



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

Notice of Decision

Decision Date: April 29, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005903

[REDACTED]

Dear [REDACTED],

On March 17, 2016, your spouse appeared by telephone at a hearing on your appeal of NY State of Health's December 30, 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 and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations § 155.545.

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Decision Date: April 29, 2016

NY State of Health Account ID: [REDACTED]
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Issues

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

Did NY State of Health (NYSOH) properly determine that your family's enrollment in a qualified health plan, as well as the application of advance payments of the premium tax credit and eligibility for cost-sharing reductions, were effective February 1, 2016?

Did NYSOH properly determine that your daughter's eligibility for and enrollment in her Child Health Plus plan was effective February 1, 2016?

Procedural History

On December 4, 2014, NYSOH issued a notice of eligibility determination, based on your December 3, 2014 application, stating that you, your spouse, and your two older children were eligible for advance payment of the premium tax credit (APTC) and eligible for cost-sharing reductions (CSR), effective January 1, 2015. Your family was subsequently enrolled into a qualified health plan (QHP).

That same notice stated that your youngest child was eligible for Child Health Plus (CHP), effective January 1, 2015. Your child was subsequently enrolled in a CHP plan.

On October 24, 2015, NYSOH issued a notice stating that it was time to renew your family's coverage for health insurance. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether your family would qualify for financial help paying for health

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coverage, and that you needed to update your account by December 15, 2015 or your family might lose the financial assistance they were currently receiving.

No updates were made to your account by December 15, 2015.

On December 22, 2015, NYSOH issued an eligibility determination notice stating that your youngest child was not eligible for Medicaid, CHP, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. Your child also could not enroll in a qualified health plan at full cost. This was because you had not responded to the renewal notice and had not completed the renewal within the required time frame. Your child's eligibility ended December 31, 2015.

That same day, NYSOH also issued an eligibility determination notice which stated that you, your spouse, and your two older children were eligible to purchase a QHP at full cost through NYSOH, effective January 1, 2016. The notice also stated that you and your family were not eligible for Medicaid, CHP, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance because you had not responded to the renewal notice and had not completed the renewal within the required time frame. Your family's eligibility ended December 31, 2015.

On December 24, 2015, NYSOH issued a disenrollment notice stating that your youngest daughter's enrollment in her CHP plan would end effective December 31, 2015 because you had not renewed her health insurance coverage.

On December 29, 2015, NYSOH received your household's updated applications for health insurance.

On December 30, 2015 NYSOH issued a notice of eligibility determination, based on your December 29, 2015 application, stating you, your spouse, and your two older children were newly eligible for APTC of up to \$743.00 per month, effective February 1, 2016, and newly eligible for CSR if you enrolled in a silver level QHP, effective February 1, 2016.

That same notice stated that your youngest child was eligible for CHP with a \$9.00 per month premium, effective February 1, 2016.

Also on December 30, 2015, NYSOH issued an enrollment confirmation notice, based on your plan selection on December 29, 2015, stating that you, your spouse, and your two older children were enrolled in a family, silver level QHP and that coverage would start on February 1, 2016.

That same enrollment confirmation notice stated that your youngest child was enrolled in a Child Health Plus plan, and that her coverage would start on February 1, 2016, based on your plan selection on December 29, 2015.

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On December 31, 2015, you spoke to NYSOH's Account Review Unit and appealed the start date of your family's QHP and your child's CHP plan, insofar as they did not begin on January 1, 2016.

On March 17, 2016, your spouse had a telephone hearing with a Hearing Officer from NYSOH'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) Your spouse testified, and the record reflects, that you receive all of your notices from NYSOH by electronic mail.
- 2) Your spouse testified that you have not changed your preferences as to whether you receive your notices electronically or by regular mail at any point in time.
- 3) During the hearing, your spouse testified that he did not recall receiving any electronic alerts regarding any notice in your NYSOH account telling you that you needed to update your application in order to renew your family's coverage.
- 4) Your spouse testified that the reason he knew he needed to update your NYSOH account was because he "keeps notes."
- 5) Your spouse testified that he was told by representatives from NYSOH, on two separate occasions, that, as long as your account was updated by December 31, 2015, your household would have coverage on January 1, 2016.
- 6) During the hearing, your spouse granted permission to the Hearing Officer to request and listen to phone records of his phone calls with NYSOH.
- 7) The record reflects that, between the period of November 1, 2015 and December 31, 2015, your spouse had three conversations with NYSOH. Two of these calls took place on December 29, 2015, and one took place on December 31, 2015
- 8) The recordings of these three conversations were listened to in their entirety by the Hearing Officer.

- 9) The following findings of fact are based on a review of your spouse's phone calls with NYSOH:
- a. The first representative your spouse spoke to on December 29, 2015 from NYSOH Contact Center stated he could "look into" whether your household's coverage could be backdated, but he stated that, as of the date of your spouse's phone call, your household's coverage would not start until February 1, 2016.
 - b. The two Account Review Unit representatives that your spouse subsequently spoke to on December 29, 2015 and December 31, 2015 also told him that your household's coverage would not start until February 1, 2016, and that they could not backdate the coverage to January 1, 2016.
 - c. On December 29 2015, your spouse told NYSOH Representative from the Account Review Unit that he did not get the renewal notice. However, later in the conversation, he stated that he had received the email alerting him to the renewal notice. He went on to say that the important thing was not whether he received an email, but that your family had ongoing medical needs.
 - d. On December 31, 2015, your spouse told the Account Review Unit representative that he did not renew your account until December 29, 2015 because he was told that he had to call by December 30, 2015 to get January 1, 2016 coverage. When the Account Review Unit told him that there was no record of any such call with NYSOH, he then stated that it was actually his health insurance plan and his youngest child's health insurance plan that he spoke with.
 - e. On December 31, 2015, the Account Review Unit representative your spouse spoke with told him that she could not backdate your household's coverage because she could only backdate coverage if NYSOH was at fault. Later in the conversation, your spouse stated "I never received any of your emails. What do you say about that? So you are at fault."
- 10) The record reflects that on December 29, 2015 NYSOH received your household's updated application for health insurance.
- 11) Your spouse testified that you are seeking for you, your spouse, and your two older children to be enrolled in your QHP as of January 1, 2016, and for your youngest daughter to be enrolled in her CHP plan as of January 1, 2016.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, when NYSOH conducts annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, NYSOH 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 Code of Federal Regulations (CFR) § 155.335(a), (b)).

NYSOH must send an annual renewal notice that contains the individual's projected eligibility for the upcoming year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information and projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Child Health Plus

The "period of eligibility" for Child Health Plus 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 timely paid, or the 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)).

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“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 following month (see State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant’s account (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you, your spouse, and your two older children were eligible for enrollment in your QHP, and eligible to have your APTC and CSR applied, effective February 1, 2016.

You, your spouse, and your two older children were found eligible for APTC and CSR effective January 1, 2015, and enrolled in a QHP effective January 1, 2015.

NYSOH must redetermine a qualified individual’s eligibility for health insurance and financial assistance to help pay for that health insurance annually. NYSOH must issue a renewal notice that contains the individual’s eligibility. If an individual does not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 24, 2015, NYSOH issued an annual renewal notice in your case. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether or not you qualify for financial help with paying for your health coverage. You were asked to update the

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information in your account by December 15, 2015 or the financial help you were receiving might end.

Because there was no timely response to this notice, your household's eligibility for financial assistance and your enrollment in your QHP was terminated effective December 31, 2015.

The effective date of coverage by a QHP is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment and select a plan between the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month. On December 29, 2015, your NYSOH account was updated. You, your spouse, and your two older children were found eligible for APTC and CSR, effective February 1, 2016, and were enrolled in a family, silver level QHP, effective February 1, 2016. Therefore, the February 1, 2016 start date for your household's coverage in your QHP was correct.

Your spouse testified, and the record reflects, that you elected to receive electronic alerts via email regarding notices from NYSOH. At the hearing, your spouse testified that he did not recall ever receiving a renewal notice from NYSOH.

However, review of the phone conversations that your spouse had with NYSOH reflect that, on December 29, 2015, he told a NYSOH representative that he had received an email regarding the renewal, but that the issue of whether he received an email was not important; rather, his family's health was the important thing. On December 31, 2015, after being informed by NYSOH representative that your household's coverage could not be backdated to January 1, 2016 because there was no indication that NYSOH was at fault, your spouse stated, "I never received any of your emails. What do you say about that? So you are at fault."

Further, your spouse testified at the hearing that he was informed during two different phone calls with NYSOH that, as long as he renewed by December 31, 2015, he would have January 1, 2016 coverage.

A review of the existing phone records associated with your account for November and December of 2015 revealed that your spouse had three phone calls with NYSOH during that time, and that none of the representatives he spoke with told him that he would receive January 1, 2016 coverage. Indeed, he informed the representative he spoke with on December 31, 2015 that it was actually the health insurance plans – both your plan and your daughter's CHP plan - that told him he would have January 1, 2016 coverage so long as he renewed by December 31, 2015.

Based on a review of your spouse's testimony and his phone conversations with NYSOH, his testimony regarding non-receipt of the October 24, 2015 renewal notice is inconsistent. The record is devoid of any record of phone conversations in which your spouse was told that your household's coverage could start on January 1, 2016 as long as your application was renewed by December 31, 2015, despite his sworn testimony at the hearing that such conversations occurred. As such, your spouse's testimony is not credible.

Therefore, NYSOH's December 30, 2015 eligibility determination, insofar as it states that you, your spouse, and your two older children are eligible for APTC and CSR, effective February 1, 2016, is AFFIRMED.

The December 30, 2015 enrollment confirmation notice, insofar as it states that your enrollment in your family, silver level QHP is effective February 1, 2016 is likewise AFFIRMED.

The second issue under review is whether NYSOH properly determined that your youngest child's eligibility for and enrollment in her Child Health Plus plan was effective February 1, 2016.

Your child was found eligible for Child Health Plus effective January 1, 2015

Generally, NYSOH must redetermine a qualified child's eligibility for Child Health Plus once every 12 months without requiring information from the individual, if it is able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's October 24, 2015 renewal notice stated that there was not enough information to determine whether your child was eligible to continue to receive financial assistance for health insurance, and that you needed to supply additional information by December 15, 2015, or any such financial assistance might end.

Because there was no timely response to this notice, your child was terminated from her Child Health Plus plan, effective December 31, 2015.

As your spouse's testimony regarding non-receipt of the October 24, 2015 renewal notice has been deemed to be not credible, your child's CHP plan coverage was properly terminated as of December 31, 2015, and the December 24, 2015 disenrollment notice terminating her coverage as of December 31, 2015 is AFFIRMED.

You first renewed your child's eligibility for financial assistance through NYSOH for the new coverage year on December 29, 2015, and you enrolled her in a plan on that same day. The State of New York has provided that a child's period of eligibility for CHP 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

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15th day of the month will be processed for the first day of the second following month.

Therefore, since your child's CHP application was received and her health plan selected on December 29, 2015, NYSOH properly determined that her CHP coverage and enrollment began on February 1, 2016. As such, the December 30, 2015 eligibility determination, insofar as it stated your child's CHP coverage was effective February 1, 2016, is AFFIRMED.

Likewise, the December 30, 2015 enrollment confirmation, insofar as it stated your child was enrolled in her CHP plan as of February 1, 2016, is AFFIRMED.

Decision

The December 24, 2015 disenrollment notice stating that your daughter was disenrolled from her CHP plan effective December 31, 2015 is AFFIRMED.

The December 30, 2015 eligibility determination is AFFIRMED.

The December 30, 2015 enrollment confirmation is AFFIRMED.

Effective Date of this Decision: April 29, 2016

How this Decision Affects Your Eligibility

You, your spouse, and your two older children were eligible for APTC and CSR, effective February 1, 2016.

Your youngest child was eligible for CHP, effective February 1, 2016.

Your household's enrollment in your QHP, and your youngest child's enrollment in her CHP plan, were effective February 1, 2016.

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

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must be done within four months 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 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):

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Summary

The December 24, 2015 disenrollment notice stating that your daughter was disenrolled from her CHP plan effective December 31, 2015 is AFFIRMED.

The December 30, 2015 eligibility determination is AFFIRMED.

The December 30, 2015 enrollment confirmation is AFFIRMED.

You, your spouse, and your two older children were eligible for APTC and CSR, effective February 1, 2016.

Your youngest child was eligible for CHP, effective February 1, 2016.

Your household's enrollment in your QHP, and your youngest child's enrollment in her CHP plan, were effective February 1, 2016.

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Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

