



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

Notice of Decision

Decision Date: February 8, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005047

[REDACTED]

Dear [REDACTED],

On January 20, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 6, 2015 enrollment confirmation notice regarding your children.

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).

This page intentionally left blank.



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

Decision

Decision Date: February 8, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005047

[REDACTED]

Issue

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

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

Procedural History

On January 14, 2015, the Marketplace received your updated application for health insurance for your two children, then 3 years old and under 1 year of age respectively.

On January 15, 2015, the Marketplace issued a notice of eligibility redetermination that stated your two children were conditionally eligible to enroll through Child Health Plus (CHP) with a \$15.00 premium per child per month, effective February 1, 2015. The notice further stated that your two children were temporarily eligible for CHP because the Marketplace was unable to confirm the total income information on your application of \$57,749.40, with state and federal data sources. The notice instructed you to submit documentation confirming household income for the both children before March 17, 2015.

On January 29, 2015, the Marketplace issued a disenrollment notice that stated, based on your request, your two children were disenrolled from their CHP plan through Fidelis Care, effective January 31, 2015.

That same day, the Marketplace issued a notice of eligibility redetermination that stated your two children were conditionally eligible to enroll through CHP with a \$15.00

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).

premium per child per month, effective March 1, 2015. The notice again stated that your two children were temporarily eligible for CHP because the Marketplace was unable to confirm the total income information on your application of \$57,749.40, with state and federal data sources. The notice instructed you to submit documentation confirming household income for the both children before March 31, 2015.

On February 6, 2015, the Marketplace issued an enrollment notice confirming that your two children were enrolled in a CHP plan with Fidelis Care and coverage could start as early as March 1, 2015, provided you paid the first month's premium.

On September 5, 2015, the Marketplace issued a notice of eligibility redetermination that stated your two children were eligible to enroll in CHP for a cost of \$30.00 per child per month, effective October 1, 2015.

That same day, the Marketplace issued an enrollment notice confirming your two children were enrolled in a CHP plan with Excellus BCBS, your monthly premium responsibility totaling \$60.00, and a start date of October 1, 2015, provided you paid the first month's premium.

On October 28, 2015, you renewed your request in an appeal to have the Marketplace backdate coverage for your children to February 1, 2015.

On January 20, 2016, 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 children's initial 2015 enrollment start date in their CHP plan.
- 2) According to the October 28, 2015 entry on the Appeal Summary prepared by the Marketplace and dated December 9, 2015:

Appellant [] contacted marketplace due to a share point request being withdrawn. The request was put in on 2/23/2015. The Appellant's child was not able to enroll into a plan due to a technical issue, which a defect was filed for (NYCSCMDT-6912) on 1/14/2015. The Appellant contacted the marketplace on 1/28/15 to see status of defect, and the agent that assisted the appellant was able to submit the application, and choose a plan for the child with a 3/1/15 effective date. The Appellant had a SharePoint request submitted to have their child's coverage backdated to 2/1/15, due to the technical issue that prevented them from enrolling on

1/14/2015. The SharePoint request has not been approved as of yet. The appellant went in to application on 9/3/2015 and changed their child's plan to Excellus. The Share Point request was withdrawn on 10/20/15 due to this change. The appellant is appealing to have the SharePoint request resubmitted and approved for 2/1/15 for their child.

- 3) You testified that you tried to enroll your children before the cut-off date of January 15, 2015 for coverage in a CHP plan for a start date of February 1, 2015, and got an error message when trying to select a CHP plan.
- 4) According to your Marketplace account, and the above-noted entry in the Appeal Summary in Fact # 2, you attempted to select a CHP plan for your two children on January 14, 2015.
- 5) You testified that the Marketplace admitted there was a technical defect preventing you from being able to enroll your children by the cut-off date of January 15, 2015, and they would get the defect fixed and backdate your children's coverage in their CHP plan to February 1, 2015, which has not yet occurred.
- 6) You testified that you incurred medical expenses for your younger child in February 2015, that you are now being held personally responsible to pay.
- 7) You testified that you are still seeking to have your younger child's CHP plan start date backdated to February 1, 2015.

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 – Enrollment Start Date

“A State must specify a method for determining the effective date of eligibility for [Child Health Plus (CHP)], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between [CHP] 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, CHP 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 children’s enrollment in their Child Health Plus plan was effective March 1, 2015 and not February 1, 2015.

The record reflects that, on January 14, 2015, you attempted to enroll your children in a CHP plan and got an error message, which the Marketplace acknowledged was a defect on your account. In addition, the credible evidence of record demonstrates that a SharePoint defect request was filed on January 14, 2015 by the Marketplace to correct the defect; however, it was closed on October 20, 2015, instead of being acted upon, because you had selected a different CHP plan for your children, effective October 1, 2015. Also, the record reflects that on October 28, 2015, you renewed your request to have the SharePoint request resubmitted and your younger child’s CHP enrollment backdated to February 1, 2015, which resulted in an appeal being processed and no backdate approval or denial being determined or corresponding notices being issued. The record, however, does contain an October 29, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issues on appeal as “Request to backdate coverage to 02/01/2015 through Fidelis” for both children.

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 October 29, 2015 notice, which acknowledges your request to have coverage for your children backdated to February 1, 2015 and the October 28, 2015 entry on the Appeal Summary, which corroborates the January 14, 2015 date in which a SharePoint defect request was filed and then closed without resolution, permit an inference that the Marketplace has not timely acted on your backdate 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 a denial to backdate your children's CHP coverage to February 1, 2015 had it been reached and/or a corresponding notice issued. Therefore, the Appeals Unit issues this decision the merits.

The credible evidence of record reflects that you accessed your Marketplace account on January 14, 2015 and encountered technical difficulties that prevented you from selecting a CHP plan for your children that day.

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 following month and, if received after the 15th of the month, benefits are provided the second following month.

Despite your efforts to enroll your children in the CHP plan as attempted on January 14, 2015, you were unable to select a plan so as to ensure a February 1, 2015 CHP start date for your children. The record supports that the delay was due to technical difficulties beyond your control that were not timely rectified. Further, no plausible reason has been provided to indicate why your backdate request was not otherwise approved. We note that, had you been able to select a plan on January 14, 2015, your children's CHP start plan with Fidelis Care would have been effective February 1, 2015.

Under these circumstances, therefore, the February 6, 2015 enrollment notice is MODIFIED to state that your children's enrollment in Fidelis Care is effective February 1, 2015 and not March 1, 2015.

Accordingly, your case is RETURNED to the Marketplace to effectuate your children's enrollment in their CHP plan then in effect with Fidelis Care as of February 1, 2015, and to notify you accordingly.

You will be responsible for premium payments for your children, if any are due, for the month of February 2015.

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

Decision

The February 6, 2015 enrollment notice is MODIFIED to state that your children's enrollment in Fidelis Care is effective February 1, 2015 and not March 1, 2015.

Your case is RETURNED to the Marketplace to effectuate your children's enrollment in their CHP plan then in effect with Fidelis Care, effective February 1, 2015, and to notify you accordingly.

This decision does not affect any subsequent determinations issued by the Marketplace after February 6, 2015.

Effective Date of this Decision: February 8, 2016

How this Decision Affects Your Eligibility

This decision does not change your children's eligibility for CHP or your monthly premium contribution of \$15.00 per child as of February 1, 2015.

It does change the effective date of your children's CHP plan with Fidelis Care to February 1, 2015.

Your case is being RETURNED to the Marketplace to backdate your children's Fidelis Care CHP coverage start date to February 1, 2015. The Marketplace will notify you once this has been done.

You will be responsible for premium payments for both children, if any are due, for the month of February 2015.

After the Marketplace has confirmed your children's February 1, 2015 enrollment start date and the premiums are paid or credits applied, you may process your February 2015 claims with your children'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.

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).

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 February 6, 2015 enrollment notice is MODIFIED to state that your children's enrollment in Fidelis Care is effective February 1, 2015 and not March 1, 2015.

Your case is RETURNED to the Marketplace to effectuate your children's enrollment in their CHP plan then in effect with Fidelis Care, effective February 1, 2015, and to notify you accordingly.

This decision does not affect any subsequent determinations issued by the Marketplace after February 6, 2015.

This decision does not change your children's eligibility for CHP or your monthly premium contribution of \$15.00 per child as of February 1, 2015.

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).

It does change the effective date of your children's CHP plan with Fidelis Care to February 1, 2015.

Your case is being RETURNED to the Marketplace to backdate your children's Fidelis Care CHP coverage start date to February 1, 2015. The Marketplace will notify you once this has been done.

You will be responsible for premium payments for both children, if any are due, for the month of February 2015.

After the Marketplace has confirmed your children's February 1, 2015 enrollment start date and the premiums are paid or credits applied, you may process your February 2015 claims with your children'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:

