



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

## Notice of Decision

Decision Date: March 7, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011392

[REDACTED]

Dear [REDACTED],

On January 6, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 11, 2016 enrollment confirmation 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: March 7, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011392

[REDACTED]

## Issues

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

Did NYSOH properly determine that your enrollment in an Essential Plan was effective September 1, 2016?

Did NY State of Health provide you with a timely notice of your eligibility for retroactive Medicaid for the period of July 1, 2016 through July 31, 2016?

## Procedural History

According to your NY State of Health (NYSOH) account, you were determined eligible for Medicaid, effective July 1, 2014, and were enrolled in a Medicaid Managed Care plan, effective August 1, 2014.

On June 2, 2015, NYSOH issued an eligibility redetermination notice stating in part that you remained eligible for Medicaid effective July 1, 2015.

On May 2, 2016, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. 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 June 15, 2016 or you might lose the financial assistance you were currently receiving.

On June 9, 2016, NYSOH received your updated application for financial assistance.

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On June 10, 2016, a notice was issued stating the information you provided was insufficient to resolve the income documentation request and more information was needed to make a determination on whether or not you qualified for financial assistance. The notice asked that you provide income documentation by June 25, 2016 to confirm the information in your application.

Also on June 10, 2016, NYSOH issued a disenrollment notice stating in part that your Medicaid Managed Care plan would end June 30, 2016.

On June 15, 2016, you uploaded to your NYSOH account two pay advices from one of your employers.

On June 22, 2016, NYSOH issued a notice stating that the documentation you submitted was insufficient to resolve the income documentation request and additional information was required to confirm the information on your application.

On August 5, 2016, NYSOH issued an eligibility redetermination notice stating that you were eligible to purchase a qualified health plan at full cost, effective September 1, 2016. The notice also stated you qualified to select a health plan outside of the open enrollment period for 2016. The notice further stated that you were not eligible to receive tax credits or cost sharing reductions to help pay for the cost of your insurance because you failed to complete the requirements for obtaining Medicaid.

On August 10, 2016, NYSOH received your updated application for financial assistance. That day, a preliminary eligibility redetermination was made finding you eligible for a limited time for the Essential Plan effective September 1, 2016.

Also on August 10, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility redetermination insofar as it did not start your Essential Plan as of July 1, 2016.

On August 11, 2016, NYSOH issued an eligibility redetermination notice, based on your updated August 10, 2016 financial application, stating that you were eligible for a limited time for the Essential Plan effective September 1, 2016. This redetermination was based on your reported annual household income of \$33,353.06. The notice further stated you needed to provide proof of income by November 8, 2016.

Also on August 11, 2016, NYSOH issued an enrollment notice confirming your enrollment in an Essential Plan with \$20.00 monthly premium, effective September 1, 2016.

On August 12, 2016, you uploaded four paystubs for your adult dependent child.

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On January 6, 2017, 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) According to your NYSOH account, you expect to file your 2016 and 2017 federal income tax returns as Head of Household (with qualifying individual) and claim two dependents on those tax returns.
- 2) According to your NYSOH account and your testimony, you live in [REDACTED], New York.
- 3) According to your NYSOH account, you were initially found eligible for Medicaid as of July 1, 2014 and renewed on July 1, 2015. According to your NYSOH account, your Medicaid coverage ended effective June 30, 2016.
- 4) According to your NYSOH account, you were found eligible for the Essential Plan effective September 1, 2016 and were enrolled in a plan with coverage starting on that date.
- 5) You testified that you are employed in two part-time jobs and that your pay varies month to month. You testified that one of your jobs was as an [REDACTED].
- 6) You testified that the household income of \$33,350.06 listed on your August 10, 2016 application, consisted of \$17,128.06 you earned less \$935.00 in allowable deductions and \$17,160.00 that your adult dependent child earned as wages. You testified these amounts were correct.
- 7) According to your NYSOH account, the August 10, 2016 updated application for financial assistance included your request for help paying for medical bills from the last 3 months.
- 8) There is no indication in your NYSOH account that your August 10, 2016 request for help in paying for medical bills for the previous three months was addressed.

- 9) You testified that you required necessary medical testing in the month of July 2016 and that expenses of about \$1,100.00 were incurred and not covered by insurance because of the gap in your coverages.
- 10) You testified that you are seeking retroactive Medicaid coverage for the month of July 2016.

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

## **Applicable Law and Regulations**

### Medicaid for Adults between the Ages of 19 and 65

Medicaid through NYSOH can be provided 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), 435.911(b)(1), 435.603(d)(4); N.Y. Soc. Serv. 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 \$20,160.00 for a three-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).

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)).

## 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 \$20,090.00 for a three-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).

## Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see also 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

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## De Novo Review

NYSOH's 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).

## Timely Notice

When an individual applies for insurance through the NYSOH, the NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, the NYSOH must base the time period from the date of application to the date the NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for the NYSOH to make an eligibility determination, then the NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

The NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your enrollment in the Essential Plan was effective September 1, 2016.

You are in a three-person household for purposes of this analysis. This is because you file your taxes with a tax filing status of head of household (with qualifying individual) and claim two dependents on your tax return.

According to your NYSOH account, you were originally found eligible for Medicaid effective July 1, 2014 and your eligibility was renewed effective July 1, 2015.

On May 2, 2016, you were notified that it was time to renew your eligibility for the upcoming policy period and that you needed to update your account by June 15, 2016 or the financial assistance you were receiving might end.

On June 9, 2016, you updated your account, but the information you provided did not match state and federal data sources. On June 10, 2016, NYSOH sent a notice stating more information was needed to confirm your income.

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Also on June 10, 2016, NYSOH issued a disenrollment notice stating your Medicaid Managed Care plan would end effective June 30, 2016.

On June 15, 2016, you uploaded additional income information.

On June 22, 2016, NYSOH issued a notice that the information you provided was not enough to resolve the inconsistency in your household's income.

On August 10, 2016, you contacted NYSOH and updated the income amounts for you and your adult child and, as a result, were determined eligible for the Essential Plan effective September 1, 2016. Also on August 10, you selected an Essential Plan and were enrolled at that time with a plan start date of September 1, 2016.

The date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

Since on August 10, 2016 you selected an Essential Plan, your enrollment properly took effect on the first day of the first month following August 2016; that is, on September 1, 2016.

Therefore, the August 11, 2016 enrollment confirmation notice stating that your enrollment in an Essential Plan was effective September 1, 2016, is correct and must be AFFIRMED.

The second issue under review is whether NYSOH provided you with a timely notice of your eligibility for retroactive Medicaid for the period of July 1, 2016 through July 31, 2016.

According to your NYSOH account, in the August 10, 2016 application for financial assistance you requested help paying for medical bills from the last three months.

During the hearing, you testified that you required necessary medical testing during the month of July 2016 and that medical bills for those tests of about \$1,100.00 were not covered by any insurance because of the gap in your coverages. You testified that you are requesting retroactive Medicaid coverage for the month of July 2016.

To date, NYSOH has issued no determination with regard to your eligibility for retroactive Medicaid for the months of May 2016, June, 2016, or July 2016.

This does not preclude the NYSOH appeals unit from rendering a decision based upon the information as if it were presented to it for the first time. Here, the lack of a notice of eligibility determination on the issue of retroactive Medicaid for the months of May 2016, June, 2016, or July 2016 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. Your August 10, 2016 application makes clear that NYSOH did not address your request for retroactive Medicaid and the record makes clear that your request was not addressed.

Since the Appeals Unit review of NYSOH determinations, or lack thereof, is performed on a de novo basis, your request for retroactive Medicaid will be reviewed on the merits.

The record reflects that your Medicaid eligibility and enrollment ended as of June 30, 2016 and your Essential Plan eligibility and enrollment did not begin until September 1, 2016. Therefore, it is reasonable to conclude that you were without Medicaid coverage in the interim.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual's application if the individual received medical services that would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

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 July 2016, you would have needed to meet the non-financial criteria and have an income no greater than 138% of the FPL for a three-person household, which is \$2,318.00 per month. There is no indication in the record that you would have been ineligible for Medicaid based on non-financial criteria during July 2016.

According to your NYSOH account, the system calculated average monthly income for your household for the August 10, 2016 application to be \$2,779.42. While this amount would be greater than the \$2,318.00 monthly threshold for Medicaid eligibility, this is not an accurate reflection of your actual household income for the month of July 2016. You testified that you work two part-time jobs and your monthly income varies, but it is unclear from the record what you received in earnings during July 2016 and the average monthly income amount calculated by the system may not be accurate.

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In addition, since your August 10, 2016 application, NYSOH has not rendered an eligibility determination on your request for help paying for medical bills for a three-month period prior to that date. NYSOH had 45 days to render a decision. However, since no determination has ever been issued, NYSOH is past the time period for such a determination. Therefore, NYSOH has not provided you with a timely eligibility determination on retroactive Medicaid for the period of July 1, 2016 to July 31, 2016.

Your case is RETURNED to NYSOH to redetermine your eligibility for retroactive Medicaid based on a three-person household living in [REDACTED] County for the period of July 1, 2016 through July 31, 2016. You are directed by this decision to provide proof of income **received** during July 2016 for all members of your household; that is, all pay advices with July 2016 pay dates for all members of your household. NYSOH can then redetermine your eligibility for retroactive Medicaid that month and can notify you of its redetermination accordingly.

It is important to note that your health insurance coverage under an Essential Plan as of September 1, 2016, will not be disturbed by this decision.

## **Decision**

The August 11, 2016 enrollment notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for retroactive Medicaid based on a three-person household living in [REDACTED] County for the period of July 1, 2016 through July 31, 2016. You are directed by this decision to provide proof of income **received** during July 2016 for all members of your household; that is, all pay advices with July 2016 pay dates for all members of your household. NYSOH can then redetermine your eligibility for retroactive Medicaid that month and can notify you of its redetermination accordingly.

**Effective Date of this Decision:** March 7, 2017

## **How this Decision Affects Your Eligibility**

This decision does not change your eligibility.

The effective date of your Essential Health Plan coverage is September 1, 2016.

This is not a final determination of your eligibility for retroactive Medicaid. Your case is sent back to NYSOH to redetermine your eligibility for Medicaid for July 2016 based on the partial evidence you presented at the hearing and the proof of household income that you are required to submit for the month of July 2016.

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## **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**

The August 11, 2016 enrollment notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for retroactive Medicaid based on a three-person household living in ██████ County for the period of July 1, 2016 through July 31, 2016. You are directed by this decision to

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provide proof of income **received** during July 2016 for all members of your household; that is, all pay advices with July 2016 pay dates for all members of your household. NYSOH can then redetermine your eligibility for retroactive Medicaid that month and can notify you of its redetermination accordingly.

This decision does not change your eligibility.

The effective date of your Essential Health Plan coverage is September 1, 2016.

This is not a final determination of your eligibility for retroactive Medicaid. Your case is sent back to NYSOH to redetermine your eligibility for Medicaid for July 2016 based on the evidence you presented at the hearing and the proof of household income that you are required to submit for the month of July 2016, as directed in this decision.

### **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

