



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

Notice of Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003167

[REDACTED]

Dear [REDACTED],

On August 5, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 28, 2015 eligibility determination and May 4, 2015 disenrollment notice regarding your stepson.

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 Code of Federal Regulation 45 CFR § 155.545(b).

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that your stepson's eligibility for Child Health Plus is conditioned upon him obtaining and providing a Social Security Number?

Did the Marketplace properly determine that your stepson was no longer eligible for Child Health Plus, other financial assistance, or to enroll in a qualified health plan through New York State of Health, effective May 31, 2015, and was disenrolled from his Child Health Plus plan, effective May 31, 2015?

Procedural History

On January 9, 2015, the Marketplace issued an eligibility determination that stated in relevant part that your stepson was conditionally eligible to enroll in Child Health Plus, effective February 1, 2015, and needed to provide his Social Security number by April 9, 2015.

As of May 1, 2015, your stepson's Social Security number had not been provided.

On May 2, 2015, the Marketplace issued a notice of eligibility redetermination that your stepson was no longer eligible for financial assistance or to enroll in a qualified health plan through the Marketplace, effective May 31, 2015, because he had not provide his Social Security Number on time.

On May 4, 2015, the Marketplace issued a disenrollment notice that your stepson's coverage with Healthfirst PHSP, Inc., a Child Health Plus plan, would end effective May 31, 2015.

On May 28, 2015, you contacted the Marketplace's Account Review Unit and appealed your stepson's disenrollment from his Child Health Plus plan. You also requested aid to continue during the appeal process, which the marketplace granted and made effective June 1, 2015 so that there would no gap in your stepson's health coverage.

In keeping with the grant of aid to continue, also on May 28, 2015, the Marketplace issued a notice of eligibility redetermination that, in relevant part, stated your stepson is conditionally eligible for Child Health Plus effective July 1, 2015, and issued an enrollment notice to that effect. The eligibility redetermination notice stated that your stepson had until August 26, 2015 to provide his Social security Number and provide documentation as proof of immigration status and income.

On July 8, 2015, the marketplace issued a notice of eligibility redetermination that your stepson was conditionally eligible to enroll in Child Health Plus effective August 1, 2015, and still needed to produce his Social Security Number and proof of his immigration status by October 5, 2015.

On August 5, 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 that you expected to file your 2015 taxes with a tax filing status of married filing jointly. You will claim your stepson as a dependent on that tax return.
- 2) You testified that your wife had a K-1 visa and has since become a permanent resident of the United States.
- 3) You are seeking insurance for your twelve-year-old stepson.
- 4) You testified that you applied for your stepson's permanent residence about two months before the hearing when you had enough money to pay for the application.
- 5) On May 29, 2015, you faxed to the Marketplace a copy of your stepson's K-2 visa that was issued on October 24, 2013, and a copy of his Form I-797, Department of Homeland Security, U.S. Citizenship and Immigration Services

(USCIS), showing his USCIS A # [REDACTED] and Application # [REDACTED] (Appellant's Exhibit A, pp. 2 and 5).

- 6) You testified that you were told it can take up to nine months, which will be February 2016, for his permanent residency to be approved by USCIS and that a Social Security Number will issued to him at that time.
- 7) You testified that you are worried that the Marketplace will disenroll your stepson again on October 5, 2015, because he will not have a Social Security number by that time.

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

Applicable Law and Regulations

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus 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 (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)).

To be eligible for Child Health Plus, the child:

- Must be under 19 years of age;
- Must be a New York State Resident;
- Must not have other health insurance coverage; and
- Must not be eligible for, or enrolled in, Medicaid

(N.Y. Pub.Health Law. § 2511(2)(a)-(e)).

Generally, New York does not require an applicant's Social Security Number as a condition of enrollment but does require a Social security number if available, except in the case of temporary enrollment (Model State Children's Health Insurance Program Plan, Section 4.1.9).

Health insurance through Child Health Plus is available to all uninsured children in New York State regardless of their immigration status provided the children are New York State residents. The Marketplace makes the determination on a case by case basis (N.Y.S. Dept. of Health, Child Health Plus Plan Manual (March 2008)).

Immigrants who are permanently residing under color of law (PRUCOL) are eligible for all of the State's medical assistance programs, including Child Health Plus. Department of Health policy, in part, defines PRUCOL individuals as those persons whose

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application is pending before the U.S. Citizenship and Immigration Services. For example, an applicant for adjustment of status to permanent residence is considered PRUCOL. Children who are physically located in New York State and have PRUCOL status satisfy the Child Health Plus residency requirement, unless the family indicates that they intend to return to their home country in the future (N.Y.S. Dept. of Health, Child Health Plus Plan Manual (March 2008); see, *generally*, CHIP ADM-52 (December 1, 2006)).

Legal Analysis

At issue is whether the Marketplace properly determined at first that your stepson was conditionally eligible for Child Health Plus and then later determined not eligible for financial assistance, including Child Health Plus, because he did not provide a Social Security number.

According to your testimony at the August 5, 2015 hearing and the information available on the record, your stepson is 12 years old.

You are a United States citizen and your stepson is living in New York with you and has a K-2 dependent visa; that is, as the child of a K-1 visa holder, who is your wife.

According to your Marketplace application, your stepson did not have other health insurance coverage outside of the Marketplace.

Your stepson lives with you and your wife in New York City, New York. According to your testimony, your wife and your stepson have resided in New York with you since October 2013 and they both plan on remaining in New York. You testified that your wife has already become a permanent resident. You further testified and provided documentary proof that you have filed your stepson's application to become a permanent resident and his Social Security number will be issued once his application is approved, which could take up to February 2016.

Child Health Plus is available to a child who is under 19 years old, is a resident of New York, does not have other health insurance coverage, and is not eligible for, or enrolled in, Medicaid coverage. A child who has applied for permanent residence is considered a PRUCOL individual. A child who is a PRUCOL individual and who lives in New York with the intent to remain in New York satisfies the residency requirement to be eligible for Child Health Plus.

Since your stepson is 12 years old, resides with you and your wife in New York and intends to remain in New York, is considered to be a PRUCOL individual by virtue of his pending permanent residence application, did not have other health insurance coverage at the time of the January 9, 2015 determination, the Marketplace incorrectly made your stepson's Child Health Plus eligibility conditioned on his ability to secure a Social Security number.

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Therefore, the January 9, 2015 eligibility determination notice and subsequent notices that state your stepson was conditionally eligible for Child Health Plus are MODIFIED to state he is eligible for Child Health Plus up to 12 months, or until January 31, 2016.

The May 2, 2015 eligibility redetermination notice and May 4, 2015 disenrollment notice are RESCINDED.

Once you have obtained a Social Security Number for your son, please provide that information to the Marketplace by uploading a copy of his Social Security card to your Marketplace account or by faxing it to the Marketplace at the number listed below.

Decision

The January 9, 2015 eligibility determination notice and subsequent notices that state your stepson was conditionally eligible for Child Health Plus are MODIFIED to state he is eligible for Child Health Plus up to 12 months, or until January 31, 2016.

The May 2, 2015 eligibility redetermination notice and May 4, 2015 disenrollment notice are RESCINDED.

Effective Date of this Decision: October 15, 2015

How this Decision Affects Your Eligibility

Your stepson's eligibility for and enrollment in Child Health Plus is effective February 1, 2015 through January 31, 2016. You are responsible for paying the monthly premium amount as currently calculated.

Once you have obtained a Social Security Number for your son, please provide that information to the Marketplace by uploading a copy of his Social Security card to your Marketplace account or by faxing it to the Marketplace at the number listed below.

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

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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
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Summary

The January 9, 2015 eligibility determination notice and subsequent notices that state your stepson was conditionally eligible for Child Health Plus are MODIFIED to state he is eligible for Child Health Plus up to 12 months, or until January 31, 2016.

The May 2, 2015 eligibility redetermination notice and May 4, 2015 disenrollment notice are RESCINDED.

Your stepson's eligibility for and enrollment in Child Health Plus is effective February 1, 2015 through January 31, 2016. You are responsible for paying the monthly premium amount as currently calculated.

Once you have obtained a Social Security Number for your son, please provide that information to the Marketplace by uploading a copy of his Social Security card to your Marketplace account or by faxing it to the Marketplace at the number listed above.

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A Copy of this Decision Has Been Provided To:

