



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

Notice of Decision

Decision Date: February 21, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023374

[REDACTED]

[REDACTED]

On January 5, 2018, your representative appeared by telephone at a hearing on your appeal of NY State of Health's October 7, 2017 eligibility determination and disenrollment notices.

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

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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 your spouse was eligible to enroll in the Essential Plan, effective November 1, 2017, and not eligible for Medicaid?

Procedural History

On October 6, 2017, NYSOH received an updated application for health insurance submitted on behalf of your spouse.

On October 7, 2017, NYSOH issued a notice of eligibility determination, stating your spouse was eligible to enroll in the Essential Plan, with no monthly premium, effective November 1, 2017. The notice stated that she qualified for the Essential Plan, because your household income was less than the allowable income limit and she was in the first five years of her qualified immigration status or living in the United States under the color of law.

Also on October 7, 2017, NYSOH issued a disenrollment notice stating your spouse's Medicaid Managed Care plan would end on October 31, 2017, because she was no longer eligible to enroll in that plan.

On October 16, 2017, you or someone on your behalf contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as your spouse not eligible for Medicaid.

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On January 5, 2018, you orally authorized your son, with the help of [REDACTED], to represent you at the telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing closed thereafter.

Findings of Fact

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

- 1) You are seeking insurance for your spouse.
- 2) Your representative testified that your spouse has lived in the United States since 2015 and is a green card holder.
- 3) On July 24, 2015, a copy of your spouse's Permanent Resident Card was uploaded to your NYSOH account. That document indicates that your spouse has been a resident since February 1, 2015 [REDACTED]
- 4) According to your account, your spouse was initially determined eligible for Medicaid through NYSOH in 2015. Upon renewal for the 2016 coverage year, your spouse was determined eligible for the Essential Plan and ineligible for Medicaid, due to being in the first five years of her qualified immigration status.
- 5) According to notes in your account dated January 29, 2016, your spouse's Essential Plan eligibility was overridden due to her need for "community based long term care services." She was determined Medicaid eligible and reinstated in her Medicaid Managed Care plan.
- 6) On July 8, 2017, an updated application was submitted on behalf of you and your spouse wherein you indicated that you were in need of "Waiver services Personal Care/Home Care services."
- 7) You and your spouse were determined eligible for the Essential Plan and ineligible for Medicaid, again, due to being in the first five years of your qualified immigration status.
- 8) The eligibility determination notice issued by NYSOH on July 9, 2016 indicated that your case was being sent to your Local Department of Social Services to determine your eligibility for Medicaid on a different basis.
- 9) Notes in your account from September 8, 2016 indicate that your spouse's Essential Plan eligibility was, again, overridden due to her need for long term care. She was reinstated in her Medicaid Managed Care plan.

- 10) Subsequently, you, [REDACTED] were determined ineligible for health insurance through NYSOH and referred to your LDSS, apparently due to the information in your application indicating you were in need of “Waiver services Personal Care/Home Care services” which are “not available through [NYSOH]” pursuant to the eligibility determination notice issued by NYSOH on December 7, 2016.
- 11) Your spouse remained enrolled in her Medicaid Managed Care plan.
- 12) On October 6, 2017, NYSOH received an updated application submitted on behalf of your spouse. That application indicated that neither you nor your spouse would file a tax return and that neither you nor your spouse had any anticipated income.
- 13) NYSOH determined your spouse eligible for the Essential Plan with no monthly premium, and ineligible for Medicaid, effective November 1, 2017, due to being in the first five years of her qualified immigration status.
- 14) Your spouse was disenrolled from her Medicaid Managed Care plan, effective October 31, 2017, and enrolled into an Essential Plan, effective November 1, 2017.
- 15) You appealed insofar as your spouse was not eligible for Medicaid.
- 16) Your representative testified that your spouse was disabled because of various diagnoses including [REDACTED]. He testified that she should be eligible for Medicaid because of her disability.
- 17) Your representative further testified that due to your spouse’s medical conditions, she needs [REDACTED] and [REDACTED] services which are not covered by the Essential Plan.
- 18) Your representative testified that your spouse was receiving personal care services until October 2017 when she was disenrolled from her Medicaid Managed Care plan.

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

Applicable Law and Regulations

Medicaid

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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. A person is eligible for Medicaid when his or her immigration status is satisfactory and he or she meets all other requirements for Medicaid (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 2017 FPL, which is \$16,240.00 for a two-person household (82 Federal Register 8831, 8832).

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).

Qualified Immigrants

In NY State, qualified immigrants who were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016 (New York's Basic Health Plan Blueprint, p. 19, as approved January 2016; see www.medicaid.gov/basic-health-program/downloads/ny-blueprint.pdf). This category of qualified immigrants includes individuals lawfully admitted for permanent residence in the United States who are still in their first five years of permanent residency. (18 NYCRR § 349.3, 8 USC § 1613).

Essential Plan Eligibility

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-

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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).

Pursuant to Local Commissioner Memorandum 2016 LCM-01 issued by the NYS Department of Health, Office of Health Insurance Programs, on June 29, 2016, individuals in receipt of or in need of long term care including, personal care services, are not eligible for the Essential Plan.

Legal Analysis

The issue under review is whether NYSOH properly determined your spouse was eligible to enroll in the Essential Plan, effective November 1, 2017, and not eligible for Medicaid.

The application that was submitted on October 6, 2017 indicated that neither you nor your spouse had any anticipated income for 2017 and that neither of you would file a tax return. Subsequently, NYSOH determined your spouse eligible for the Essential Plan, effective November 1, 2017, and ineligible for Medicaid, due to her being in the first years of her qualified immigration status. You appealed that determination insofar as your spouse was not eligible for Medicaid.

Pursuant to the regulations, the Essential Plan is provided through NYSOH to individuals who are lawfully present non-citizens, ineligible for Medicaid or Child Health Plus because of their immigration status, and have a household income that is between 0% and 200% of the FPL. 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.

Since your application indicated that your household had no anticipated income for 2017, your spouse met the financial eligibility criteria for both the Essential Plan and Medicaid.

Although the evidence establishes that your spouse is a permanent resident, she has only had that permanent resident status since 2015. Pursuant to the regulations, legal permanent residents who were receiving Medicaid through NY State, but were not eligible for Medicaid under federal law due to being in the first five years of their permanent residency as of January 1, 2016, must receive coverage through the Essential Plan. The evidence establishes that your spouse

was within the first five years of permanent residency status at the time of the October 6, 2017, and, thus, not eligible for Medicaid under federal law. Generally, given these facts, the applicant would be eligible for the Essential Plan, because she would not meet the non-financial requirements for Medicaid. However, the evidence establishes that your spouse is in receipt and/ or need of long term care. Since long term care services are not covered by the Essential Plan, applicants in need of such services are not eligible for the Essential Plan. Your account confirms that your spouse's Essential Plan eligibility was overridden previously on multiple occasions due to her apparent need for long term care services. Based on the evidence that your spouse is need of long term care services, it is concluded that she is not eligible to enroll in the Essential Plan.

Therefore, the October 7, 2017 eligibility determination notice stating your spouse was eligible for the Essential Plan, effective November 1, 2017, was not correct and must be RESCINDED.

However, based on your representative's testimony that your spouse is disabled and in need of [REDACTED] and [REDACTED] services, your case is also REFERRED to your LDSS to determine her eligibility for Medicaid through that agency and availability of waiver services not provided by NYSOH. Pursuant to the regulations, your spouse's Medicaid coverage will continue throughout the referral process.

Therefore, the October 7, 2017 disenrollment notice stating your spouse's Medicaid Managed Care plan coverage would end on October 31, 2017 is RESCINDED and your case is RETURNED to NYSOH to reinstate your spouse in her Medicaid Managed Care plan, effective November 1, 2017.

Decision

The October 7, 2017 eligibility determination and disenrollment notices are RESCINDED.

Your case is REFERRED to your LDSS to determine your spouse's eligibility for Medicaid through that agency and the availability of waiver services not provided by NYSOH.

Your case is RETURNED to NYSOH to reinstate your spouse in her Medicaid Managed Care plan, effective November 1, 2017.

Effective Date of this Decision: February 21, 2018

How this Decision Affects Your Eligibility

Your spouse is not eligible for the Essential Plan due to her need for long term care.

Your case is being sent to your LDSS to determine your spouse's eligibility for Medicaid through that agency and the availability of waiver services not provided by NYSOH.

Your spouse will be reinstated in her Medicaid Managed Care plan, effective November 1, 2017.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace 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 Federal Marketplace. 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

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

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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 October 7, 2017 eligibility determination and disenrollment notices are **RESCINDED**.

Your case is **REFERRED** to your LDSS to determine your spouse's eligibility for Medicaid through that agency and the availability of waiver services not provided by NYSOH.

Your case is **RETURNED** to NYSOH to reinstate your spouse in her Medicaid Managed Care plan, effective November 1, 2017.

Your spouse is not eligible for the Essential Plan due to her need for long term care.

Your spouse will be reinstated in her Medicaid Managed Care plan, effective November 1, 2017.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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