



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

Notice of Decision

Decision Date: January 25, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011011

[REDACTED]

Dear [REDACTED],

On December 13, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's June 21, 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.

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Decision Date: January 25, 2017

NY State of Health Account ID: [REDACTED]
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[REDACTED]

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 newborn children were not eligible for Medicaid, effective June 1, 2016?

Procedural History

On June 20, 2016, your newborn children were added to your NY State of Health (NYSOH) account and an application was submitted on their behalf.

On June 21, 2016, NYSOH issued an eligibility determination notice, based on your June 20, 2016 application, stating that your newborn children were conditionally eligible to enroll in Child Health Plus (CHP) with a \$15.00 per month premium, effective August 1, 2016.

On July 5, 2016, you submitted your newborn children's proof of citizenship and Social Security number to NYSOH, which was subsequently verified on July 11, 2016.

On July 6, 2016, NYSOH issued an enrollment confirmation notice, based on your July 5, 2016 plan selection, stating your newborn children were enrolled in a CHP plan, effective August 1, 2016.

On July 12, 2016, NYSOH issued an eligibility determination notice, based on your July 11, 2016 updated application, stating that your newborn children were eligible to enroll in CHP with a \$15.00 per month premium, effective August 1, 2016.

Also on July 12, 2016, NYSOH issued an enrollment confirmation notice, based on your July 11, 2016 enrollment update, stating that your newborn children were enrolled in a CHP plan, effective August 1, 2016.

On July 22, 2016, you spoke to NYSOH's Account Review Unit and appealed the start date of your newborn children's enrollment in a CHP plan insofar as it did not begin on [REDACTED] their date of birth.

On December 13, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The Hearing Officer granted your request to amend your appeal to include a redetermination for Medicaid coverage for your newborn children as of their date of birth.

The record was developed during the hearing and held open to allow you time to submit proof of your income for June 2016. Specifically, the Hearing Officer directed you to submit a copy of your spouse's letter of employment, paystubs for the month of June 2016, and proof of your spouse's self-employment income (profit and loss statement) for the month of June 2016.

On December 21, 2016, you uploaded a letter from your spouse's employer, your spouse's paystubs for the month of June 2016 and July 2016, and your spouse's profit and loss statement for the entire 2016 tax-year to your NYSOH account. This evidence was made part of the record as "Appellant's Exhibit A." On January 13, 2017, you uploaded proof of your spouse's self-employment income (profit and loss statement) for the month of June 2016. This evidence was made part of the record as "Appellant's Exhibit B." The record remained open until January 13, 2017 and no other documents were submitted. The record is now closed.

Findings of Fact

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

1. You testified that you are appealing only your newborn children's eligibility.
2. According to your NYSOH account and your testimony, your newborn children were born on [REDACTED].
3. According to your NYSOH account, you submitted an application to NYSOH for financial assistance on behalf of your newborn children on June 20, 2016 and you enrolled them into a CHP plan on July 5, 2016.
4. According to your NYSOH account and your testimony, you expect to file your 2016 federal income tax return as married filing jointly and claim your four children as dependents.

5. According to your NYSOH records, a telephone call, dated July 22, 2016, states that you requested that your children get “[CHP] for June [2016] and July [2016] or any coverage to help with [their] medical bills.”
6. During the hearing, you amended your complaint to seek Medicaid coverage for your newborn children for the months of June 2016 and July 2016.
7. You testified that you are unemployed and have no income and your spouse’s earnings are your household’s sole source of income.
8. You testified that your spouse was self-employed from January 1, 2016 through the end of May 2016; he started a new job with a start date of May 31, 2016; and he is paid bi-weekly and only received one paycheck in the month of June 2016. On behalf of your spouse, you uploaded a letter from his employer confirming that his employment start date was May 31, 2016 and that he would receive his first paycheck on June 17, 2016, along with a paystub dated June 17, 2016 showing gross earnings of \$2,769.21. The following bi-weekly paystub he received was dated July 1, 2016 showing gross earnings of \$3,076.92 (see *generally*, Appellant’s Exhibit A).
9. You uploaded a 2016 year-end profit and loss statement from your spouse’s self-employment income, which reflects a net profit of \$66,002.76, after business deductions were applied (see Appellant’s Exhibit A). You also uploaded your spouse’s profit and loss statement for the month of June 2016 indicating no self-employment income for that month (see Appellant’s Exhibit B).
10. According to your NYSOH account, your household’s 2016 annual income is listed as \$80,000.00. You testified that since your husband changed jobs, you were not sure if this amount would be accurate.
11. You testified that you need health coverage for your newborn children from their date of birth because at the time of their delivery and hospitalization, you were enrolled in the Essential Plan and that coverage will not cover your newborn children’s medical expenses. You further testified that you were told that your newborn children would be eligible for Medicaid at the time of their birth.

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

Applicable Law and Regulations

De Novo Review

The Marketplace 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 for Children

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 federal poverty level (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 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 \$32,580.00 for a six-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)).

Medicaid Continuous Coverage

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 Social Services Administrative Directive 13ADM-03).

Medicaid-eligible children under the age of 19 are provided with 12 months of continuous coverage, even if the household's income increases above eligibility levels during that period (N.Y. Soc. Serv. Law § 366(4)(b)(3)(i)).

Legal Analysis

The sole issue under review is whether NYSOH properly determined that your newborn children were not eligible for Medicaid effective June 1, 2016.

On June 20, 2016, you added your newborn children to your application for financial assistance. The record, although it contains a June 21, 2016 eligibility determination that is silent as to your newborn children's Medicaid eligibility, does contain a telephone call dated July 22, 2016, that states you requested that your children get "[CHP] for June [2016] and July [2016] or any coverage to help with [their] medical bills." Moreover, you testified at the hearing that you would like to have your newborn children's eligibility redetermined for Medicaid for the months of June 2016 and July 2016. Additionally, on July 23, 2016, NYSOH issued an Appeal Notice, which identifies you and one of your newborns as appellants, and acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Eligibility Determination."

Here, the lack of a notice of eligibility determination on the issue of Medicaid for your newborn children and the lack of your second newborn child being listed on the Appeal Notice 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 failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

The telephone call record, dated July 22, 2016, the text of the July 23, 2016 Appeal Notice, and your testimony that you would like both of your newborn children redetermined eligible for Medicaid, along with the June 21, 2016 eligibility determination notice that states your newborn children were found conditionally eligible for CHP, but is silent as to their eligibility for Medicaid, permits an inference that the NYSOH did deny your request for Medicaid for your newborn children.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to an eligibility determination had it been issued. Therefore, the issue under review is refined to whether your newborn children were properly denied Medicaid from the date of the birth, [REDACTED].

Your newborn children reside in a six-person household for purposes of this analysis. This is because you file your taxes with a tax filing status of married filing jointly and will claim four dependents on your 2016 income tax return.

Your newborn children were initially found eligible for CHP in the June 21, 2016 eligibility determination notice. According to this notice, their coverage with CHP began August 1, 2016.

You testified that you are seeking to have your newborn children determined eligible for Medicaid coverage for their month of birth, [REDACTED], and July 2016.

Medicaid can be provided through NYSOH to children under the age of one-year-old who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 223% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$32,580.00 for a six-person household. You testified that your spouse's income from self-employment and his current job is your household's sole source of income. According to your NYSOH account, you expect that your spouse will earn \$80,000.00 in income in 2016. You testified that you weren't sure if this was accurate. Without any evidence to the contrary, NYSOH properly relied on the information contained in your NYSOH account. Since \$80,000.00 is 245.62% of the 2016 FPL, NYSOH properly found your newborn children to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

To be eligible for Medicaid in June 2016, your newborn children would have needed to meet the non-financial criteria and have an income no greater than 223% of the FPL, which is \$6,055.00 per month. There is no indication in the record that your newborn children would have been ineligible for Medicaid based on non-financial criteria during June 2016. Therefore, the analysis turns to the financial requirements of Medicaid.

You testified that your spouse was self-employed from January 1, 2016 through the end of May 2016. The credible evidence of record supports the finding that your spouse began to work for a new employer on May 31, 2016, he is paid on a bi-weekly basis, and received one paycheck from that employer in the month of June 2016.

The employer letter you submitted on behalf of your spouse confirms that his start date was May 31, 2016 and that he would receive his first check on June 17, 2016 (see Appellant's Exhibit A). You also submitted your spouse's one paystub, dated June 17, 2016, showing gross earnings of \$2,769.21. The next paystub was dated July 1, 2016, showing gross earnings of \$3,076.92. Additionally, you submitted a 2016 year-end profit and loss statement for your spouse's self-employment income, which shows a net profit of \$66,002.76 (*id*).

On January 13, 2017, you submitted a profit and loss statement for your spouse's self-employment income for the month of June 2016, showing no income from self-employment for that month (see Appellant's Exhibit B).

These documents reflect that your spouse's total income for the month of June 2016 consisted of one paystub, dated June 17, 2016, with gross earnings in the amount of \$2,769.21. You testified that your spouse's income is your household's sole source of support. Therefore, it is reasonable to conclude that your household income for June 2016 totaled \$2,769.21.

Since the record now contains a more accurate representation of what your household income was for the month of June 2016, your case is RETURNED to NYSOH to consider your request for Medicaid coverage for your newborn children effective June 1, 2016, based on a household size of six people and household income of \$2,769.21 for the month of June 2016, and to notify you accordingly.

If your newborn children are determined eligible for Medicaid in the month of June 2016, NYSOH is directed to also determine their eligibility for continuous coverage under Medicaid in the month of July 2016.

Decision

Your case is RETURNED to NYSOH to consider your request for Medicaid coverage for your newborn children, on a monthly basis as of June 1, 2016, based on a household size of six people and a household income of \$2,769.21 that month.

If your newborn children are determined eligible for Medicaid in the month of June 2016, NYSOH is directed to also determine their eligibility for continuous coverage under Medicaid in the month of July 2016.

Effective Date of this Decision: January 25, 2017

How this Decision Affects Your Eligibility

Your newborn children may be eligible for Medicaid, effective June 1, 2016.

This is not a final determination of your newborn children's eligibility. Your case is sent back to NYSOH to redetermine your newborn children's eligibility for Medicaid in the month of June 2016 and for continuous coverage with Medicaid in the month of July 2016 based on the evidence you presented at the hearing. NYSOH will notify you of the outcome.

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

Summary

Your case is RETURNED to NYSOH to consider your request for Medicaid coverage for your newborn children, on a monthly basis as of June 1, 2016, based on a household size of six people and a household income of \$2,769.21 that month.

If your newborn children are determined eligible for Medicaid in the month of June 2016, NYSOH is directed to also determine their eligibility for continuous coverage under Medicaid in the month of July 2016.

Your newborn children may be eligible for Medicaid, effective June 1, 2016.

This is not a final determination of your newborn children's eligibility. Your case is sent back to NYSOH to redetermine your newborn children's eligibility for Medicaid in the month of June 2016 and for continuous coverage with Medicaid in the month of July 2016 based on the evidence you presented at the hearing. NYSOH will notify you of the outcome.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

