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

Notice of Decision

Decision Date: April 13, 2018

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000025670

[redacted]

[redacted]

On March 22, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 13, 2017 denial 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 NY State of Health 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: April 13, 2018

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000025670

[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 you were not eligible to receive Medicaid through NYSOH, as of December 12, 2017?

Procedural History

On October 28, 2017, NYSOH issued a renewal notice stating that you were eligible for Medicaid, effective January 1, 2018, and that you were no longer eligible for the Essential Plan, effective December 31, 2017. The notice further stated that you were not eligible to enroll in a Medicaid Managed Care plan because you had other health insurance or Medicare.

On November 18, 2017, NYSOH issued a disenrollment notice stating that your Essential Plan coverage was ending, effective December 31, 2017.

On November 28, 2017, you updated your NYSOH account.

On November 29, 2017, NYSOH issued a discontinuance notice stating that, effective January 1, 2018, you were no longer eligible for health insurance through NYSOH. The notice stated that you were not eligible for Medicaid because your household income was over the allowable income limit for that program. It further stated that you were not eligible for the Essential Plan, to receive premium tax credits, or to enroll in a qualified health plan at full cost because you have Medicare.

On December 12, 2017, you updated your NYSOH account. That same day, NYSOH prepared a preliminary eligibility determination stating that you were not eligible to enroll in health insurance through NYSOH.

Also on December 12, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination, as it related to your ineligibility for Medicaid.

On December 13, 2017, NYSOH issued a denial notice stating that you were not eligible for Medicaid through NYSOH because your household income was over the allowable income limit for Medicaid. The notice further stated you were not eligible for the Essential Plan, to receive premium tax credits, or to enroll in a qualified health plan at full cost because you have Medicare.

On March 22, 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 through April 6, 2018 to allow you time to submit supporting documentation.

On April 3, 2018, you faxed an 11-page document to the Appeals Unit. The record is now closed.

Findings of Fact

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

1) You testified that you expected to file your 2018 taxes with a tax filing status of married, filing jointly. You will claim one dependent on that tax return.

2) You are appealing on behalf of yourself.

3) You testified that you became eligible for Medicare in [redacted]. You became eligible because you have been [redacted] through the Social Security Administration for at least 24 months.

4) You testified that you are enrolled in Medicare Part A, but that you have never used this coverage.

5) You testified that you have never been enrolled in Medicare Part B.

6) You testified that, after you were denied coverage by NYSOH, you reached out to Medicare and were told that you would have to apply for Part B, and that you would be penalized for every year since [redacted] in which you were not enrolled.

7) You testified, and your NYSOH account reflects, that you were previously enrolled in coverage through NYSOH at the same time that you were eligible for Medicare, so you do not understand why you are not eligible to enroll anymore.

8) You testified, and your NYSOH account confirms, that you have a daughter who lives with you and whom you claim as a dependent, and that she is currently [redacted].

9) The application that was submitted on December 12, 2017 listed annual household income of $47,220.00, consisting of: $9,720.00 in Social Security Disability (SSD) benefits; $11,500.0 in "additional income;" and $26,000.00 in earned income from your spouse.

10) You testified that you are not sure whether this amount is correct.

11) You testified that your adjusted gross income for 2016 was $27,030.00, according to your 2016 federal income tax return.

12) You testified that the amount of SSD benefits you receive in 2016 that were not taxed, which you read from Line 20A of your IRS Form 1040, was $9,768.00

13) You testified that your current monthly SSD benefit is $816.00, and that you received this amount in December 2017.

14) You testified that the total amount of rental income on your 2016 income tax return was $20,469.00, which you read from line 17 of your 2016 IRS Form 1040.

15) You testified that you receive monthly rental income of $1,415.00, and received this amount in December 2017.

16) You testified that your spouse owns her own business, but pays herself a salary. You testified that she also files a corporate income tax return.

17) You testified that your spouse pays herself the same amount every month, and that her monthly income for December 2017 would be the equivalent of one-twelfth of her 2017 W2 income.

18) You testified that you did not know what your spouse's 2017 W2 income was, but that you would submit her 2017 W2.

19) You testified that you believe your income for 2018 will be similar to what it was in 2017, with the exception of any variation in your spouse's income.

20) You testified that you need to be able to enroll in health insurance coverage because you have chronic medical conditions.

21) After the hearing, you submitted an 11-page fax consisting of the following:

a. A one-page fax cover sheet;
b. A copy of you and your spouse's 2016 IRS Form 1040, which Schedules A, C, E, and 8812, which indicate the following:
    i. You and your spouse's 2016 adjusted gross income was $27,030.00;
    ii. You received $9,768.00 in SSD benefits that were excluded from your taxable income in 2016;
    iii. Your spouse's W2 wages from "[redacted]" in 2016 were $9,600.00;
    iv. You showed a $4,198.00 loss from a sole proprietorship for which you are the proprietor;
    v. You had total rental income, after expenses, of $8,628.00 in 2016 from two properties;
    vi. Your spouse had a total income of $11,841.00 from an S Corporation, "[redacted]," in 2016;
c. A copy of your spouse's 2016 W2 from "[redacted]" showing wages of $9,600.00;
d. A copy of your spouse's 2017 W2 from "[redacted]" showing wages of $19,200.00.

Together, these documents are marked and entered into the record as "Appellant's Exhibit One."

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 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)).

An individual is eligible for enrollment in Medicaid through NYSOH (called MAGI-based Medicaid) when he or she meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard (45 CFR § 155.305(c); NY Social Services Law § 366(1)(b)).

In general, to qualify for MAGI-based Medicaid through NYSOH, you must also be one of the following:

- An adult aged 19-64 who is not eligible for Medicare Part A or Part B,
- A pregnant woman or infant,
- A child aged 1-18, or
- A parent or caretaker relative

(45 CFR § 155.305(c); NY Social Services Law § 366(1)(b)).

If an individual does not fall into one of these categories, 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)).

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 $20,420.00 for a three-person household (82 Federal Register 8831).

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).

<u>Modified Adjusted Gross Income</u>

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term "modified adjusted gross income*"* 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)).

"Adjusted gross income" means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of finds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income (*id*.).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were not eligible to receive Medicaid through NYSOH.

Medicaid through NYSOH (called MAGI-based Medicaid) is available to individuals who are between the ages of 19 and 64, who are not eligible for Medicare Parts A or B; pregnant women or infants; children between the ages of 1 and 18; and parent or caretaker relatives.

The record reflects that, at the time NYSOH issued the December 13, 2017 denial notice, you were enrolled in Medicare Part A and eligible for Medicare Part B. Ordinarily, an individual enrolled in Medicare is ineligible to enroll in MAGI-based Medicaid through NYSOH. However, according to your testimony and the information in your NYSOH application, you and your spouse have one child who is [redacted]. Individuals who are eligible for, or enrolled in Medicare, but are the parent or caretaker relative of a child under the age of 19, can enroll in Medicaid through NYSOH, if they are otherwise eligible.

Therefore, since you meet the non-financial criteria for MAGI-based Medicaid, the issue that remains is whether you are financially eligible for Medicaid through NYSOH.

Medicaid can be provided through NYSOH to individuals who 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 $20,420.00 for a three-person household. Since $47,220.00 is 231.24% of the 2017 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

At the hearing, you testified that you were not sure whether the income information provided in your application was correct. You testified that you receive $816.00 per month in SSD benefits. You testified that you receive rental income, and that you expect it to be similar in 2018 to what it was on your 2016 tax return. You testified that your spouse owns her own business and pays herself a salary from that business, but you were not sure what she earned in 2017.

After the hearing, you provided a copy of you 2016 federal income tax return. That tax return reflects that your 2016 adjusted gross income was $27,030.00. However, NYSOH bases its eligibility determinations on “modified adjusted gross income,” which 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. Your 2016 IRS form 1040

indicates that you received $9,768.00 in SSD benefits that were excluded from your 2016 adjusted gross income. Therefore, your modified adjusted gross income for 2016 was $36,798.00 ($27,030.00 plus $9,768.00).

You also submitted your spouse's 2017 W2, which shows that she earned $19,200.00 in 2017, compared with $9,600.00 in 2016 (Appellant's Exhibit One). However, you did not provide information to indicate whether she will be reporting any income from her business ($11,841.00 was reported in 2016). Additionally, your 2016 tax return reflects that you were the sole proprietor of a business in 2016, but you did not provide any testimony or information regarding whether you still have that business, and what, if any, income you expect to receive from it. Lastly, there is not enough information, from your testimony and the documentation you have provided, to determine what your rental income will be for 2018.

As such, there is insufficient information in the record on which to base a new calculation of your expected annual income for 2018, and NYSOH's determination that you were not eligible for Medicaid based on your annual income was correct.

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

You testified that your monthly income in December 2017 was $816.00 in SSD, $1,415.00 in rental income, and one-twelfth of your spouse's 2017 wages ($1,600.00). This equates to $3,831.00. However, as outlined above, there is not enough information in the record to conclude that this is an accurate monthly income figure for December 2017.

Additionally, 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 $2,348.30 per month. Even if your income were only the total of your spouse's wages and your SSD benefits, ($2,416.00), you would be over the monthly income limit for Medicaid.

Since there is insufficient evidence in the record to find that the income amount you provided in your December 12, 2017 application was incorrect, the December 13, 2017 denial notice must be AFFIRMED.

Please Note: You may be eligible for non-MAGI Medicaid through your local Department of Social Services (DSS). To find out whether you are eligible, you must contact your local DSS office and file an application.

Decision

The December 13, 2017 denial notice is AFFIRMED.

Effective Date of this Decision: April 13, 2018

How this Decision Affects Your Eligibility

You are not eligible for MAGI-based Medicaid through NYSOH, based on the income information in your application.

You may apply for non-MAGI Medicaid through your local DSS office.

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 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).

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 December 13, 2017 denial notice is AFFIRMED.

You are not eligible for MAGI-based Medicaid through NYSOH, based on the income information in your application.

You may apply for non-MAGI Medicaid through your local DSS office.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

[redacted]

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).

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)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您免费提供相应语种的口译服务。

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 1-855-355-5777 번으로 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.

(Bengali)

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1-855-355-5777

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 महत्त्वपूर्ण 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 yɛ tow krataa a ho hia. Sɛ wo hia ɛho nkyerɛkyerɛmu a, yɛ srɛ wo, frɛ 1-855-355-5777. yƐbƐtumi ama wo obi a ɔkyerƐ kasa a woka no ase ama wo kwa a wontua hwee.

اردو (Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم1-855-355-5777 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)

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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.

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).