



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

Notice of Decision

Decision Date: February 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011079

[REDACTED]

Dear [REDACTED],

On January 6, 2017, you and your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health's July 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 number 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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NY State of Health Account ID: [REDACTED]
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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 (NYSOH) properly determine that you were not eligible to receive Medicaid through NYSOH, as of July 20, 2016?

Procedural History

On September 30, 2015, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid, effective October 1, 2015. You were subsequently enrolled into a Medicaid Managed Care (MMC) plan, effective November 1, 2015.

On December 10, 2015, you updated your NYSOH account.

On December 11, 2015, NYSOH issued an eligibility determination notice stating that you were no longer eligible for Medicaid, but that your coverage would continue until August 31, 2016.

On July 16, 2016, NYSOH issued a notice stating that it was time to renew your health insurance. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by August 15, 2016, or you might lose the financial assistance you were currently receiving.

On July 20, 2016, you updated your NYSOH account.

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On July 21, 2016, NYSOH issued a notice of eligibility determination stating that you were newly eligible to purchase qualified health plan at full cost, effective September 1, 2016. You were not eligible to receive advance tax credits because your employer-sponsored insurance “waiting period [was] over,” and you were not eligible for the Essential Plan because your household income was not below \$23,540.00. The notice also stated that you could have your Medicaid eligibility determined on a different basis by your local Department of Social Services (DSS), and provided instructions for how to request a Medicaid eligibility determination on a different basis.

Also on July 21, 2016, NYSOH issued a disenrollment notice stating that your MMC plan coverage was ending effective August 31, 2016.

On July 26, 2016, you contacted NYSOH’s Account Review Unit and requested an appeal of the July 21, 2016 eligibility determination, insofar as you were not eligible for Medicaid. You also requested Aid to Continue, pending the outcome of your NYSOH appeal.

On August 10, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid for a limited time because you had been granted “Aid to Continue” until a decision is made on your NYSOH appeal. This eligibility was effective September 1, 2016.

Also on August 10, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in your MMC plan, effective September 1, 2016, pursuant to the granting of your Aid to Continue request.

On January 6, 2017, you had a telephone hearing with a Hearing Officer from NYSOH’s Appeals Unit. During the hearing, [REDACTED], your Authorized Representative (AR), appeared on your behalf and provided sworn testimony. The record was developed during the hearing and kept open at the end of the hearing, until January 23, 2017, so that you could provide: a copy of the notice stating that your Medicaid case had been transferred to the local DSS; any information regarding the outcome of your fair hearing with DSS; and proof of your monthly income for the month of September 2016. On January 13, 2017, your AR faxed a 20-page document to the NYSOH Appeals Unit. The record is now closed.

Findings of Fact

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

- 1) You testified that you expected to file your 2016 taxes with a tax filing status of single. You will claim no dependents on that tax return.

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- 2) Your July 20, 2016 application listed an expected annual income of \$28,320.00, after \$800.00 in deductions, and you testified that this was accurate.
- 3) You testified that your final paystub for the year 2016 showed gross year-to-date earnings of \$30,425.00.
- 4) Your AR testified that, when you updated your NYSOH application on July 20, 2016, it was noted that you are disabled and that you wanted to apply for the Medicaid Buy-In program. Your NYSOH account confirms this.
- 5) Your AR testified that, after you received the July 20, 2016 eligibility determination, she contacted NYSOH to find out how a disability review could be processed so that you could have your eligibility determined for the Medicaid Buy-In program.
- 6) Your AR testified that the person she spoke with at NYSOH stated that your case needed to be referred to the local DSS.
- 7) Your AR testified that she also requested that your Medicaid case remain open with NYSOH while the disability review process was taking place.
- 8) Your AR testified that, since she was not sure how the transfer from NYSOH to DSS would work, she also helped you apply directly with your local DSS.
- 9) Your AR testified that she received a letter from your local DSS confirming that your case had been referred by NYSOH because the applicant wanted to be enrolled in a Medicaid disability-related program.
- 10) Your AR testified that there was a problem with your application with DSS, as they were sending notices to the improper address and, as a result, your disability review is still in process.
- 11) Your AR testified that you had a fair hearing with DSS in December 2016. She testified that the judge at the hearing stated that your Medicaid case should remain open until the disability review process is completed.
- 12) You testified that you became eligible for employer-sponsored health insurance as of September 1, 2016, but that it is \$105.00 per week, and is not affordable to you.
- 13) Your AR testified that she is also concerned about the fact that you have two CIN's, and that no one has been able to resolve this situation for you.

- 14) Your AR testified that you and she both understand that you are not eligible for Medicaid through NYSOH, based on your income, but believe that you should be eligible because of your disability, using a different budgeting methodology.
- 15) Your AR also testified that she believes your Medicaid case should remain active pending the outcome of your disability review, pursuant to a NYS policy directive, GIS 12 MA/004.
- 16) The record reflects that you requested and were granted Aid to Continue from NYSOH. You were reinstated into your Medicaid coverage as of September 1, 2016, pending the outcome of your appeal.
- 17) Your application states that you live in Monroe County.
- 18) After the hearing, your AR faxed a 20-page document to the Appeals Unit, consisting of the following:
 - a. A one-page fax cover sheet;
 - b. The first page of Notice Number [REDACTED], dated August 11, 2016, from Monroe County DSS and addressed to you, that states in part, "The Medicaid case for the following individual [REDACTED] [REDACTED] has been referred to your local department of social services;"
 - c. One page with a copy of the front of your Excellus Blue Choice card and the front of your NYS Benefit ID card;
 - d. Paystubs for the following dates and gross amounts from [REDACTED] [REDACTED]:
 - i. September 9, 2016 - \$610.50;
 - ii. September 16, 2016 - \$622.50;
 - iii. September 23, 2016 - \$616.88;
 - iv. September 30, 2016 - \$658.26
 - e. A paystub dated December 23, 2016 from [REDACTED] showing gross year-to-date earnings of \$30,425.28;
 - f. A one-page Notice of Fair Hearing from the Office of Temporary and Disability Assistance stating that you had a fair hearing on December 21, 2016, and that the local office is directed to continue assistance unchanged until the fair hearing decision is issued;
 - g. Nine pages of an email thread between your AR and your local DSS regarding your Medicaid case. The most recent email, sent January 12, 2017 from [REDACTED] of Community Medicaid Team 40, states in part, "The client's case Monroe county is still active through 5/31/17 with Medicaid manage care."
 - h. A two-page notice from NYSOH dated January 5, 2017 stating that it is time to renew your NYSOH health coverage, and that you qualify to buy a health plan at full cost, effective March 1, 2017.

These documents are collectively entered into the record as “Appellant’s Exhibit One.”

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

Applicable Law and Regulations

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 federal poverty level (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 \$11,880.00 for a one-person household (81 Federal Register 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).

If an individual is not eligible for MAGI-based Medicaid through NYSOH, he or she may still be eligible for non-MAGI-based Medicaid coverage through their Local Department of Social Services or the New York City Human Resources Administration (see NY Social Services Law § 366(1)(c)).

NYSOH is required to refer an individual who is not eligible for MAGI-based Medicaid because they are in receipt of Medicare, certified disabled, or over the age of 65 to the Local Department of Social Services or the Human Resources Administration. During the referral process, an individual’s Medicaid eligibility, including their enrollment in an MMC plan or receipt of Premium Payment Assistance, continues until such a time as their eligibility can be re-determined on a non-MAGI Medicaid basis (see *generally* 42 CFR § 435.1200, 42 CFR § 435.930, 14 OHIP/LCM-2 effective as of December 1, 2014, GIS 16 MA/04 effective as of January 1, 2016).

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Legal Analysis

The issue under review is whether NYSOH properly determined that you were not eligible to receive Medicaid through NYSOH.

Medicaid through NYSOH (called MAGI-based Medicaid) is available to individuals who are between the ages of 19 and 64, who are not eligible for Medicare Parts A or B; pregnant women or infants; children between the ages of 1 and 18; and parent or caretaker relatives.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the above non-financial requirements, and have a household 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 \$11,880.00 for a one-person household. Since \$28,320.00 is 238.38% of the 2016 FPL, NYSOH properly found you to be ineligible for MAGI-based Medicaid on an expected annual income basis, using the information provided in your application.

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 four paystubs that show that you earned a total of \$2,508.14 in gross income in September 2016, without your paystub from September 2, 2016.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,366.20 per month. Since the documentation you provided shows that you earned \$2,508.14 in September 2016, you do not qualify for Medicaid on the basis of monthly income as of the date of your application (See Appellant's Exhibit One, pp 4-7).

However, individuals who are no longer eligible for MAGI-based Medicaid on the basis of income may qualify for Medicaid under non-MAGI standards, if they have become certified disabled. NYSOH is required to refer these individuals to their local DSS for redetermination of their Medicaid eligibility.

Once a case is referred, NYSOH and the local DSS must ensure that an individual's Medicaid is maintained throughout the redetermination process to prevent any gaps in coverage. This includes maintaining an individual's coverage through their MMC plan or receipt of Medicaid Premium Assistance payments.

You indicated in your July 20, 2016 application that you were disabled, and that you wanted to apply for the Medicaid Buy-In program. The eligibility determination issued on July 21, 2016 does not indicate that your case was transferred to the local DSS office, but merely gives information on how you can apply to have your Medicaid eligibility determined on a different basis. However, at the hearing, your AR testified that your case was transferred to your local

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DSS, and that you received documentation stating this. After the hearing, she faxed a notice from your local DSS, dated August 11, 2016, which states that your Medicaid case had been referred to your local DSS (see Appellant's Exhibit One, p 2).

Since it appears your case was referred by NYSOH to DSS for a determination of your Medicaid eligibility using non-MAGI methodology based on your status as disabled, then, pursuant to NYS policy, your Medicaid and MMC eligibility must remain active until a determination as to your eligibility is made by your local DSS. It does not appear that NYSOH followed this policy, and, instead, it appears that your Medicaid and MMC coverage have remained on solely because you requested Aid to Continue.

Therefore, your case is RETURNED to NYSOH, and NYSOH is directed to ensure that your Medicaid and MMC plan coverage continue until such time as your local DSS makes a written eligibility determination as to your eligibility for non-MAGI based Medicaid.

Your AR testified during the hearing that she believes your Medicaid should continue throughout the disability review process, based on GIS 12 MA/004. She also testified that the judge at your fair hearing directed DSS to continue your Medicaid coverage unchanged until the disability review process is complete. However, NYSOH's jurisdiction over your Medicaid case extends only until a written eligibility determination is made by DSS on your eligibility for non-MAGI Medicaid, regardless of what that determination says. Any directive issued by a judge during a fair hearing with DSS is not within the purview of this case, and is not within the NYSOH Appeals Unit's jurisdiction. Additionally, GIS 12 MA/004 apply in this immediate case, as your NYSOH Medicaid case is not the one pending a disability review.

Lastly, the Hearing Officer makes note of the fact that you have two CIN's. However, NYSOH does not use these numbers for case identification purposes, nor does the Appeals Unit have any jurisdiction over the issuance of these numbers. Therefore, you will need to attempt to resolve this issue by other means.

Decision

The July 21, 2016 eligibility determination is AFFIRMED.

Your case is RETURNED to NYSOH to ensure that your Medicaid and MMC plan coverage continue until such time as your eligibility for Medicaid on a non-MAGI basis is determined by your local DSS.

Effective Date of this Decision: February 7, 2017

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How this Decision Affects Your Eligibility

You are not eligible for MAGI-based Medicaid through NYSOH.

Your case is being sent back to NYSOH to make sure that your Medicaid and MMC plan coverage continue until such time as your local DSS makes a written determination as to your eligibility for non-MAGI based Medicaid.

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

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Summary

The July 21, 2016 eligibility determination is AFFIRMED.

Your case is RETURNED to NYSOH to ensure that your Medicaid and MMC plan coverage continue until such time as your eligibility for Medicaid on a non-MAGI basis is determined by your local DSS.

You are not eligible for MAGI-based Medicaid through NYSOH.

Your case is being sent back to NYSOH to make sure that your Medicaid and MMC plan coverage continue until such time as your local DSS makes a written determination as to your eligibility for non-MAGI based Medicaid.

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Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]

[REDACTED]