



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

Notice of Decision

Decision Date: March 16, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000026716

[REDACTED]

Dear [REDACTED],

On March 9, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's November 21, 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).

This page intentionally left blank.



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

Decision

Decision Date: March 16, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000026716



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 your [REDACTED] child (child) was only eligible for Medicaid coverage for the treatment of emergency medical conditions?

Did NYSOH properly end your child's Medicaid Managed Care (MMC) plan as of December 31, 2017?

Procedural History

On July 22, 2017, NYSOH issued an eligibility determination notice stating, in relevant part, that your child would remain eligible for Medicaid, effective as of July 1, 2017.

On July 25, 2017, your NYSOH account was systemically updated.

On July 26, 2017, NYSOH issued an eligibility determination notice stating, in relevant part, that your child was conditionally eligible for Medicaid, effective as of July 1, 2017. The notice instructed you to submit proof of your child's immigration status by October 23, 2017.

On August 7, 2017, NYSOH issued a plan enrollment notice confirming that as of August 6, 2017, your child was enrolled in an MMC plan with an enrollment start date of September 1, 2017.

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).

On November 20, 2017, your account was updated.

On November 21, 2017, NYSOH issued an eligibility determination notice stating, in relevant part, that your child was eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective January 1, 2018.

Also on November 21, 2017, NYSOH issued a disenrollment notice stating that your child's MMC plan would end on December 31, 2017.

On December 29, 2017, your account was updated.

On December 30, 2017, NYSOH issued an eligibility determination notice stating that your child did not qualify for health insurance coverage through NYSOH, effective February 1, 2018.

On January 3, 2018, you spoke with NYSOH's Account Review and requested an appeal because your child's Medicaid coverage was discontinued.

On January 4, 2018, NYSOH issued an eligibility determination notice stating, in relevant part, that your child was eligible for Child Health Plus for a limited time, with a \$30.00 premium per month, effective as of February 1, 2018. The notice instructed you to submit proof of income by March 4, 2018, to confirm your child's eligibility.

On March 9, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Testimony was taken during the hearing, and the record was 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 are appealing because your child's Medicaid coverage was discontinued.
- 2) According to your NYSOH account, your child was born on [REDACTED]
[REDACTED]
- 3) You testified that your child entered the United States on [REDACTED]
[REDACTED], 2013, with the visa status of F2.
- 4) According to your NYSOH account, your child is a "Non-Immigrant Visa Holder."

- 5) You submitted your child's U.S. visa to your NYSOH account. The visa indicated that your child was admitted with a class of F2 until "D/S." Further, the visa has an expiration date of [REDACTED]. (see Document [REDACTED]; uploaded 11/15/2016).
- 6) According to your NYSOH account, on July 21, 2017, your child's visa was determined to be valid proof of their immigration status.
- 7) You testified that your child does not have any applications to adjust their immigration status before any federal agency.
- 8) According to your NYSOH account, your child was determined unconditionally eligible for Medicaid, effective July 1, 2017.
- 9) You testified that you contacted NYSOH and the representatives were unable to determine why your child was no longer eligible for Medicaid.

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

Applicable Law and Regulations

Medicaid – Citizenship an Immigration Status

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 Department of Health Administrative Directive 13 OHIP ADM-03).

Medicaid must be provided to otherwise eligible residents of the United States who are citizens, nationals, or qualified non-citizens who have provided satisfactory documentary evidence of their qualified non-citizen status (42 CFR § 435.406)).

In some cases, Medicaid will pay for emergency medical treatment for an individual who does not have evidence of citizenship or immigration status, even if the individual is not eligible for full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a); 42 CFR § 435.350)).

Temporary non-immigrants are individuals who can enter the United States temporarily for a specific purpose and for a specific period of time. In general, temporary non-immigrants have been eligible only for coverage of medical care and services necessary to treat an emergency medical condition. State Medicaid programs may cover temporary non-immigrant and certain other groups of

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).

pregnant women and children who are "lawfully residing" in the United States. The Centers for Medicare & Medicaid Services (CMS) has interpreted the term "lawfully residing" to mean individuals who are "lawfully present" in the United States and who are state residents (GIS 16 MA/02 "Changes in Medicaid Coverage for Temporary Non-Immigrants"; State Health Official Letter #10-006, issued July 1, 2010, "Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women").

Lawfully Present

The federal regulations state that the following non-citizens are lawfully present:

- (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. 1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. 1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. 1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status;
 - (vii) Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;

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).

(5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention Against Torture; or

(7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J));

(8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.

(45 CFR § 155.20; 45 CFR § 152.2).

Medicaid Continuous Coverage - Children:

A child under the age of nineteen, who is determined eligible for Medicaid, shall remain eligible for such assistance until the last day of the month which is twelve months following the determination or redetermination of eligibility for such assistance (N.Y. Soc. Serv. Law § 366(4)(b)(3)(i); 42 CFR § 435.926).

In the following situations, individuals are not entitled to receive continuous coverage:

- Unable to locate;
- Death;
- Consumer requests to have his/her Medicaid closed;
- Failure to provide or cooperate in obtaining a Social Security Number, if otherwise required;
- Failure to provide documentation of citizenship after the reasonable opportunity period;
- Moved out of State;
- Coverage established under MAGI in error;
- Undocumented pregnant women (only get 60 days post-partum);
- Failure to comply with absent parent (IV-D) requirements; and
- Individuals receiving treatment in a setting where Medicaid eligibility is not available

(see GIS 15 MA/22).

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).

Legal Analysis

The issue under review is whether NYSOH properly determined that your child was only eligible for Medicaid coverage for emergency medical care and services.

To be eligible for full Medicaid through NYSOH, your child must meet the non-financial requirements; which includes having a valid immigration status. To be eligible for full Medicaid participation through NYSOH, an applicant must have documents to prove their current citizenship or immigration status. In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage.

Certain groups of non-immigrants who are "lawfully residing" in the United States are eligible for full Medicaid coverage. "Lawfully residing" has been defined to mean individuals who are "lawfully present" in the United States. An alien in a nonimmigrant status who has not violated the terms of the status under which they were admitted or to which was changed after admission, is a lawfully present non-citizen.

You testified that your child entered the United States on [REDACTED], with the visa status of F2. On November 15, 2016, you had submitted your child's visa to NYSOH. The visa reflects that your child was admitted with a class of F2 until "D/S," and the visa had an expiration date of [REDACTED]. (Document [REDACTED]). Further, on July 21, 2017, NYSOH determined that your child's visa was valid proof of their immigration status.

The record reflects that your child has continuously held a valid nonimmigrant status since entering the United States on [REDACTED]. Therefore, there is sufficient evidence in the record to determine that your child was lawfully present in the United States as of the issuance of the November 21, 2017 eligibility determination notice.

The November 21, 2017, eligibility determination notice stating, in relevant part, that, effective January 1, 2018, your child was only eligible for Medicaid coverage for the treatment of emergency conditions is RESCINDED.

The second issue under review is whether NYSOH properly ended your Medicaid coverage as of December 31, 2017.

Generally, once individuals are determined eligible for Medicaid, they are guaranteed 12 months of Medicaid coverage, even if the individual loses Medicaid eligibility because of any changes or updates they make to their NYSOH account. This twelve-month period is known as "continuous coverage" and is based on the effective date of the Medicaid eligibility determination.

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).

The record reflects that your child was initially determined eligible for Medicaid coverage as of July 1, 2017, and on August 6, 2017, your child was enrolled in an MMC plan with an enrollment start date of September 1, 2017.

On November 20, 2017, your NYSOH account was updated. Based on that update, your child was determined only eligible for Medicaid coverage for the treatment of emergency medical conditions and your child's full Medicaid coverage was discontinued as of December 31, 2017.

Based on analysis above, your child was improperly determined eligible for Medicaid coverage for the treatment of emergency medical conditions. There are no other disqualifying factors in the record regarding your child. Therefore, your child was eligible to remain in Medicaid for twelve continuous months.

The November 21, 2017, disenrollment notice stating that your child's MMC plan ended as of December 31, 2017, is RESCINDED.

Your child's case is RETURNED to NYSOH to reinstate their MMC plan as of January 1, 2018, and for the continuation of their twelve months of continuous coverage that began on July 1, 2017, barring any future disqualifying events.

Decision

The November 21, 2017 eligibility determination notice is RESCINDED.

The November 21, 2017 disenrollment notice is RESCINDED.

Your child's case is RETURNED to NYSOH to reinstate their MMC plan as of January 1, 2018, and for the continuation of their twelve months of continuous coverage, barring any future disqualifying events.

Effective Date of this Decision: March 16, 2018

How this Decision Affects Your Eligibility

NYSOH improperly determined that your child was only eligible for Medicaid coverage for emergency medical care and services.

NYSOH improperly ended your child's Medicaid coverage as of December 31, 2017.

Your child's case is being sent back to NYSOH to reinstate their MMC plan as of January 1, 2018, and for the continuation of their twelve months of continuous

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).

coverage that began on July 1, 2017, barring any future disqualifying events. NYSOH will notify you once coverage is reinstated.

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 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

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).

- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557
- =

Summary

The November 21, 2017 eligibility determination notice is RESCINDED.

The November 21, 2017 disenrollment notice is RESCINDED.

Your child's case is RETURNED to NYSOH to reinstate their MMC plan as of January 1, 2018, and for the continuation of their twelve months of continuous coverage, barring any future disqualifying events.

NYSOH improperly determined that your child was only eligible for Medicaid coverage for emergency medical care and services.

NYSOH improperly ended your child's Medicaid coverage as of December 31, 2017.

Your child's case is being sent back to NYSOH to reinstate their MMC plan as of January 1, 2018, and for the continuation of their twelve months of continuous coverage that began on July 1, 2017, barring any future disqualifying events. NYSOH will notify you once coverage is reinstated.

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)

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 مجاناً.

বাংলা (Bengali)

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).

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।

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. ye&etumi ama wo obi a okyerε 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.

אַײַדיש (Yiddish)

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).

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).