



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

Notice of Decision

Decision Date: March 2, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011557

[REDACTED]

Dear [REDACTED],

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 20, 2016 eligibility determination notice and disenrollment 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 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 Date: March 2, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011557

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Issues

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

Did NY State of Health (NYSOH) properly determine that your spouse was no longer eligible to remain enrolled in his Medicaid Managed Care plan effective September 30, 2016?

Did NY State of Health properly determine you and your child were no longer eligible for Medicaid, but that your Medicaid coverage would continue until May 31, 2017?

Procedural History

On June 24, 2016, NYSOH issued an eligibility determination notice stating you and your child were eligible for Medicaid effective June 1, 2016; and your spouse was conditionally eligible for Medicaid effective June 1, 2016. The notice stated your spouse's eligibility was based on the condition he provide proof of his Citizenship Status by September 12, 2016. The determination was based on your attested household income of \$0.00 per month.

On July 4, 2016, NYSOH issued an enrollment confirmation notice confirming your household's enrollment in a Medicaid Managed Care plan effective August 1, 2016.

On August 16, 2016, NYSOH issued a notice stating you needed to send more information to confirm your spouse's eligibility. The notice stated the documentation reviewed by NYSOH did not confirm the information in your

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application. The notice stated you needed to provide proof of your spouse's Citizenship Status effective September 12, 2016.

On August 19, 2016, the household income information in your NYSOH account was updated to \$57,373.00. That same day, a preliminary eligibility determination was made finding you and your child no longer eligible for Medicaid, however, your Medicaid coverage would continue until May 31, 2017. The determination further found your spouse conditionally eligible to receive advance premium tax credits effective August 1, 2016.

Also on August 19, 2016 you contacted NYSOH's Account Review Unit and requested an appeal of your household's eligibility determination finding you no longer eligible for Medicaid.

On August 20, 2016, NYSOH issued an eligibility determination notice stating you and your child were no longer eligible for Medicaid, however your coverage would continue until May 31, 2017. The notice further stated your spouse was conditionally eligible for advance premium tax credits effective October 1, 2016. The notice requested you provide proof of your current income by September 3, 2016, and proof of your spouse's income by November 17, 2016.

Also on August 20, 2016, a disenrollment notice was issued terminating your spouse's Medicaid Managed Care plan effective September 30, 2016. The notice stated this was because he was no longer eligible to remain enrolled in his current health insurance.

On January 10, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and kept open 15 days for you to provide proof of your spouse's income for the month of June, 2016. You uploaded documentation to your account on January 11, 12, and 16, 2017 documentation related to your appeal consisting of:

1. An Unemployment Insurance letter dated July 5, 2016 stating you will not be eligible for Unemployment Insurance Benefits beginning June 13, 2016. See Document [REDACTED].
2. A letter dated January 12, 2017 stating as of June 4, 2016 you have not been employed and not receiving an income. See Document [REDACTED].
3. A copy of your spouse's expired Employment Authorization Card. See Document [REDACTED].
4. A copy of your spouse's I-797 Notice of Action for an Application for employment Authorization dated December 15, 2016. See Document: [REDACTED].

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No other documentation was received within the 15-day window and the record is now closed.

Findings of Fact

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

- 1) You expect to file your 2016 taxes with a status of married filing jointly with your spouse and you will claim one dependent on that tax return.
- 2) Your application states your spouse is an immigrant non-citizen.
- 3) You uploaded a copy of your spouse's Employment Authorization card on September 5, 2016 with the status of C-08, the document has an expiration date of June 10, 2004.
- 4) The status of C-08, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as an Asylum Applicant.
- 5) The application that was submitted on August 19, 2016, which requested financial assistance, listed annual household income of \$57,373.00. This amount consisted of \$58,777.00 your spouse expects to earn from his job, \$4,096.00 you earned from a job, and a \$5,500.00 tuition and fees deduction you expect to take on your tax return. You testified that this amount was not correct.
- 6) The application that was submitted on August 19, 2016 listed a monthly household income for your spouse of \$1,600.00, and a monthly household income for you of \$0.00. Your application also requested that your eligibility be determined based on your current monthly income.
- 7) You provided documentation in the form of a self-declaration that you do not have any income.
- 8) You testified that your spouse receives \$400.00 every week in income.
- 9) You provided paystubs for your spouse showing gross wages of \$400.00 a week. The paystubs are dated July 22, 29, and August 12, 2016. This documentation was invalidated by NYSOH on August 24, and September 1, 2016. Your account states this is because you only submitted three and needed a fourth.

10) The record shows your most recent application on February 14, 2017 states you have a household income of \$20,800.00.

11) Your application states that you live in ██████████ County.

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 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 that is at or below 138% of the federal poverty level for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

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 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).

A person who meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard is eligible for Medicaid benefits (45 CFR § 155.305(c)). One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. Generally, no person except a United States citizen, naturalized citizen, qualified alien, or person permanently residing in the United States under color of law (PRUCOL) is eligible for full Medicaid benefits (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

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 applications, 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

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(42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Medicaid Continuous Coverage

Most adults determined eligible for Medicaid are guaranteed twelve months of Medicaid coverage even if they lose Medicaid eligibility because of any changes or updates they make to their NYSOH account. For example, even if income increases above the Medicaid limit allowed for the household size, the insured will remain covered under Medicaid for a twelve-month period. This twelve-month period is referred to as “continuous coverage” and is set based on the start date of the original Medicaid eligibility determination or the date of a subsequent Medicaid eligibility determination based on modified adjusted gross income (N.Y. Soc. Serv. Law § 366(4)(c)).

An individual will be enrolled or remain in their Medicaid plan with limited exceptions, including entering prison or another facility that provides medical care, lack of state residence, failing to provide a valid social security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

Citizenship and Immigration Status Verification

Generally, no person except a United States citizen, a naturalized citizen, a qualified alien, and persons permanently residing in the United States under color of law (PRUCOL), is eligible for medical assistance from the state (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2(j)).

A PRUCOL alien is a person who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the United States such agency does not contemplate enforcing (18 NYCRR §360-3.2(j)). The New York Department of Health regards aliens who have been issued an Employment Authorization Document (I-688B or I-766), and have the requisite category code, to be PRUCOL (08 OHIP/INF-4, dated August 4, 2008)).

The guide, “‘Key to I-766/I-688B, Employment Authorization Documents (EADs)’, defines certain codes on the USCIS Employment Authorization Documents” (08 MA/033, dated December 1, 2008, and as amended). It confirms that a person who has category code of “(c)(8)” has PRUCOL status for Medicaid, Essential Plan, Child Health Plus, Advance Premium Tax Credits and Qualified Health plans (*id.*).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, the Essential Plan, and Federal Medicaid, including the certification of citizenship, status as a national, or

lawful presence (45 CFR § 155.315(a), (c), 42 CFR § 600.305, 42 CFR §435.406).

Legal Analysis

The first issue under review is whether NYSOH properly determined you and your child were no longer eligible for Medicaid, but that your Medicaid coverage would continue until May 31, 2017.

You and your child were determined eligible for Medicaid effective June 1, 2016.

Under New York State law, once a person is determined fully eligible for Medicaid, that eligibility continues for 12 months, even if the household income rises above 138% of the FPL. This provision is called “continuous coverage.”

On August 19, 2016 an application was submitted to NYSOH that listed annual household income of \$57,373.00. As a result of this application, you and your child were found no longer eligible for Medicaid but that your coverage would continue until May 31, 2016.

However, during the hearing you testified that the annual household income amount listed on the August 19, 2016 application was not correct. You testified that your spouse receives \$400.00 every week in income and provided three paystubs supporting your testimony. You also provided documentation in the form of a self-declaration that you do not receive any income. Furthermore, the application that was submitted on August 19, 2016 listed a monthly household income for your spouse of \$1,600.00, and a monthly household income for you of \$0.00. It also requested that your eligibility be determined based on your current monthly income.

You testified you reside with your spouse and your one dependent child who is four years old. Your application states you will be filing your 2016 taxes as married filing jointly, and will claim one dependent on that return. You testified that this was true also for your child. Therefore, you and your child reside in a three-person household.

Therefore, at the time of the August 19, 2016 application, NYSOH should have determined your household’s eligibility for financial assistance using a three-person household with a monthly household income of \$1,600.00.

The financial criteria for 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 federal poverty level (FPL) for the applicable family size.

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 MAGI that is at or below 154% of the FPL for the applicable family size.

On the date of your application, the relevant monthly FPL was \$1,680.00 for a three-person household. Since \$1,600.00 is 95.24% of the 2016 FPL, you and your child should have been fully eligible for Medicaid on a financial basis.

Since the August 20, 2016 redetermination stated the opposite, and found you and your child no longer eligible for Medicaid based on the household income of \$19,200.00, it is RESCINDED insofar as it found you and your child no longer eligible for Medicaid coverage.

The second issue under review is whether NYSOH properly determined that your spouse was no longer eligible to remain enrolled in his Medicaid Managed Care plan effective September 30, 2016.

NYSOH issued an eligibility determination notice on June 24, 2016 stating that your spouse was found conditionally eligible for Medicaid effective June 1, 2016. Your spouse's eligibility was based on the condition he provide proof of his Citizenship Status by September 12, 2016.

One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. Generally, no person except a United States citizen, naturalized citizen, qualified alien, or person permanently residing in the United States under color of law (PRUCOL) is eligible for full Medicaid benefits.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that an applicant is eligible for enrollment in a qualified health plan, Medicaid, and the Essential Plan, including the certification of citizenship, status as a national, or lawful presence.

You uploaded a copy of your spouse's Employment Authorization card on September 5, 2016 with the status of C-08. The document you provided had an expiration date of June 10, 2004.

To be eligible for full Medicaid and Essential Plan participation through the NYSOH, you must have valid and non-expired documents to prove your spouse's citizenship or immigration status.

Since you only provided a copy of your spouse's expired Employment Authorization Card, NYSOH cannot determine his eligibility for financial assistance using the expired documentation.

You did provide a copy of your spouse's I-797 Notice of Action for an Application for employment Authorization dated December 15, 2016. However, this documentation as stated does not confirm any status to the applicant.

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage. This coverage is commonly referred to as Emergency Medicaid.

As a result, the August 20, 2016 disenrollment notice is **AFFIRMED**. Your spouse is ineligible for Medicaid effective September 30, 2016.

Should your spouse obtain a valid Employment Authorization Card or acceptable proof of citizenship status, you may provide that documentation to NYSOH to be verified.

Decision

The August 20, 2016 redetermination notice is **RESCINDED** insofar as it found you and your child no longer eligible for Medicaid coverage.

The August 20, 2016 disenrollment notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to ensure that you and your child had continuous Medicaid enrollment as of June 1, 2016.

Effective Date of this Decision: March 2, 2017

How this Decision Affects Your Eligibility

You and your child remain eligible for Medicaid.

Your spouse is ineligible for Medicaid effective September 30, 2016.

Should your spouse obtain a valid Employment Authorization Card or acceptable proof of citizenship status, you may provide that documentation to NYSOH to be verified.

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.

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).

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
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The August 20, 2016 redetermination notice is **RESCINDED** insofar as it found you and your child no longer eligible for Medicaid coverage.

Your case is **RETURNED** to NYSOH to ensure that you and your child had continuous Medicaid enrollment as of June 1, 2016.

You and your child remain eligible for Medicaid.

The August 20, 2016, disenrollment notice is **AFFIRMED**.

Your spouse is ineligible for Medicaid effective September 30, 2016.

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).

Should your spouse obtain a valid Employment Authorization Card or acceptable proof of citizenship status, you may provide that documentation to NYSOH to be verified.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

