



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

## Notice of Decision

Decision Date: November 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002645

[REDACTED]

Dear [REDACTED],

On June 22, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 29, 2015 eligibility determination.

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).

This page intentionally left blank.



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

## Decision

Decision Date: November 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002645



## Issue

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

Did your newborn daughter's coverage through Child Health Plus properly begin on June 1, 2015, instead of May 1, 2015?

## Procedural History

The Marketplace received your household's initial application for health insurance on April 28, 2015. In response to your application, the Marketplace prepared a preliminary eligibility determination stating that your infant daughter was eligible for coverage through Child Health Plus (CHP) at a reduced premium rate of \$45.00 per month, effective June 1, 2015.

Also on April 28, 2015, you spoke with the Marketplace's Account Review Unit and appealed the April 28, 2015 preliminary eligibility determination insofar as you were seeking CHP coverage for your daughter to begin May 1, 2015.

On April 29, 2015, the Marketplace issued an eligibility determination notice stating that your daughter was conditionally eligible to enroll through CHP at a reduced premium rate of \$45.00 per month, effective June 1, 2015. This notice requested that provide documentation confirming your daughter's citizenship status and Social Security number before July 27, 2015.

On April 30, 2015, the Marketplace issued an enrollment notice confirming that your daughter's enrollment in CHP coverage through CDPHP would begin on June 1, 2015. This notice also requested that provide documentation confirming

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).

your daughter's citizenship status and Social Security number before July 27, 2015.

On June 22, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) You testified, and the record reflects, that your daughter was born on April 20, 2015.
- 2) You testified that you contacted the Marketplace when you were approximately seven months pregnant, which would have been around January or February 2015, to get additional information on when you should enroll your unborn daughter for healthcare coverage through the Marketplace.
- 3) You testified that a Marketplace representative instructed you that you needed to wait to enroll your unborn daughter, because it was not allowed at that point. You further testified that you were told that once born, your daughter would be covered under your health insurance, and that her coverage would be retroactive for 30 days in any event.
- 4) The record reflects that you did not submit an application to the Marketplace until April 28, 2015.
- 5) The Marketplace issued a determination on April 29, 2015 finding that your daughter could enroll through Child Health Plus (CHP) no earlier than June 1, 2015.
- 6) You testified that you were seeking to have your daughter's CHP coverage begin no later than May 1, 2015.

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

## **Applicable Law and Regulations**

Child Health Plus 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.). Eligibility rules are set out in NY Public Health Law § 2511(2).

“A State must specify a method for determining the effective date of eligibility for [Child Health Plus], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between [Child Health Plus] and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage” (42 CFR § 457.340(f)).

The State of New York has provided that a child’s period of eligibility for Child Health Plus begins on the first day of the month during which a child is eligible. A child will become eligible on the first day of the next month if the application is received by the 15th of the month; applications received after the 15th day of the month will be processed for the first day of the second subsequent month (see e.g. State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Although so-called “qualified health plans” are required to provide coverage as of date of birth (45 CFR § 155.420(b)(2)), as are Medicaid plans (42 CFR § 435.117(a), N.Y. Soc. Serv. Law § 366-g(3)), Medicaid Managed Care Model Contract (Appendix H-3(a), effective 3/1/2014 – 2/28/2019), there is no similar requirement for CHP plans.

## **Legal Analysis**

The sole issue under review is when your infant daughter’s Child Health Plus (CHP) coverage should have properly started.

The Marketplace received your household’s application on April 28, 2015.

On April 29, 2015 the Marketplace issued an eligibility determination notice stating that your daughter was eligible to enroll in Child Health Plus with a \$45.00 monthly premium. The notice further stated that her coverage would be effective shortly after the first premium payment is received by the health plan.

On April 30, 2015, the Marketplace issued a notice identifying the plan that you had selected for your daughter, which was CDPHP. There is nothing in the record to indicate that you did not submit the first month’s premium in a timely manner.

The record indicates that you submitted your daughter's application for health insurance on April 28, 2015.

As noted above, the State of New York has provided that a child's period of eligibility for Child Health Plus begins on the first day of the month during which a child is eligible. A child will become eligible on the first day of the next month of the application is received by the 15th of the month; applications received after the 15th day of the month will be processed for the first day of the second subsequent month (see e.g. State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Although so-called "qualified health plans" are required to provide coverage as of date of birth (45 CFR § 155.420(b)(2)), as are Medicaid plans (42 CFR § 435.117(a), N.Y. Soc. Serv. Law § 366-g(3)), Medicaid Managed Care Model Contract (Appendix H-3(a), effective 3/1/2014 – 2/28/2019), there is no similar requirement for CHP plans.

There has been no amendment to the State Plan, which has been approved by the federal government, to allow a newborn to be covered under Child Health Plus as of date of birth, nor is there any available provision in New York State law, regulations, or policy for a family to enroll an unborn child prospectively in a Child Health Plus plan.

The current law sets a gap between the date of birth and the beginning date of coverage, through no fault of the enrollee (see Sponsor Memo, 2015 NY Senate Bill S4745B (April 15, 2015)). There is legislation pending in the New York State Senate and Assembly that would amend the Public Health Law so that in the case of a newborn child their enrollment will be effective as of the date of the child's birth if the applicant for insurance applied either prior to the date of birth or within 60 days after the child's birth (2015 NY Senate-Assembly Bill S4745B, A7155B). However, that proposed legislation has not yet been sent to the governor and is not yet law in New York State.

Therefore, in the State of New York, newborns who fall into the category of being eligible only for Child Health Plus and whose parents cannot afford to pay for an individual health plan at full cost cannot be enrolled in a health plan from date of birth, as can newborns who will be covered under Medicaid or a "qualified health plan."

Until such time as New York State changes this legislative, regulatory, and policy omission, the Appeals Unit does not have the authority to compel the Marketplace to direct CHP insurance providers to provide coverage as of date of birth for newborns who do not have coverage elsewhere.

Accordingly, the April 29, 2015 eligibility determination is **AFFIRMED**.

## **Decision**

The April 29, 2015 eligibility determination AFFIRMED.

However, some CHP insurance providers voluntarily agree to begin coverage for newborns back to the date of their birth. Therefore, your case is returned to the Marketplace for it to facilitate discovering whether this is the case for your plan.

**Effective Date of this Decision:** November 18, 2015

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

Your infant daughter's Child Health Plus coverage took effect on June 1, 2015.

## **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  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The April 29, 2015 eligibility determination **AFFIRMED**.

Your infant daughter's Child Health Plus coverage took effect on June 1, 2015.

However, some CHP insurance providers voluntarily agree to begin coverage for newborns back to the date of their birth. Therefore, your case is returned to the Marketplace for it to facilitate discovering whether this is the case for your plan.

## **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:**

