enrolled in or eligible for a public insurance program such as Medicare.

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On May 16, 2016, you updated your application for health insurance.

On May 17, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid, effective May 1, 2016.

Also on May 17, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive reimbursement of your Medicare Part B premium from NYSOH, effective May 1, 2016.

On May 31, 2016, you updated your application for health insurance to indicate that you were seeking help paying for medical bills for February 2016, March 2016, and April 2016.

On June 1, 2016, NYSOH issued a notice of eligibility determination stating that you were ineligible for Medicaid for February 1, 2016 through April 30, 2016 because the monthly household income you provided of \$2,458.00 was over the allowable income limit of \$1,843.00.

On July 19, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the eligibility determinations as they related to your ineligibility for Medicaid and Medicaid reimbursement of your Medicare premiums prior to May 1, 2016.

On December 15, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for 14 days to allow you the opportunity to submit statements of your and your daughter's Social Security benefits, as well as your 2014 and 2015 income tax returns. On December 15, 2016 the Appeals Unit received via fax your 2014 and 2015 Social Security Benefit Statement, your daughter's 2014 and 2015 Social Security Benefit Statement, a September 1, 2015 letter from the Social Security Administration advising of your monthly Social Security Benefit, a September 1, 2015 letter from the Social Security Administration advising of your daughter's monthly Social Security Benefit, and your 2014 and 2015 tax returns. These documents were collectively marked as Appellant's Exhibit #1 and incorporated into the record. The record is now closed.

Findings of Fact

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

- 1) The application that was submitted on May 31, 2016 listed an annual income for yourself of \$19,440.00 which consisted of Social Security Disability payments. The application indicated that you expected to file your 2016 tax return as single and would claim one dependent, your

- daughter. The application indicates that your monthly income for February 2016, March 2016, and April 2016 was \$1,620.00. The application indicates that your daughter's monthly income for February 2016, March 2016, and April 2016 was \$838.00.
- 2) The letter from the Social Security Administration you submitted dated September 1, 2015 indicates that beginning December 2014 your full monthly Social Security benefit before any deduction is \$1676.90
 - 3) The letter from the Social Security Administration you submitted dated September 1, 2015 indicates that beginning December 2014 your daughter's full monthly Social Security payment is \$838.00.
 - 4) You testified that you have had Medicare Part A and Part B since 2010 and that Medicaid previously paid your Medicare premiums, beginning at some point in 2011. You testified that this stopped sometime in 2013, and resumed at some point in 2016. You testified that you are seeking to have Medicaid reimburse your Medicare premiums since 2013.
 - 5) You testified that you began receiving Social Security Disability benefits in 2009, and these were made retroactive to August 1, 2008.
 - 6) You testified that your and your daughter's Social Security benefits have remained the same since 2015, however, you recently received a letter indicating that the benefits would be increasing.
 - 7) You testified that you and your daughter receive the same amount in Social Security benefits every month and are paid once per month, on the third of the month.
 - 8) You testified that in September 2016 you moved to New Jersey, however, prior to this, you had lived in New York your entire life, and lived in Kings County for the past thirty years.
 - 9) You testified that you contacted NYSOH via phone to apply for health insurance and update your applications. You testified that each time you requested to have your Medicare premiums paid by Medicaid, but were advised that your income was too high to qualify. You testified that it was not until 2016 that you were offered the option of an appeal.
 - 10) The record reflects that you amended a complaint filed on May 16, 2016 to reflect that that you were seeking eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums prior to May 1, 2016 on May 23, 2016.

11) You testified that this appeal is only with regard to your coverage, not your daughter's coverage.

12) You testified that your daughter's only source of income is her Social Security benefit.

13) You testified that your only source of income in 2014, 2015, and 2016 was your Social Security benefit.

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

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

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)).

An individual is eligible for enrollment in Medicaid through NYSOH (called MAGI-based Medicaid) when he or she meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard (45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

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In general, to qualify for MAGI-based Medicaid through NYSOH, you must also be one of the following:

- An adult aged 19-64 who is not eligible for Medicare Part A or Part B,
- A pregnant woman or infant,
- A child aged 1-18, or
- A parent or caretaker relative

(45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

A caretaker relative is a relative of a dependent child by blood, adoption, or marriage, who:

- Lives with the dependent child;
- Assumes primary responsibility for the child's care; and
- Is either the child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(42 CFR § 435.4; N.Y. Soc. Serv. Law § 366(1)(a)(2)(i); NY Department of Health Administrative Directive 13ADM-03)

A dependent child is a child who:

- Is under 18 years old, or is 18 years old and a full-time high school student; and
- Is deprived of parental support by at least parent due to either death, absence, physical or mental incapacity, or unemployment.

(42 CFR § 435.4; N.Y. Soc. Serv. Law § 366(b)(1)(v); NY Department of Health 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 2015 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

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 Premium Reimbursement

A person may be eligible for Medicaid reimbursement of health insurance premiums paid if the payment of those premiums is cost-effective and so reduces the cost of providing Medicaid services (see NYS Social Services Law § 367a(b), 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).

18 NYCRR § 360-7.5, GIS 02 MA/019). Cost-effectiveness may be determined by comparing what it would cost Medicaid to provide coverage to the cost of the premiums for the health insurance policy.

Modified Adjusted Gross Income

The Marketplace 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 Marketplace, 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 MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2015 year, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg. 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, 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)).

Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

"Adjusted gross income" means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an

employer, losses from sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

“Gross income” is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual’s income from Social Security benefits is included in their gross income only to the extent that the sum of the person’s IRS-defined “modified adjusted gross income” and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

Legal Analysis

The first issue under review is whether your appeal of NYSOH’s June 21, 2014 eligibility determination notice and August 20, 2015 eligibility determination notice was timely.

On June 21, 2014, NYSOH issued a notice of eligibility determination stating that you were not qualified to enroll through NYSOH because based on information from Federal and State data sources, you were already enrolled in or eligible for a public insurance program such as Medicaid, Tricare, Veteran’s or another program.

On August 20, 2015, NYSOH issued a notice of eligibility determination stating that you were not qualified to enroll through NYSOH because based on information from Federal and State data sources, you were already enrolled in or eligible for a public insurance program such as Medicare.

The record reflects that the first time you contacted NYSOH to file a complaint in regard to your ineligibility for Medicaid and Medicaid reimbursement of your Medicare premiums was May 16, 2016.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of your ineligibility for Medicaid as stated in the June 21, 2014 eligibility determination notice, an appeal should have been filed by September 19, 2014. For an appeal to have been valid on the issue of your ineligibility for Medicaid as stated in the August 20, 2015 eligibility determination notice, an appeal should have been filed by October 19, 2015. According to the credible evidence in the record, you did not contact NYSOH to

file a complaint until May 16, 2016, well after the 60-day time period to file a formal appeal.

You testified that you were not offered the option of an appeal until 2016. However, the record reflects that NYSOH sent you notices on June 21, 2014 and August 20, 2015. Neither of these notices was returned to NYSOH as undeliverable. Both of these notices advised you of your appeal rights, including the requirement that an appeal be filed within 60 days of a determination. However, no attempt was made to file an appeal of these determinations until May 16, 2016.

Therefore, there has been no timely appeal of the June 21, 2014 and August 20, 2015 eligibility determination notices and your appeal on the issue of your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums prior to February 1, 2016 is DISMISSED.

The second issue is whether NYSOH properly determined that you were ineligible for Medicaid for February 1, 2016 through April 30, 2016.

On May 31, 2016 you filed an application for financial assistance listing a monthly household income of \$2,458.00 for the months of February 2016, March 2016, and April 2016. This amount consists of \$1,620.00 in Social Security Disability payments that you receive each month and \$838.00 your child receives in Social Security benefits

Household income for the purposes of calculating a person's eligibility for financial assistance to help pay for the costs of health insurance through NYSOH, consists of the Modified Adjusted Gross Income of all tax filers in a household who are required to file a tax return.

You attested to your intent to file a 2016 return when you requested financial support on the NYSOH application. Since you plan on filing your taxes as single and claim one child as a dependent on your 2016 tax return, you are in a two-person household.

A dependent will be required to file a tax return in 2016 if their earned income is greater than \$6,300.00. According to the information on your application and your testimony, your child has no earned income. Since your dependent has an earned income less than \$6,300.00, she is not required to file a tax return on the basis of her earned income.

A dependent will also be required to file a tax return in 2016 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

At the time of your application, your child received \$10,060.80 in income from Social Security benefits. One-half the amount of Social Security she receives is \$5,030.40. Since \$5,030.40 is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

Therefore, the June 1, 2016 eligibility determination is **RESCINDED** because your child's income, should not have been included in your household's income for NYSOH purposes.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums, for February 1, 2016 to April 30, 2016, based on a household of two with a monthly household income of \$1676.90 residing in Kings County.

Decision

The appeal of the June 21, 2014 eligibility determination notice and August 20, 2015 eligibility determination notice is **DISMISSED** as untimely.

The June 1, 2016 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums, for February 1, 2016 to April 30, 2016, based on a household of two with a monthly household income of \$1676.90 residing in Kings County.

Effective Date of this Decision: January 5, 2017

Your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums prior to February 1, 2016 will not be addressed, as your appeal was untimely.

This decision is not a final determination of your eligibility.

Your case is being sent back to NYSOH to redetermine your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums, for February 1, 2016 to April 30, 2016, based on a household of two with a monthly household income of \$1676.90 residing in Kings County.

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Once a redetermination has been made, NYSOH will issue you a redetermination notice which will contain further information.

How this Decision Affects Your Eligibility

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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Summary

The appeal of the June 21, 2014 eligibility determination notice and August 20, 2015 eligibility determination notice is **DISMISSED** as untimely.

The June 1, 2016 eligibility determination notice is **RESCINDED**.

Your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums prior to February 1, 2016 will not be addressed, as your appeal was untimely.

This decision is not a final determination of your eligibility.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for Medicaid and Medicaid reimbursement of your Medicare premiums, for February 1, 2016 to April 30, 2016, based on a household of two with a monthly household income of \$1676.90 residing in Kings County.

Once a redetermination has been made, NYSOH will issue you a redetermination notice which will contain further information.

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:

