



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

Notice of Decision

Decision Date: January 14, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004359

[REDACTED]

Dear [REDACTED],

On December 29, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 4, 2015 enrollment confirmation notice regarding your child.

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).

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 Date: January 14, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004359

[REDACTED]

Issue

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

Did the Marketplace properly determine that your child's coverage through Child Health Plus began on March 1, 2015, instead of January 1, 2015?

Procedural History

On November 4, 2014, the Marketplace issued a renewal notice that stated, based on the information from federal and state sources, it could not make a decision about whether or not your child qualified for financial help paying for her health coverage. You were instructed to update the information on your NY State of Health account by December 15, 2014 so that an appropriate decision could be made and, if you missed this deadline, the financial assistance your child was then getting might end.

As of December 15, 2014, your Marketplace account ([REDACTED]) had not been updated.

On December 22, 2014, the Marketplace issued a notice of eligibility redetermination that your child was no longer eligible for Medicaid, Child Health Plus (CHP), or tax credits and cost-sharing reductions, and could not enroll in a qualified health plan at full cost because you did not respond to the renewal notice and update your application within the required timeframe.

On December 27, 2014, the Marketplace issued a disenrollment notice that stated your child's CHP coverage with Excellus Blue Cross Blue Shield (BCBS) would end effective December 31, 2014.

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Based on your January 5, 2015 updated application, on January 6, 2015, the Marketplace issued a notice of eligibility redetermination that your child was eligible to enroll through CHP with a \$30.00 monthly premium, effective February 1, 2015. The notice also informed you that you needed to pick a CHP plan for your child.

On February 3, 2015, you spoke with the Marketplace and requested that your child's CHP coverage be backdated to January 1, 2015.

On February 4, 2015, the Marketplace issued an enrollment notice confirming your selection of Excellus BCBS as your child's CHP plan. The notice informed you that your child's coverage could start as early as March 1, 2015 and would start after you paid the first month's premium of \$30.00.

On August 17, 2015, you spoke to the Marketplace's Account Review Unit and appealed the enrollment confirmation notice insofar as it began your child's coverage under her CHP Plus plan on March 1, 2015 and your February 3, 2015 request to have her coverage start January 1, 2015 was still pending.

On December 29, 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 support the following findings of fact:

- 1) You testified, and the record reflects, that you are appealing only your child's 2015 enrollment start date in her CHP plan.
- 2) You testified that, after you received the November 4, 2014 renewal notice, and before December 20, 2014, you accessed your Marketplace account online and completed and submitted an application to recertify your child for CHP in 2015 in the same CHP plan, Excellus BCBS, that she had in 2014.
- 3) According to a January 5, 2015 recorded telephone conversation with a Marketplace supervisor that you requested the Hearing Officer listen to, the supervisor acknowledged that you had created a new account in November 2014 (██████████), which the supervisor stated was not activated by the system because it was duplicative and the system will not activate duplicate accounts.
- 4) You testified and that January 5, 2015 recorded telephone conversation confirms that, in November 2014, you submitted the duplicate application and selected the same CHP plan to continue in 2015 for your child. You also testified that you did

not receive any reply from the Marketplace to inform you that the application was duplicative and would not be activated.

- 5) You testified that in December 2014 you received a premium billing statement and paid the first month's premium for January 2015 expecting your child's coverage to take effect January 1, 2015, without a gap in coverage.
- 6) You testified that when you learned that there was a problem with your child's coverage on December 22, 2014, you contacted the Marketplace. The duplicate Marketplace account in your name ([REDACTED]) confirms that you accessed that account on December 22, 2014.
- 7) According to your Marketplace account and your testimony, you again contacted the Marketplace on January 5, 2015 and your application was updated to include your household income. This was confirmed by a recorded telephone conversation on January 5, 2015 that you had with a Marketplace representative.
- 8) Also that same day, the Marketplace prepared a preliminary redetermination regarding your child's eligibility to enroll through CHP. According to the corresponding notice of eligibility redetermination issued on January 6, 2015, her CHP eligibility was effective February 1, 2015. This, too, was confirmed by a recorded telephone conversation on January 5, 2015 that you had with the Marketplace representative.
- 9) You testified that on that same day, with the assistance of the Marketplace representative, you selected the same Excellus BCBS CHP Plan for 2015 that your child had in 2014, with a February 1, 2015 start date.
- 10) You testified that you your child needed immediate medical attention so you took her to a dental appointment in January 2015.
- 11) You testified that, believing your child had been enrolled on January 5, 2015 in a CHP plan, with a February 1, 2015 start date, you also took her to a medical appointment in February 2015 and only learned afterward that her coverage had not been activated for that month.
- 12) Since her coverage was actually not in effect these months, the medical bills of \$740.00 for treatment and care she received were denied and you are now liable for these expenses.
- 13) You contacted the Marketplace again on February 3, 2015, in an effort to again straighten out the enrollment of your child in her CHP plan. According to your Marketplace account, that same day the Marketplace enrolled your child through an Excellus BCBS CHP plan with an effective start date of March 1, 2015.

- 14) According to your Marketplace account, your child's enrollment in Excellus BCBS was again processed on April 22, 2015, and made effective March 1, 2015.
- 15) According to your Marketplace account and your testimony, on August 17, 2015, you renewed your request to have your child's CHP coverage backdated to January 1, 2015, because your February 3, 2015 request to do so had not been processed and was still pending.
- 16) You testified that you want your child's CHP coverage to be backdated to January 1, 2015, because the renewal application you completed in the duplicate account and the CHP plan selection you made were timely and should be honored.

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

Applicable Law and Regulations

De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "*De novo review* means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

The Marketplace is required to provide "timely written notice to an applicant of any eligibility determination" made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

Child Health Plus – Period of Eligibility

The "period of eligibility" for CHP is "that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date," unless the CHP premiums are not

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timely paid or child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law § 2510(6)).

Child Health Plus - Redetermination of Eligibility

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

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the information by which the Marketplace will use to redetermine a qualified individual's eligibility for that year (45 CFR § 155.335(c)(3)). The notice must allow a reasonable amount of time for the qualified individual to respond and for the Marketplace to implement any changes that the individual has elected (45 CFR § 155.335(d)(2)(ii)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(h)(i)). The Marketplace must ensure this redetermination is effective on the first day of the coverage year (45 CFR § 155.335(i)).

Child Health Plus – Enrollment Start Date

“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)).

In New York State, Child Health Plus benefits are furnished “By the first day of the month after the application is received if prior to the 15th of the month or the first day after the subsequent month if after the 15th of the month” (Selection made on Form CS 18, Separate Child Health Insurance Program Non-Financial Eligibility – Citizenship. Sections: 2105(c)(9) and 2107(e)(1)(J) of the SSA and 42 CFR 457.320(b)(6), (c) and (d)).

Legal Analysis

The issue is whether the Marketplace properly determined that your child's enrollment in her Child Health Plus plan was effective March 1, 2015 and not January 1, 2015.

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Initially, as to the timeliness of the Marketplace's determination regarding your request to backdate your child's CHP coverage start date to January 1, 2015, the record indicates that you contacted the Marketplace on February 3, 2015 and your child's enrollment was added with an effective date of March 1, 2015. The record also indicates that, on that same date, you requested that her coverage be backdated to January 1, 2015.

The record further reflects that, on August 17, 2015, you spoke with the Marketplace's Account Review Unit and renewed your February 3, 2015 request that your child's CHP coverage be backdated to January 1, 2015. We note that there were no enrollment notices issued following your December 22, 2014 backdate request. Nor was an enrollment notice issued on or after January 5, 2015 when you next requested that your child's enrollment be added. Further, we note that the record does not contain a notice of eligibility determination or redetermination on the issue of backdating your child's coverage to January 1, 2015, and the record reflects that this request has not yet been processed. However, the record does contain an August 18, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issues on appeal as "Request to backdate coverage sent 02/03/2015 still pending."

In this particular case, the lack a notice of eligibility redetermination on the issue of your backdate request does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the August 17, 2015 notice, which acknowledges your February 3, 2015 request to backdate your child's CHP plan was still pending, permits an inference that the Marketplace has not timely acted on your request. There being no plausible reason for the undue delay and since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility redetermination had it been issued. Further, because of the undue delay and in the interest of justice, the Appeals Unit issues this decision the merits.

Children enrolled in CHP are generally entitled to a 12 month period of eligibility. In your case, the record reflects that your child was enrolled in an Excellus BCBS CHP plan from January 1, 2014 to December 31, 2014.

Generally, the Marketplace must redetermine a child's eligibility for CHP once every twelve months without requiring information from the account holder if able to do so based on reliable information contained in the account or other more current information available to the agency. The Marketplace's November 4, 2014 renewal notice stated that there was not enough information to determine whether your child was eligible for financial assistance for health insurance coverage in 2015, and that you needed to supply additional information by December 15, 2014 or her eligibility for financial assistance and to enroll in a health plan might end.

Because there was no timely response to this notice in your active Marketplace account, your child was terminated from her CHP plan effective December 31, 2014, after the then effective 12 month period of CHP eligibility had ended. Also, because your active Marketplace account did not reflect that you had responded to this notice, the Marketplace was unable to verify your household's income and it was required to determine your child's eligibility without verification of your household's income. As a result, the Marketplace properly determined that your child was not eligible for financial assistance and could not enroll in a qualified health plan through NY State of Health, effective January 1, 2015, because you did not provide the information requested by the Marketplace.

However, you credibly testified that you accessed and submitted a Marketplace application in November 2014, which was corroborated by a Marketplace supervisor in the recorded telephone call on January 5, 2015. Yet, according to the Marketplace supervisor, that application was duplicative and, therefore, not activated by the Marketplace's system. You credibly testified that you were not informed that there was a problem with that application and, on December 22, 2014, attempted to correct it, as reflected in that duplicative Marketplace account. Again, you credibly testified that you were not informed that the duplicate account could not be activated.

We further note that the application in your existing Marketplace account was updated on January 5, 2015 with the assistance of a Marketplace representative and your selection of Excellus BCBS was confirmed during that telephone conversation. This activity was confirmed by the recorded telephone conversation you had with a Marketplace representative that date and the Marketplace's notice of eligibility redetermination issued on January 6, 2015, which indicated that your child was eligible to enroll in CHP effective February 1, 2015. However, no corresponding enrollment notice was generated.

Ordinarily, in New York State, consistent with federal regulation, if an application for CHP insurance coverage is received before the 15th of the month, benefits are provided on the first day of the second following month and, if received after the 15th of the month, benefits are provided the second following month.

However, under the circumstances and given the series of events in your case, we find that you timely submitted your child's application in November 2014 to renew her CHP eligibility and plan for 2015, which was corroborated by a Marketplace supervisor on a recorded telephone conversation on January 5, 2015. Notwithstanding additional problems with your Marketplace account and your child's enrollment being process, we find that her effective date of coverage should have been January 1, 2015.

Therefore, the February 4, 2015 enrollment notice is MODIFIED to state that your child's enrollment in Excellus BCBS is effective January 1, 2015 and not March 1, 2015.

Accordingly, your case is RETURNED to the Marketplace to ensure that your child's enrollment in her CHP plan, Excellus BCBS, is made effective January 1, 2015, and to issue a notice to that effect.

You will be responsible for premium payments, if any are due, for the months of January 2015 and February 2015.

After the Marketplace has confirmed your child's January 1, 2015 enrollment date and premiums are paid, you may process your claims with your child's CHP plan.

Decision

The February 4, 2015 enrollment notice is MODIFIED to state that your child's enrollment in Excellus BCBS is effective January 1, 2015 and not March 1, 2015.

Your case is RETURNED to the Marketplace to ensure that your child's enrollment in her CHP plan, Excellus BCBS, is made effective January 1, 2015, and to issue a notice to this effect.

Effective Date of this Decision: January 14, 2016

How this Decision Affects Your Eligibility

This decision does not change your child's eligibility for CHP or your monthly premium contribution of \$30.00.

It does change the effective date of your child's CHP plan to January 1, 2015.

Your case is being RETURNED to the Marketplace to effectuate your child's CHP coverage date as of January 1, 2015. The Marketplace will issue a notice to this effect.

You will be responsible for premium payments, if any are due, for the months of January 2015 and February 2015.

After the Marketplace has confirmed your child's January 1, 2015 enrollment date and premiums are paid or credits applied, you may process your claims with your child's CHP plan.

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:
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- By fax: 1-855-900-5557

Summary

The February 4, 2015 enrollment notice is MODIFIED to state that your child's enrollment in Excellus BCBS is effective January 1, 2015 and not March 1, 2015.

Your case is RETURNED to the Marketplace to effectuate your child's enrollment in her CHP plan, Excellus BCBS, as of January 1, 2015, and to issue a notice to this effect.

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This decision does not change your child's eligibility for CHP or your monthly premium contribution of \$30.00.

It does change the effective date of your child's CHP plan to January 1, 2015.

Your case is being RETURNED to the Marketplace to effectuate your child's CHP coverage date as of January 1, 2015. The Marketplace will issue a notice to this effect.

You will be responsible for premium payments, if any are due, for the months of January 2015 and February 2015.

After the Marketplace has confirmed your child's January 1, 2015 enrollment date and premiums are paid or credits applied, you may process your claims with your child's CHP plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

