



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

Notice of Decision

Decision Date: February 28, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013469

[REDACTED]

Dear [REDACTED]

On February 21, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 23, 2016 eligibility determination notice and the November 23, 2016 enrollment 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.

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DEPARTMENT OF HEALTH
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Decision

Decision Date: February 28, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013469

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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 properly determine that you were eligible for the Essential Plan, and that your eligibility for and enrollment in your Essential Plan was effective January 1, 2017?

Did NY State of Health properly determine that you were ineligible for Medicaid?

Procedural History

On December 13, 2015, NY State of Health (NYSOH) received your application for financial assistance with health insurance.

On January 7, 2016, NYSOH issued an eligibility determination notice, based on your December 13, 2015 application, stating that you were eligible for Medicaid, effective December 1, 2015.

On January 9, 2016, NYSOH issued an enrollment confirmation notice, confirming your selection of a Medicaid Managed Care plan, with an enrollment start date of February 1, 2016.

On October 9, 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

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coverage, and that you needed to update your account by November 15, 2016 or you might lose the financial assistance you were currently receiving.

No updates were received by November 15, 2016 and NYSOH redetermined your eligibility for financial assistance with health insurance.

On November 17, 2016, NYSOH issued an eligibility determination notice stating that you were no longer eligible for health insurance through NYSOH, effective December 1, 2016. The notice stated that you were not eligible for financial assistance because you did not respond to the renewal notice.

On November 23, 2016, NYSOH issued a disenrollment notice stating that your enrollment in your Medicaid Managed Care plan was terminated, effective November 30, 2016.

On November 22, 2016, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was prepared stating that you were eligible for the Essential Plan and you had selected a plan for enrollment.

Also on November 22, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination insofar as you were not found eligible for Medicaid and you did not have coverage for the month of December 2016.

On November 23, 2016, NYSOH issued a notice of eligibility determination, stating that you were eligible to enroll in the Essential Plan, effective January 1, 2017.

Also on November 23, 2016, NYSOH issued an enrollment notice confirming your selection of your Essential Plan, with a plan enrollment start date of January 1, 2017.

On February 21, 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 were determined eligible for the Essential Plan on November 22, 2016, with an effective date of January 1, 2017.

- 2) You testified, and your NYSOH account confirms, that you currently receive your notices from NYSOH by regular mail.
- 3) You testified that you previously received electronic alerts via email from NYSOH, however, the email address that the electronic alerts were being sent to is inactive. You further testified that you could not recall when you changed the preference of how you receive notices from NYSOH from paperless to regular mail.
- 4) You testified that you did not receive any notices in the mail telling you that you needed to update your application in order to renew your Essential Plan eligibility.
- 5) No notices sent to you at the mailing address listed on your NYSOH account have been returned as undeliverable.
- 6) You testified that you did not know that you needed to update your account until November of 2016.
- 7) The record reflects that on November 22, 2016 NYSOH received your updated application for health insurance.
- 8) You reenrolled into an Essential Plan on November 22, 2016.
- 9) You testified that you expect to file your 2017 taxes with a tax filing status of head of household. You will claim one dependent on that tax return.
- 10) The application that was submitted on November 22, 2016 listed annual household income of \$24,096.00, consisting of \$2,008.00 per month you receive in Social Security Disability benefits. You testified that this amount was correct, although your benefits may have gone up by \$5.00 or \$6.00 in 2017.
- 11) You provided a copy of your Social Security Disability award letter, which indicates that as of July 2016 you receive a monthly benefit about of \$2,008.00.
- 12) You testified that your Social Security Disability benefits were your only source of income in 2016.
- 13) The application that was submitted on November 22, 2016 indicates that your child has no earned income.
- 14) You provided a copy of your child's Social Security award letter which indicates that as of July 2016 she receives a monthly benefit amount of \$1,004.00.

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- 15) You testified that you do not anticipate taking any deductions on your 2017 tax return.
- 16) You testified that you currently reside in Montgomery County.
- 17) You testified that when you first filed your appeal, there was an issue with your child's coverage, however, that has since been rectified, and you are no longer appealing with regard to your child's coverage.
- 18) You testified that you are seeking to have your coverage in Medicaid reinstated as of December 1, 2016.

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

Applicable Law and Regulations

Medicaid Renewal

In general, NYSOH must review Medicaid eligibility once every twelve months or "whenever it receives information about a change in a beneficiary's circumstances that may affect eligibility" (42 CFR § 435.916(a)(1), (d)). NYSOH must make its "redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency" (42 CFR § 435.916(a)(2)).

NYSOH must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, NYSOH must issue a redetermination as provided by the notice, with consideration given to any updates provided by the individual (45 CFR § 155.335(h)).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)).

With regard to eligibility for financial assistance through NYSOH, a tax filer's household income includes the MAGI of all the individuals in the taxpayer's household who are required to file a federal tax return for the taxable year (26

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CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). Currently, a dependent who had yearly gross earned income greater than \$6,300.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2014-61).

Unearned income is generally all income other than salaries, wages and other amounts received as pay for work actually performed, including the taxable part of Social Security and pension payments (IRS Publication 929, pg 15).

For the purposes of determining a person's eligibility for financial assistance for health insurance through the Marketplace, the term "MAGI" means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

Social Security Benefits

For the purposes of determining the amount of taxable income a person receives from Social Security benefits, the IRS gives the term "modified adjusted gross income" the same definition as "adjusted gross income," without regard to certain income that is not relevant here (26 USC § 86(b)(2)). Please note that this definition is different than the definition of MAGI the Marketplace uses.

"Adjusted gross income" means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

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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 2016 FPL, which is \$16,020.00 for a two-person household (81 Fed. Reg. 4036.).

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).

The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

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)).

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 \$16,020.00 for a two-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).

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)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were eligible for the Essential Plan, and that your eligibility for and enrollment in your Essential Plan was effective January 1, 2017.

You were originally found eligible for Medicaid effective December 1, 2015.

Generally, NYSOH will redetermine a qualified individual's eligibility for Medicaid once every 12 months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's October 9, 2016 renewal notice stated that there was not enough information to determine whether you were eligible to continue your financial assistance for health insurance, and that you needed to supply additional information by November 15, 2016, or your financial assistance might end.

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Because there was no timely response to this notice, you were terminated from Medicaid effective November 30, 2016.

You testified that you did not receive any notice from NYSOH telling you that you needed to update the information in your NYSOH account. You testified that you had previously elected to receive email alerts from NYSOH, but changed this preference at some point. You testified that the email address which the alerts would have been sent to is no longer an active account. You further testified that you changed the preference of how you receive notices from NYSOH from paperless to regular mail, however, you could not recall when you changed this preference in your account.

Your NYSOH account currently indicates, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

Therefore, the record reflects that NYSOH properly notified you of your annual renewal and that information in your NYSOH account needed to be updated in order to ensure your enrollment in your health plan and eligibility for financial assistance would continue.

Household income for the purposes of calculating a person's eligibility for financial assistance to help pay for the costs of health insurance through NYSOH, consists of the Modified Adjusted Gross Income of all tax filers in a household who are required to file a tax return.

You attested to your intent to file a 2017 return when you requested financial support on the NYSOH application. Since you plan on filing your taxes as head of household and claim one child as a dependent on your 2017 tax return, you are in a two-person household.

Currently, a dependent will be required to file a tax return if their earned income is greater than \$6,300.00. According to the information on your application your child has no earned income. Since your dependent has an earned income less than \$6,300.00, she is not required to file a tax return on the basis of her earned income.

A dependent will also be required to file a tax return at present when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of Social Security benefits.

To determine if any portion of a person's Social Security benefit is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount in excess of \$25,000.00 is considered taxable income.

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At the time of your application, your child will receive \$12,048.00 annually in income from Social Security benefits. One-half the amount of Social Security she receives is \$6,024.00. Since \$6,024.00 is less than \$25,000.00, your child has no taxable income from Social Security and is not required to file a tax return on the basis of unearned income.

Therefore, your household income for purposes of determining your financial eligibility for assistance with health insurance is \$24,096.00, consisting solely of your Social Security Disability benefits.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,020.00 for a two-person household. Since an annual household income of \$24,096.00 is 150.41% of the 2016 FPL, NYSOH properly found you to be eligible for the Essential Plan.

The date on which the 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 after the fifteenth day of a month goes into effect on the first day of the second following month.

The record shows that on November 22, 2016, you updated the information in your NYSOH account and submitted a request to enroll in an Essential Plan.

Since you selected your Essential Plan on November 22, 2016, it must take effect on the first day of the second month following after November 2016; that is, on January 1, 2017.

The second issue is whether NYSOH properly determined that you were ineligible for Medicaid.

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 that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,020.00 for a two-person household. Since \$24,096.00 is 150.41% of the 2016 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information you provided.

However, 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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You submitted your Social Security Disability award that shows you receive \$2,008.00 monthly.

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 \$1,843.00 per month for a two-person household. Since the documentation you provided shows that you receive \$2,008.00 monthly you do not qualify for Medicaid on the basis of monthly income as of the date of your application.

Since the November 23, 2016 eligibility determination properly stated that, based on the information you provided, you were eligible for the Essential Plan and ineligible for Medicaid, it is correct and is AFFIRMED.

Additionally, NYSOH's November 23, 2016 eligibility determination notice and enrollment confirmation notice are AFFIRMED because they properly began your eligibility for and enrollment in the Essential Plan on January 1, 2017.

Decision

The November 23, 2016 eligibility determination notice is AFFIRMED.

The November 23, 2016 enrollment confirmation notice is AFFIRMED.

Effective Date of this Decision: February 28, 2017

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You are eligible for the Essential Plan as of January 1, 2017.

You are ineligible for 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

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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):

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- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The November 23, 2016 eligibility determination notice is AFFIRMED.

The November 23, 2016 enrollment confirmation notice is AFFIRMED.

This decision does not change your eligibility.

You are eligible for the Essential Plan as of January 1, 2017.

You are ineligible for Medicaid.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

