



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

## Notice of Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002175

[REDACTED]

Dear [REDACTED],

On May 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 13, 2015, February 27, 2015, and March 25, 2015 eligibility redeterminations relative to your children's Child Health Plus 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 at the top of this notice.

### 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).

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## Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002175

## Issue

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

Did the Marketplace properly determine that your children are eligible for Child Health Plus as of March 1, 2015 and then April 1, 2015, with a combined monthly premium of \$319.10 per month as of February 13, 2015 and February 27, 2015?

## Procedural History

Your children had health insurance coverage under a Fidelis Care Child Health Plus (CHP) plan from January 1, 2014 to December 31, 2014.

On November 8, 2014, the Marketplace issued a renewal notice that, in relevant part, stated if you want to keep your children in their present health plan for the next year and the information on your application was still accurate, they have been re-enrolled in their current health plan for another year and you don't have to do anything more. That notice also stated that your children qualify for CHP at full cost because they are not eligible for Medicaid and federal and state data sources show your household income is more than the allowable limit of \$111,640.00 for CHP.

On February 13, 2015, the Marketplace issued a notice of eligibility redetermination based on your updated application. The notice again stated in relevant part that your children are eligible to enroll in a CHP plan at full cost effective March 1, 2015, and are not eligible for premium assistance or Medicaid because your household income of \$164,879.99 is over the allowable income limits for these programs.

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That same day, the Marketplace issued a letter confirming that your children were enrolled in Fidelis Care CHP with a monthly combined premium of \$319.10, and coverage could begin January 1, 2015 after you paid the first month's premium.

On February 27, 2015, the Marketplace issued a notice of eligibility redetermination based on your updated application. The notice stated in relevant part that your children are eligible to enroll in a CHP plan at full cost effective April 1, 2015.

That same day, the Marketplace issued a letter confirming that your children were enrolled in Fidelis Care CHP with a monthly premium of \$319.10, and coverage could begin as early as January 1, 2015 after you paid the first month's premium.

On March 25, 2015, the Marketplace issued another letter confirming that your children were enrolled in Fidelis Care CHP with a monthly premium of \$319.10, and coverage could begin as early as May 1, 2015, after you paid the first month's premium.

That same day, you spoke with a representative from the Marketplace's Account Review Unit and appealed the March 1, 2015, April 1, 2015 and May 1, 2015, start dates of your children's CHP coverage and the monthly premium amount. You wanted their start date to be February 1, 2015, and their monthly CHP premium amount to be recalculated based on your household income of \$96,254.25.

On March 26, 2015, the Marketplace confirmed in writing that you requested review because the "[b]ackdating request for CHP plan for February [2015] was determined to be invalid since the plan was canceled by Fidelis Care due to nonpayment of the premium."

According to your Marketplace account, the Marketplace conducted a start date override on May 6, 2015 and made your children's coverage with Fidelis Care CHP effective March 1, 2015.

On May 12, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to fifteen days to allow you the opportunity to submit additional documentation in support of your testimony.

On May 27, 2015, the Marketplace's Appeals Unit received an eight page fax from you. It consisted of (1) A cover page; (2) Copies of letters from Fidelis Care New York, both dated December 16, 2014, regarding outstanding CHP premium payments for December 2014 and January 2015; (3) A copy of a Fidelis Care premium billing statement for February 2015; (4) A copy of an April 28, 2015 letter from [REDACTED] [REDACTED] requesting reinstatement of your son's insurance coverage so that additional diagnostic testing could be performed; (5) Copies of two checks from Fidelis Care New York, dated April 22, 2015, made payable to you in the amount of \$159.55 each; and (6) A printout of your Fidelis Care payment history as of May 27, 2015.

This eight page fax was made part of the record as “Appellant’s Exhibit A” and the record was closed that same day.

## **Findings of Fact**

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

- 1) You testified that you are appealing the start date of coverage for your children’s 2015 Child Health Plus (CHP) plan.
- 2) You testified that your 2015 expected household income is \$96,254.25, and consists of your earnings of \$47,840.00 and your spouse’s earnings of \$48,414.25, and not the amount of \$164,879.99 as appeared on your Marketplace application. You have no idea how the larger income amount was determined.
- 3) You provided two letters from Fidelis Care, both dated December 16, 2014, that stated you had to pay the monthly premiums due for January 2015 by January 31, 2015, or coverage for each child will be terminated as of that date (Appellant’s Exhibit A, pp. 2 and 3).
- 4) You testified that your children’s CHP monthly premium increased from \$60.00 per month in 2014 to \$319.10 for 2015 seemed to be wrong so you to contacted the Marketplace. You testified that you were told that the 2015 monthly premium amount was an error and would be corrected.
- 5) You testified that you did not receive a corrected billing statement from Fidelis Care for January 2015, and you did not pay for insurance coverage for that month.
- 6) You provided a copy of the Fidelis Care February 2015 premium billing statement, dated December 19, 2015, that said you had a balance of \$177.55 for each child as of December 19, 2014 and the current charge for February 2015 was \$159.55 each for a total of \$674.20 (Appellant’s Exhibit A, p. 4).
- 7) According to your Fidelis Care payment history, on February 9, 2015, you made payments totaling \$355.10 (Appellant’s Exhibit A, pp. 7 and 8). You testified that these payments were intended as the first monthly payment for your children’s CHP premium so that coverage could begin February 1, 2015.
- 8) You testified that you contacted Fidelis Care and were informed that they cancelled your children’s coverage for February 2015 because the premium payment you made was applied to the January 2015 monthly premium.

- 9) You provided documentary proof that you were sent two checks in the amount of \$159.55 each by Fidelis Care as refunds for each child's February 2015 premium (Appellant's Exhibit A, p. 6).
- 10) You testified that Fidelis Care's explanation that your payment was applied to January 2015 when they had also sent you refund checks did not make sense and, further, cancellation of your children's February 2015 CHP coverage did not seem right.
- 11) You further testified that you were told by Fidelis Care that the Marketplace had not provided an "ET number" or the right paperwork to reinstate your children's CHP coverage for 2015.
- 12) You contacted the Marketplace again and were informed that the Marketplace had erred in not sending you a cancellation notice and a re-enrollment notice. You testified you were also told that your children's CHP coverage could not be made retroactive to February 1, 2015, and you had to pay the current month's premium to get insurance reactivated.
- 13) You testified that your son required urgent care in February 2015 and you are being billed directly by [REDACTED] for the medical services he received that month.
- 14) You testified that you were not made aware by the Marketplace that an override had been conducted and your children's CHP coverage had been backdated to March 1, 2015; but you still want their coverage backdated to February 1, 2015.
- 15) You further testified that on the date of your hearing, you accessed your online Fidelis Care account and your children's coverage had not yet been activated. You agreed to call Fidelis Care and ensure that coverage was in fact active as reflected in your Marketplace account.

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

## **Applicable Law and Regulations**

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of

an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

### Child Health Plus Eligibility and Premium Amount

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (New York Public Health Law (PHL) § 2511(2)(a)(iii)).

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 *et seq.* and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child's family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the federal poverty level. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$60.00 per month for a child whose family household income is between 351% and 400% of the federal poverty level (PHL § 2510(9)(d)(ii)). The premium contribution for a child whose family household income is over 400% of the FPL is the full premium amount (*Id.*).

For a CHP eligibility determination, the 2015 FPL for a four-person household is \$24,250.00 (79 Fed. Reg. 3593).

Generally, a child who is eligible for CHP may have his or her financial eligibility redetermined no more frequently than once every 12 months (42 CFR § 435.916(a)).

In order for coverage to begin the first day of the following month, the application and the request for enrollment must be completed before the 20th of the current month. If the application and request for enrollment are completed after the 20<sup>th</sup> of the month, coverage begins on the first day of the second following month (see MISCELLANEOUS/CONSULTANT SERVICES - Child Health Plus Program, § 6.1).

### Child Health Plus - Change in Premium Amount

Effective January 1, 2014, the State must apply the financial methodologies used to determine Medicaid when determining financial eligibility of all individuals for CHP (45 CFR § 457.315). The State may elect in its State Plan to base financial eligibility either on current monthly household income and family size or income based on projected annual income and family size for the remainder of the calendar year (42 CFR § 435.603). In circumstances where there is a change in income, New York State has

elected to base financial eligibility on income prospectively, that is, for the remainder of the calendar year.

Families are required to report to the health plans [Marketplace] changes in New York State residency or health care coverage through insurance that may make a child ineligible for subsidy payments. They are also required to report changes which affect their subsidy level or make them appear eligible for Medicaid. The health plan [Marketplace] would act accordingly based upon the new information. If a family submits revised eligibility information to a plan that affects their eligibility status, the health plan [Marketplace] implements this information prospectively. A family may incur a lower or higher family contribution or be referred to Medicaid based on this new information (42 CFR § 457.570 and 457.505(c); Model State Child Health Plan OMB #: 0938-0707; §§ 4.1.8 and 4.3).

## **Legal Analysis**

The first issue under review is whether the Marketplace properly determined the amount of your children's CHP premium.

The amount of your children's CHP premium is calculated for a four-person household: you, your spouse, and your two children.

At the hearing, you testified that the household income amount of \$164,879.99 as stated in your February 13, 2015 and February 27, 2015 determinations was inaccurate. You further stated during the hearing that the \$96,254.25 household income amount was your household's expected income for 2015 as had been updated on your Marketplace application on March 31, 2015.

The April 1, 2015 determination listing your annual household income for 2015 as \$96,254.25 was based on your reported earnings of \$47,840.00 and your spouse's earnings of \$48,414.25. The updated application then accurately stated your household's expected annual income for 2015.

The 2015 FPL for a four-person household is \$24,250.00. Household incomes between 351% and 400% of that figure (\$85,117.50 to \$97,000.00) would result in premium payments of \$60.00 per month per child. Similarly, household incomes over 400% of that figure (over \$97,000.00) would result in the full cost of CHP premium for each child, which varies by health plan.

Therefore, since the Marketplace used a household estimated earnings for 2015 of \$164,879.99, which was inaccurate, the November 8, 2014 renewal notice and the February 13, 2015 and February 27, 2015 eligibility redeterminations are incorrect.

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Thereafter, however, the Marketplace redetermined your children's CHP eligibility and monthly premium contribution amount using your updated household's estimated earnings for 2015 of \$96,254.25 as provided on March 31, 2015. Therefore, the Marketplace properly determined that your monthly CHP premiums would be \$60.00 per child, based on annual earnings and the April 1, 2015 eligibility redetermination is AFFIRMED as to the monthly premium amount.

The second issue you raised was cancellation of your children's CHP plan for the month of February 2015 for non-payment of premium for that month.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the New York State of Health Appeals Unit.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not your children were properly terminated from their health plan for non-payment of premiums. Therefore, this issue under appeal is DISMISSED as a non-appealable issue.

You may have additional options outside of the Appeals Unit of New York State of Health, such as through your plan or through the Department of Financial Services.

## **Decision**

The February 13, 2015 and February 27, 2015 eligibility redeterminations as to your children's CHP premium amount are incorrect but have been superseded (replaced) by the April 1, 2015 eligibility redetermination that is AFFIRMED as to the monthly CHP premium amount for each child.

This decision does not address the termination of enrollment for the month of February due to non-payment of premiums.

**Effective Date of this Decision:** October 27, 2015

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

The November 8, 2014 renewal notice and your children's February 13, 2015 and February 27, 2015 eligibility redeterminations were incorrect. The combined Child Health Plus premium for your two children is \$120.00 per month.

## **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

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Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

The February 13, 2015 and February 27, 2015 eligibility redeterminations as to your children's CHP premium amount are incorrect but have been superseded (replaced) by the April 1, 2015 eligibility redetermination that is AFFIRMED as to the monthly CHP premium amount for each child.

The November 8, 2014 renewal notice and your children's February 13, 2015 and February 27, 2015 eligibility redeterminations were incorrect. The combined Child Health Plus premium for your two children is \$120.00 per month.

This decision does not address the termination of enrollment for the month of February due to non-payment of premiums.

## **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:**

