



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

Notice of Decision

Decision Date: March 30, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: APM27644616

[REDACTED]

Dear [REDACTED]

On March 3, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 15, 2016 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this letter.

Legal Authority

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

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 30, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: APM27644616

[REDACTED]

Issue

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

Did New York State of Health (NYSOH) properly calculate your household income to determine the amount of financial assistance you and your children were eligible to receive?

Procedural History

On October 17, 2016, you submitted an application for financial assistance through NYSOH.

On October 18, 2016 NYSOH issued a notice stating that you and your children may be eligible for health insurance but more income documentation was needed to confirm your household's eligibility. The notice directed you to provide income documentation by November 1, 2016.

On October 20, 2016, you faxed additional income documentation to NYSOH ([REDACTED]).

On November 14, 2016, NYSOH updated your account.

On November 15, 2016, NYSOH issued an eligibility determination stating that you were eligible to purchase a qualified health plan at full cost and your children were eligible to enroll in a full price Child Health Plus plan or Child-Only qualified health plan, effective December 1, 2016.

On November 16, 2016, your NYSOH account was updated.

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 17, 2016 NYSOH issued a notice stating that you and your children may be eligible for health insurance but more income documentation was needed to confirm your household's eligibility. The notice directed you to provide income documentation by December 1, 2016.

On November 18, 2016, you spoke with NYSOH's Account Review Unit and requested an appeal insofar as the amount of financial assistance you and your children were determined eligible to received based on the calculation of your household income.

On November 19, 2016, you uploaded income documentation to your NYSOH account ([REDACTED]).

On February 28, 2017, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. Testimony was taken during the hearing and the record was closed at the end of the proceeding.

Findings of Fact

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

1. Per your NYSOH account and testimony, you are applying for health insurance coverage for yourself and your two children, ages four and seven.
2. Per your NYSOH account and testimony, you expect to file a 2016 federal income tax return, with the tax status of qualifying widow with dependent children, and expect to claim your children as dependents on that return.
3. Per the notes in your NYSOH account, your annual household income was calculated to be \$104,876.20 as of November 14, 2016. \$85,030.00 in pensions and annuities was included in that calculation.
4. You were issued \$1,443.00 per month in Social Security benefits in 2016 ([REDACTED]).
5. Each of your children were issued \$1,443.00 in Social Security Benefits in 2016 ([REDACTED]).
6. Per your 2015 Form 1040 U.S. Individual Income Tax Return, your adjusted gross income was \$6,605.00 ([REDACTED]).
7. You testified that your 2015 Form 1040 is an accurate depiction of your 2016 adjusted gross income.

8. On November 19, 2016, you uploaded your 2015 Form 1099-R to your NYSOH account. The form indicates a gross distribution of \$85,030.40. ([REDACTED]).
9. You submitted a letter explaining the 2015 Form 1099-R. You stated the \$85,030.400 was a direct rollover of your deceased husband's 401(k) into an Individual Retirement Account (IRA). You specified that this income was not a distribution and was not income ([REDACTED]).
10. You testified that the rollover from your spouse's 401(k) to an IRA was a one-time transfer and no transfer were conducted in 2016.
11. Per Line 16a of your 2015 Form 1040 U.S. Individual Income Tax Return, it indicates a pension and annuities of \$85,030.00, and Line 16b indicates a taxable amount of \$0.00 ([REDACTED]).
12. Per your NYSOH account, you reside in [REDACTED] County, New York.

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

Applicable Law and Regulations

Modified Adjusted Gross Income

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 funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)).

Generally, an individual can roll pre-taxed funds from their or their deceased spouse's qualified plan, including 401(k), into a traditional individual retirement account (IRA). If the individual or individual's surviving spouse chooses to directly rollover the funds from the qualified plan to a traditional IRA, the taxable portion of the fund is not income until they are distributed from the IRA (see 26 U.S. Code §§ 401(k) and 408; see IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs)(2016)).

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).

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 that is at or below 138% of the federal poverty for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

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

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 by the US Department of Health and Human Services, March 19, 2014).

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 \$20,160.00 for a three-person household (81 Fed. Reg. 4036).

Legal Analysis

The issue under review is whether NYSOH properly calculated your household income to determine the amount of financial assistance you and your children were eligible to receive.

NYSOH determines an individual's financial assistance based on an individual's modified adjusted gross income (MAGI). An individual's MAGI income can be calculated by taking their adjusted gross income and increasing by: (1) any income that was excluded 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.

On October 20, 2016, you faxed your 2015 Form 1040 U.S. Individual Income Tax Return to NYSOH (see [REDACTED]). Based on the information in your tax return, NYSOH added \$85,030.00 in pension and annuities to the calculation of your MAGI.

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).

An individual can transfer pre-taxed funds from their or their deceased spouse's qualified plan, including 401(k), into a traditional individual retirement account (IRA). If the individual or individual's surviving spouse opts to rollover the funds from the qualified plan to a traditional IRA, the taxable portion of the fund is not income until they are distributed from the IRA.

You submitted a letter explaining that the \$85,030.40 was a direct rollover of your deceased husband's 401(k) into an IRA. Furthermore, your 2015 Form 1040 U.S. Individual Income Tax Return states that your adjusted gross income was \$6,605.00. Line 16a of the tax return indicates a pension and annuities of \$85,030.00, and Line 16b indicates that the taxable amount was \$0.00. Furthermore, the credible record supports that this rollover occurred in the 2015 tax year, and you did not expect to conduct a similar transfer in 2016.

Since NYSOH improperly calculated your expected household income by including a nontaxable rollover, the November 15, 2016 eligibility determination is **RESCINDED**.

Per the record, you expected to file a 2016 federal income tax return, with the tax status of qualifying widow with dependent children, and expected to claim your two children as dependents on that return. Therefore, you are in a three-person household.

You credibly testified that your 2015 Form 1040 U.S. Individual Tax Return is the best evidence of your household income. The tax return shows that your adjusted gross income was \$6,605.00.

When calculating an individual's MAGI, NYSOH must include any Social Security benefits that you were excluded from gross income. The record supports that you were issued \$1,443.00 per month in Social Security benefits. Therefore, you were issued (\$1,443.00 X12) \$17,316.00 in Social Security benefits in 2016.

Therefore, your case is **RETURNED** to NYSOH to recalculate your and your children's eligibility for financial assistance based on a three-person household, residing in ██████████ County, with an annual household income of (\$17,316.00 (+) \$6,605.00) \$23,921.00.

Decision

The November 15, 2016 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to recalculate your and your children's eligibility for financial assistance based on a three-person household, residing in ██████████ County, with an annual household income of \$23,921.00.

Effective Date of this Decision: March 30, 2017

How this Decision Affects Your Eligibility

NYSOH improperly calculated your household income.

Your case has been returned to NYSOH to recalculate your and your children's eligibility for financial assistance based on a three-person household, residing in ██████ County, with an annual household income of \$23,921.00.

NYSOH shall issue a new eligibility determination notice notifying you and your children of your new financial assistance eligibility.

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 must be done within four months after the date 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 date 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):

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

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).

Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The November 15, 2016 eligibility determination notice is RESCINDED.

NYSOH improperly calculated your household income.

Your case has been returned to NYSOH to recalculate your and your children's eligibility for financial assistance based on a three-person household, residing in ██████████ County, with an annual household income of \$23,921.00.

NYSOH shall issue a new eligibility determination notice notifying you and your children of your new financial assistance eligibility.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

