



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

Notice of Decision

Decision Date: March 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013208

[REDACTED]

Dear [REDACTED],

On February 15, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 11, 2016 eligibility determination 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 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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Decision

Decision Date: March 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013208

[REDACTED]

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 you were eligible for the Essential Plan with a monthly premium of \$20.00, and that your child was eligible for Child Health Plus with a monthly premium of \$9.00, effective December 1, 2016?

Did NYSOH properly determine that both you and your child were not eligible for Medicaid?

Procedural History

On October 24, 2016, NYSOH received two updates to your application for health insurance, which reflected your gross earnings from your employer [REDACTED] were \$30,000.00; in the first application you stated you had \$10,900.00 in deductions, and \$15,500.00 in deductions in the second.

On October 25, 2016, NYSOH issued a notice stating that your final update to your application on October 24, 2016 had been reviewed. The notice stated that the information contained in your application did not match the information NYSOH received from state and federal data sources. You were requested to provide proof of income by November 8, 2016 so that the eligibility for you and your child could be determined.

On October 31, 2016, NYSOH received two earnings statements issued to you by your employer [REDACTED] on October 7, 2016 and October 21,

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2016. These documents were reviewed and verified by NYSOH on November 10, 2016.

On November 10, 2016, NYSOH redetermined your eligibility based on the information contained in your account as of November 10, 2016, and increased the annual income from [REDACTED] listed on your application from a gross of \$30,000.00 to a net amount, after deductions, of \$26,837.10.

On November 11, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan with a monthly premium of \$20.00, effective December 1, 2016. The notice also stated that your daughter was eligible to enroll in Child Health Plus (CHP) with a monthly premium of \$9.00, effective December 1, 2016.

Also on November 11, 2016, you spoke to NYSOH's Account Review Unit and appealed that determination insofar as you were eligible for the Essential Plan and your child was eligible for coverage through Child Health Plus, and both of you were not found eligible for Medicaid.

On February 15, 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) You testified that you expect to file your 2016 tax return with a tax filing status of head of household. You will claim your child as a dependent on that tax return.
- 2) The application update you provided to NYSOH on October 25, 2016 listed annual gross household income of \$30,000.00, consisting of solely of income you expected to receive from your employment with [REDACTED]. You testified that this amount was correct. You also attested in this application to an anticipated total deduction of \$15,500.00, comprised of \$6,400.00 in tuition and fees, \$3,900.00 in student loan interest payments, and \$5,200.00 in travelling expenses.
- 3) At the time of your application, your child was 4 years old.
- 4) You live in Queens County, New York.
- 5) You provided to NYSOH on October 31, 2016, two earnings statements issued to you from [REDACTED] reflecting that you received \$1,628.35 on

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October 7, 2016 and \$1,628.35 on October 21, 2016. The earnings statements issued to you on October 21, 2016 reflected that you had a year-to-date income of \$24,195.35.

- 6) You testified that you are a salaried employee and that you received \$1,628.35 on a bi-weekly basis for the remainder of 2016.
- 7) Based on the two earnings statements you provided on October 31, 2016, NYSOH recalculated your annual gross income from [REDACTED] from \$30,000.00 to \$42,337.10, with a net income of \$26,837.10.
- 8) You testified that while you have been employed by [REDACTED] throughout 2016, your rate of earning changed mid-year, when you experienced an increase of income to \$1,628.35 on a bi-weekly basis. You further testified that an anticipated income of \$42,337.10 was too high, and you would not have received that much income from [REDACTED] by the end of 2016.
- 9) You testified that you and your child were seeking to be found eligible for Medicaid, rather than the Essential Plan and Child Health Plus. You further testified that you were seeking for your coverage to begin effective November 1, 2016, rather than December 1, 2016, because you incurred medical expenses during the month of November 2016.

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

Applicable Law and Regulations

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).

Child Health Plus

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Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

A child who meets the eligibility requirements for CHP may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (NY PHL § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY PHL § 2511(2)(b)).

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)).

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 FPL for the applicable family size (42 CFR § 435.118(c); New York State Department of Social Services Administrative Directive 13 OHIP/ADM-03).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were eligible for the Essential Plan with a monthly premium of \$20.00, and that your child was eligible for Child Health Plus with a monthly premium of \$9.00, effective December 1, 2016.

You are in a two-person household. You expect to file your 2016 income taxes as head of household and will claim your child as a dependent on that tax return.

You submitted your initial application on October 24, 2016, in which you attested to an income of \$30,000.00, and deductions totaling \$15,500.00, comprised of \$6,400.00 in tuition and fees, \$3,900.00 in student loan interest payments and \$5,200.00 in travelling expenses.

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In response to this application, NYSOH requested that you provide income documentation by November 8, 2016 so that the eligibility for you and your child could be determined.

The record reflects that on October 31, 2016, you provided to NYSOH two earnings statements issued to you from [REDACTED] reflecting that you received \$1,628.35 on October 7, 2016 and \$1,628.35 on October 21, 2016. The earnings statements issued to you on October 21, 2016 reflected that you had a year-to-date income of \$24,195.35.

The record further reflects that on November 10, 2016, NYSOH reviewed and verified your earnings statements as valid, and revised your projected annual income from \$30,000.00 to \$42,337.10. As a result, you and your child were found eligible for the Essential Plan and Child Health Plus, respectively.

You credibly testified that while you have been employed by [REDACTED] throughout 2016, your rate of earning changed mid-year, when you experienced an increase of income to \$1,628.35 on a bi-weekly basis. You further testified that an anticipated income of \$42,337.10 was too high, and you would not have received that much income from [REDACTED] by the end of 2016.

Indeed, it appears your revised anticipated income of \$42,337.10 was computed by NYSOH as a result of receiving \$1,628.35 over 26 bi-weekly payments.

Since the record reflects that you are paid on a bi-weekly basis in the amount of \$1,628.35, and that after your October 21, 2016, you would have received 5 more payments prior to December 31, 2016, we can reasonably infer that your expected earnings during 2016 should have been computed to be \$32,336.60 (\$24,195.35 *plus* \$8,141.60), rather than \$42,337.10.

Therefore, credible evidence of record reflects that your expected annual household income, after giving effect your various deductions totaling \$15,500.00, was \$16,836.60.

Since the record no longer supports the November 11, 2016 eligibility determination notice as it was based on an erroneous projected income figure as derived by NYSOH, it is hereby RESCINDED.

Your case is RETURNED to NYSOH to redetermine the eligibility of you and your child based on a two-person household in Queens County with an annual household income of \$16,836.60 as of October 31, 2016, which coincides with you having provided the two earnings statements for NYSOH review.

Decision

The November 11, 2016 eligibility determination notice is RESCINDED.

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Effective Date of this Decision: March 20, 2017

How this Decision Affects Your Eligibility

You and your child are no longer eligible for the Essential Plan and Child Health Plus, respectively.

Your case is being sent back to NYSOH to redetermine the eligibility of you and your child as of October 31, 2016, based on a two-person household in Queens County with an annual household income of \$16,836.60.

You will receive a new eligibility determination notice shortly.

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.

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If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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Summary

The November 11, 2016 eligibility determination notice is RESCINDED.

You and your child are no longer eligible for the Essential Plan and Child Health Plus, respectively.

Your case is being sent back to NYSOH to redetermine the eligibility of you and your child as of October 31, 2016, based on a two-person household in Queens County with an annual household income of \$16,836.60.

You will receive a new eligibility determination notice shortly.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

