



AC0003241969
STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: February 12, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004691

[REDACTED]

Dear [REDACTED],

On December 9, 2015, you appeared by telephone at a hearing on the NY State of Health's September 11, 2014 enrollment 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).

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

Decision

Decision Date: February 12, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004691

[REDACTED]

Issue

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

Did the Marketplace properly determine that your newborn child did not have health insurance coverage as of [REDACTED], his date of birth?

Procedural History

On July 15, 2014 the Marketplace issued an eligibility determination notice stating that you were eligible to enroll in a qualified health plan without a subsidy through the Marketplace.

Also on July 15, 2014 the Marketplace issued an enrollment confirmation notice stating that you were enrolled in North Shore-LIJ CareConnect Platinum EPO (North Shore) and that your coverage could start as early as August 1, 2014 if you pay your first month's premium.

On September 11, 2014 the Marketplace issued an eligibility determination stating that your child was presumptively eligible to enroll in Child Health Plus at full cost.

Also on September 11, 2014 the Marketplace issued an enrollment confirmation notice stating your child was enrolled in a Child Health Plus plan that could start as early as October 1, 2014 if you pay the first month's premium.

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On September 14, 2015, after multiple phone calls to the Marketplace, you spoke with the Marketplace's Account Review Unit and appealed the start date of coverage for your newborn child because he needed coverage as of his date of birth, on [REDACTED].

On December 9, 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 prior to your child being born you called the Marketplace to switch health plans so that you and your child would be covered.
- 2) The record reflects that on July 2, 2014 complaint # [REDACTED] was filed with the Marketplace on your behalf to assist you with enrolling in a plan that would cover your delivery and delivery doctor.
- 3) You testified that you called the Marketplace and your health plan prior to your child being born to ensure that your child would have coverage when he is born. You testified that you were told you that the plan would cover your child for the first 30 days.
- 4) You testified, and the record reflects, that your child was born on [REDACTED], [REDACTED].
- 5) You testified that you called the Marketplace in September to add your child to your Marketplace account. You testified that you requested that your child be added to your health plan, North Shore, but you were told that he was eligible for Child Health Plus so you should enroll him in that plan.
- 6) On September 10, 2014 your child was added to your Marketplace account. That day, he was enrolled into a Child Health Plus plan.
- 7) You testified that your Doctor contacted you several months after your child's birth and told you that your health plan was not covering the bills for your child because he was not covered by your plan.
- 8) The record reflects that on February 5, 2015 complaint # [REDACTED] was filed with the Marketplace on your behalf to add your child to your North Shore health plan from the date of his birth until his Child Health Plus plan started on October 1, 2014. A Marketplace representative resolved the complaint by denying your

request to enroll your child because you had 60 days from the date of your child's birth to add him to your plan and you did not do so.

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

Applicable Law and Regulations

Appeal Timeliness

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR 155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

Child Health Plus Effective Date

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 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), NY Social Services 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.

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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.

Newborn Child – Effective Date of Coverage

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

In addition, there are special effective dates in the case of birth, adoption, placement for adoption, or placement in foster care of a child for Marketplace Exchanges. The Marketplace must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, or it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following the date of birth, adoption, placement for adoption, or placement in foster care (45 CFR §155.420(b)(2); NYS Insurance Law § 4305). The Marketplace has elected to make the effective date the first day of the month of birth.

If the Exchange permits the qualified individual or enrollee to elect a coverage effective date of either the first of the month following the date of birth, adoption, placement for adoption or placement in foster care, the Exchange must ensure coverage is effective on the date duly selected by the qualified individual or enrollee (45 CFR §155.420(b)(2)).

Legal Analysis

You enrolled your child into a Child Health Plus plan on September 10, 2014, and the Marketplace made a preliminary determination that same day. The Marketplace issued its written notice of enrollment confirmation on September 11, 2014 stating that your child's plan was effective October 1, 2014.

According to the credible evidence in the record, you did not submit an appeal request until September 14, 2015, which is more than 60 days after September 11, 2014 and, therefore, after the period for a valid appeal had expired. Ordinarily, this would result in there being no valid appeal of the September 10, 2014 eligibility redetermination and your appeal would be dismissed. However, you are appealing your son not having coverage from the date of his birth, which was verbally denied by the Marketplace

according to a February 5, 2015 complaint (# [REDACTED]). The record reflects that you never received a written determination based on the complaint you filed.

Although the Marketplace did not issue a timely notice of eligibility determination with respect to your child's eligibility to enroll in your health plan as of his date of birth, this does not prevent the Appeals Unit from reaching the merits of your case on your September 14, 2015 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews of Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

Therefore, the issue under review is whether the Marketplace properly determined that your newborn child did not have health insurance coverage as of [REDACTED] his date of birth.

You testified, and the record reflects, that your child was born on [REDACTED]. On September 10, 2014 your child was added to your Marketplace account. That day, he was enrolled into a Child Health Plus plan.

On September 11, 2014 the Marketplace issued an enrollment confirmation notice stating your child was enrolled in a Child Health Plus plan that could start as early as October 1, 2014 if you pay the first month's premium.

In New York State if an application for insurance coverage is received through the Marketplace before the 15th of the month, benefits are provided on the first day of the next month. If an application is received after the 15th of the month, health plan benefits are provided on the first day of the second subsequent month. This rule applies to Qualified Health Plans, Medicaid Managed Care plans, and Child Health Plus plans.

However, special exceptions have been made for newborns seeking coverage through Medicaid or Qualified Health Plans as of the newborn's date of birth. In both cases, newborns are permitted to enroll in coverage that is generally guaranteed to begin as of their date of birth. According to the current laws, regulations, and policies, there is no such exception for newborns seeking enrollment in Child Health Plus plans.

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 Child Health Plus insurance providers to provide coverage as of date of birth for newborns who do not have coverage elsewhere.

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However, the Marketplace allows newborn children to be added to their parent's qualified health plan as of their date of birth if the parent's give notice to the Marketplace within 60 days of their child's birth that they wish to do so.

You testified that prior to your child being born you called the Marketplace to switch health plan plans so that you and your child would be covered. The record confirms that on July 2, 2014 complaint # [REDACTED] was filed with the Marketplace on your behalf to assist you with enrolling in a plan that would cover your delivery and delivery doctor.

You testified that you called your health plan (North Shore) and the Marketplace prior to your child being born to ensure that your child would have coverage when he is born. You testified that you were told that your North Shore plan would cover your child for the first 30 days after his birth.

You credibly testified that you called the Marketplace in September and requested that your child be added to your North Shore health plan but you were told that he was eligible for Child Health Plus so you should enroll him in that plan. On September 10, 2014 your child was enrolled in a Child Health Plus plan but that plan was not effective until October 1, 2014.

The record reflects that you clearly expressed your need for your son to be covered as of the date of his birth to the Marketplace on several occasions and the Marketplace erred in not enrolling your son into your North Shore plan as you requested. Furthermore, as evidenced by the complaints you filed and the timeline of events in your Marketplace account, you clearly contacted the Marketplace within the 60 day time frame seeking coverage for your child as of the date of his birth.

Therefore, your case is RETURNED to the Marketplace to enroll your child into your North Shore plan as of the date of this birth continuing until his own Child Health Plus plan became effective on October 1, 2014.

Decision

The September 11, 2014 enrollment confirmation notice is AFFIRMED.

Your case is being RETURNED to the Marketplace so that your child may enroll into your North Shore health plan as of the date of his birth through October 1, 2014.

Effective Date of this Decision: February 12, 2016

How this Decision Affects Your Eligibility

Your case is being sent back to the Marketplace to facilitate enrolling your child into your North Shore health plan as of the date of this birth due to the Marketplace's error in not following the request you made in September 2014.

This decision has no effect on his Child Health Plus plan that became effective on October 1, 2014.

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 September 11, 2014 enrollment confirmation notice is AFFIRMED.

Your case is being RETURNED to the Marketplace so that your child may enroll into your North Shore health plan as of the date of his birth through October 1, 2014.

Your case is being sent back to the Marketplace to facilitate enrolling your child into your North Shore health plan as of the date of this birth due to the Marketplace's error in not following the request you made in September 2014.

This decision has no effect on his Child Health Plus plan that became effective on October 1, 2014.

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:

