

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

## Notice of Decision

Decision Date: February 12, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024691

[REDACTED]

[REDACTED]

On January 18, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's denial of your wife's request for retroactive Medicaid coverage.

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.

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## Decision

Decision Date: February 12, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024691

[REDACTED]

## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine that your wife was not eligible for Medicaid for April 2017, May 2017 and June 2017?

## Procedural History

On July 10, 2017, you submitted an application for financial assistance with health insurance on behalf of yourself and your family, including your wife.

On July 12, 2017, NYSOH issued a notice of eligibility determination, stating that your wife was eligible for Medicaid, effective July 1, 2017.

On November 6, 2017 you contacted NYSOH and requested retroactive Medicaid coverage for your wife for the months of April 2017, May 2017 and June 2017. This request is found in your NYSOH account under Incident [REDACTED].

On November 21, 2017, you spoke to NYSOH's Account Review Unit and appealed the denial of your request that your wife receive retroactive Medicaid for the months of April 2017, May 2017, and June 2017.

On January 18, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open until February 2, 2018, to allow you time to submit income documentation for you and your wife for the months of April 2017, May 2017 and June 2017.

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On February 1, 2018, NYSOH received the supporting documents uploaded into your NYSOH account. The documents were incorporated into the record as Appellant's Exhibit #1 and the record was closed.

## Findings of Fact

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

- 1) You testified that you are seeking retroactive Medicaid for your wife for the months of April 2017, May 2017 and June 2017.
- 2) You submitted an application for financial assistance for your family, including your wife on July 10, 2017.
- 3) NYSOH has not issued a decision on your wife's eligibility for retroactive Medicaid in the months of April 2017, May 2017, and June 2017.
- 4) You testified that in the month of April 2017, you worked at [REDACTED]. You uploaded paystubs from [REDACTED] that show that you received a gross payment of \$1,300.00 on April 7, 2017, April 14, 2017, April 21, 2017 and April 28, 2017.
- 5) You testified that in the month of April 2017, your wife worked for part of the month before she stopped working to take [REDACTED]. You uploaded paystubs that show your wife received a gross payment of \$1,486.38 on April 20, 2017.
- 6) You testified that you stopped working at [REDACTED] May 2017, and that you received your last paycheck from [REDACTED] that month. You uploaded a letter from [REDACTED] that states that your last day was May 5, 2017. You also uploaded a paystub from [REDACTED] which shows that you received a gross payment of \$1,300.00 on May 5, 2017.
- 7) You testified and provided documentation that you started working at [REDACTED] in May 2017, but that you did not receive payment for your work during that month.
- 8) You testified that your wife did not work in May 2017, but that she received payment from her employer because her paychecks are delayed and because she received payment from sick time she used during her [REDACTED]. You submitted paystubs which show that your wife received a gross payment of \$1,316.00 on May 4, 2017 and May 18, 2017, and a gross payment of \$1,116.25 on May 30, 2017.

- 9) You testified, and provided documentation, that you were paid \$2,000.00 in the month of June 2017.
- 10) You testified that your wife was pregnant, and gave birth to your youngest child, on [REDACTED].
- 11) You testified and provided documentation that your wife did not receive any income after May 2017.
- 12) You testified that you expect to file your 2017 federal income tax return as married filing jointly, and that you will claim two dependents on that tax return.
- 13) You reside in Kings County.

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

## **Applicable Law and Regulations**

### De Novo Review

NYSOH 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).

### Medicaid-Pregnant Women

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)).

For purposes of Medicaid eligibility, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman, but also the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

Medicaid is currently available to pregnant women who have a modified adjusted gross income at or below 223% of the FPL for the applicable family size (see 42 CFR § 435.116(c); New York State Department of Health 13 OHIP/ADM-03). Once eligible, a pregnant woman will remain eligible until the end of the month in which the sixtieth day following the end of the pregnancy occurs, regardless of any change in household income, even if such change would render her ineligible for financial assistance (NY Social Services Law § 366(4)(b)(1)).

On the date of your application, that was the 2017 FPL, which is \$4,572.00 per month for a four-person household (82 Fed. Reg. 8831).

### Presumptive Eligibility for Pregnant Women

In New York State, presumptive eligibility for Medicaid is a means of immediately providing Medicaid coverage for prenatal care services pending a full Medicaid eligibility determination. A pregnant woman does not need to provide documentation of income for the presumptive eligibility determination. Pregnant women are also not required to document citizenship/immigration status for presumptive eligibility or for ongoing Medicaid eligibility. Citizenship/immigration status is not an eligibility requirement for a pregnant woman throughout her pregnancy and for 2 months after the month in which the pregnancy ends (N.Y. Soc. Serv. Law § 366 (4)(b)). Medicaid pays providers during the presumptive eligibility period for care provided to pregnant women; however, as a matter of Medicaid Program policy, labor and delivery services are excluded from payment.

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

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 2017 FPL, which is \$2,829.00 per month for a four-person household (82 Fed. Reg. 8831).

### Retroactive Medicaid

The Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of an initial application if the individual received medical services that would have been covered under Medicaid and the

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individual would have been eligible for Medicaid at the time he received the services if he had applied (42 USCA § 1396A(34); 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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined your wife was not eligible for Medicaid for April 2017, May 2017 and June 2017.

You testified that you are appealing the denial of retroactive Medicaid for your wife for the months of April 2017, May 2017, and June 2017. However, the record does not contain a notice of eligibility determination or redetermination on the issue of retroactive coverage for April 2017, May 2017, or June 2017.

Here, the lack of a notice of eligibility determination on the issue of retroactive Medicaid coverage for April 2017, May 2017, or June 2017 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 failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Your testimony, along with the November 22, 2017 appeal confirmation notice stating that the reason for your appeal was “eligibility determination”, permits an inference that NYSOH did not find your wife eligible for retroactive Medicaid for April 2017, May 2017, or June 2017.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

When calculating family size for Medicaid purposes, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman but also the number of children she expects to deliver. In April 2017, your wife was pregnant with one child and she resided with you and your oldest child. Your wife gave birth to one child on [REDACTED]. Consequently, your wife was in a four-person household during the month of April 2017. In May and June 2017, your wife resided with you, and your two children. Therefore, your wife was also in a four-person household for the months of May 2017 and June 2017.

You submitted an application for financial assistance on July 10, 2017.

When an individual files an initial application for Medicaid, his or her eligibility for retroactive Medicaid depends on the date of application. To this end, it does not

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matter whether or not that initial application resulted in Medicaid going forward. Instead, an individual, who has filed an initial application for Medicaid through NYSOH, has the right to be evaluated for Medicaid for the three months before the month of his or her application.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual's initial 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.

You testified that you are seeking retroactive Medicaid for your wife for the months of April 2017, May 2017, or June 2017.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size. Since your wife was pregnant in April 2017, to be eligible for Medicaid in April 2017, she would have needed to meet the non-financial criteria and have a household income no greater than 223% of the FPL for a four-person household, which is \$4,572.00 per month.

The record reflects that your household's gross income for April 2017 was \$6,686.38 (you received four gross payments of \$1,300.00 from [REDACTED] and your wife received one gross payment of \$1,486.38 from her employer). Since your household's gross income of \$6,686.38 was more than the \$4,572.00 monthly Medicaid limit for April 2017, NYSOH properly determined that your wife was not eligible for Medicaid coverage during April 2017.

Your wife gave birth on [REDACTED] and was not pregnant in May 2017 or June 2017. To be eligible for Medicaid in May 2017 and June 2017, your wife would have needed to meet the non-financial criteria and have a household income no greater than 138% of the FPL for a four-person household, which is \$2,829.00 per month.

The record reflects that your household's gross income for May 2017 was \$5,048.25 (you received a gross payment of \$1,300.00 from [REDACTED], and your wife received two gross payments of \$1,316.00, and one gross payment of \$1,116.25). Since your household's gross income of \$5,048.25 was more than the \$2,829.00 monthly Medicaid limit for May 2017, NYSOH properly determined that your wife was not eligible for Medicaid coverage during May 2017.

You testified and provided documentation that your wife was not working in June 2017, and did not receive any income. You provided documentation to show you stopped working at [REDACTED] in May 2017, and that you received one

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payment of \$2,000.00 on June 16, 2017 from your new employer, [REDACTED]. Therefore, the record indicates that in the month of June 2017, your household's income was \$2,000.00 for June 2017.

Since \$6,686.38 was more than the \$4,572.00 monthly Medicaid limit for April 2017, and \$5,048.25 was more than the \$2,829.00 monthly Medicaid limit for May 2017, NYSOH properly determined that your wife was not eligible for Medicaid coverage during April 2017 or May 2017. Therefore, NYSOH's determination that your wife is not eligible for retroactive Medicaid for April 2017 or May 2017 is AFFIRMED.

However, the record now contains a more accurate representation of what your wife's household income was for the month of June 2017, your wife's case is RETURNED to NYSOH to consider her request for retroactive Medicaid coverage for the month of June 2017, based on a household size of four people, and a household income of \$2,000.00 for the month of June 2017.

## **Decision**

NYSOH's determination that your wife is not eligible for retroactive Medicaid for April 2017 or May 2017 is AFFIRMED.

Your wife's case is RETURNED to NYSOH to consider her eligibility for retroactive Medicaid coverage for June 2017, with a household size of four and household income of \$2,000.00.

**Effective Date of this Decision:** February 12, 2018

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

Your wife is not eligible for Medicaid in the months of April 2017 or May 2017.

This is not a final determination of your wife's eligibility. Her case is sent back to NYSOH to redetermine her eligibility based on the evidence presented at the hearing.

## **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.

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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 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**

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NYSOH's determination that your wife is not eligible for retroactive Medicaid for April 2017 and May 2017 is AFFIRMED.

Your wife is not eligible for Medicaid in the months of April 2017 or May 2017.

Your wife's case is RETURNED to NYSOH to consider her eligibility for retroactive Medicaid coverage for June 2017, with a household size of four and household income of \$2,000.00.

This is not a final determination of your wife's eligibility. Her case is sent back to NYSOH to redetermine her eligibility based on the evidence presented at the hearing.

### **Legal Authority**

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

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



## Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

### Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

### 中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

### Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

### 中文 (Simplified Chinese)

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### Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

### 한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

### Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

### العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

### বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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## **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

## **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

## **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

## **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

## **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

## **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. y&b&tumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

## **(Urdu) اردو**

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

## **Tiếng Việt (Vietnamese)**

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

## **אידיש (Yiddish)**

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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