



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

Notice of Decision

Decision Date: July 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006125

[REDACTED]

Dear [REDACTED]

On April 28, 2016, you appeared by telephone at a hearing on the NY State of Health's determination to not enroll your newborn child in a qualified health plan effective your child's date of birth and NYSOH's failure to issue a timely financial assistance 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 at the top of this notice.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(b).

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Decision

Decision Date: July 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006125

[REDACTED]

Issues

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

Did the New York State of Health (NYSOH) fail to enroll your newborn child in a qualified health effective their date of birth?

Did NYSOH fail to provide you with a timely eligibility determination regarding you and your newborn child's application for financial assistance?

Procedural History

On December 9, 2014, NYSOH issued an enrollment notice confirming that you are enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care) and coverage could start as early as January 1, 2015.

On November 23, 2015, NYSOH issued a notice stating that your Fidelis Care coverage will end effective December 31, 2015, but you will be automatically renewed in the same plan for 2016.

On November 25, 2015 NYSOH issued an enrollment notice confirming that you are enrolled in Fidelis Care with a plan enrollment start date of January 1, 2016.

On December 31, 2015, you updated your NYSOH account to include your newborn child.

On January 1, 2016, the NYSOH issued an eligibility determination notice that states that your newborn child is conditionally eligible to enroll in a full-price qualified health

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plan effective as of February 1, 2016. The notice requested that you confirm your newborn child's eligibility by providing documentation regarding citizenship status and Social Security number by March 30, 2016.

On January 3, 2016, the NYSOH issued an enrollment notice confirming your newborn child's Fidelis Care coverage with a plan enrollment start date of January 1, 2016.

On January 11, 2016, your NYSOH account was updated and changed to a "Financial Assistance" application.

On January 11, 2016 you spoke to the NYSOH Account Review Unit and requested an appeal insofar as your newborn child being added to your qualified health plan effective their date of birth.

On January 11, 2016 you uploaded income documentation to your NYSOH account (Document [REDACTED]).

On January 12, 2016 NYSOH issued a notice stating that you and your child's January 11, 2016 application was reviewed but more information was needed to make a determination. The notice directed you to submit income documentation for your household by January 27, 2016 to confirm that the information you provided in your application is accurate.

On January 20, 2016 NYSOH issued a notice stating that you submitted documentation to resolve the inconsistency; however the documentation appears to insufficient to resolve the request. The notice stated that additional information was required to make sure we know your correct income.

On January 25, 2016 you uploaded income documentation to your NYSOH account (Document [REDACTED]; Document [REDACTED]; Document [REDACTED]).

On January 28, 2016 your NYSOH account was updated and changed to a "Non-Financial Assistance" application.

On January 29, 2016 NYSOH issued an eligibility determination notice that you were eligible and your child was conditionally eligible to purchase a qualified health plan at full cost through NYSOH, effective March 1, 2016. The notice directed you to confirm your child's eligibility by providing their Social Security number before April 27, 2016.

On April 28, 2016 you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing and the record was left open until May 26, 2016, to allow you to submit additional income documentation. You were requested to submit: (1) 2015 FORM 1040 U.S. Individual Income Tax Return; (2) record of business income and expenses for January, February and March 2016; and (3) earnings statements from your employers in 2016.

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On May 5, 2016 you faxed eighteen-pages of documents to NYSOH Appeals Unit. The documents included:

- (a) exhibit Cover Sheet (p. 1);
- (b) a statement that you are seeking to have your child's insurance backdated to their date of birth and a summary of pages four through eighteen (p. 2);
- (c) a copy of the March 25, 2016 Notice of Telephone Hearing with the NYSOH Appeals Unit (p. 3);
- (d) a printout of your [REDACTED] Account Activity from February 4, 2016 through May 2, 2016 (pgs. 4-5);
- (e) illegible documents that appear to be an accounting of your income and expenses of your private practice (pgs. 6-12);
- (f) 2015 FORM 1040 U.S. Individual Income Tax Return (pgs. 13-18).

These documents have been entered into the record collectively as "Appellant Exhibit A." The record is now complete and closed.

Findings of Fact

A review of the record supports the following findings of fact.

- 1) According to your NYSOH account, you were enrolled in Fidelis Care ST INN Pediatric Dental Dep25 January 1, 2015 through December 31, 2015 and were re-enrolled in that plan effective January 1, 2016.
- 2) Your newborn child was born on [REDACTED], 2015.
- 3) According to your NYSOH account, on December 31, 2015 you updated your account and added your newborn child to your application.
- 4) According to your NYSOH account, you enrolled your newborn child in your qualified health plan on January 2, 2016.
- 5) According to the "Appeal Summary" in the Evidence Packet that was created in anticipation of your appeal, on January 11, 2016, you requested an appeal to backdate your child's coverage to January 1, 2016 (Incident # [REDACTED]).
- 6) According to the "Enrollment History" in your NYSOH account, your child was enrolled in Fidelis Care with a start date of February 1, 2016.
- 7) You testified that you incurred approximately \$6,000.00 in medical bills from the month of December 2015.
- 8) You testified that you are seeking to have your newborn child's coverage through your qualified health plan to be effective for the month of December 2015.

- 9) According to your NYSOH account, on January 11, 2016 your NYSOH was changed to a "Financial Assistance" application.
- 10) According to your January 11, 2016 NYSOH application, you plan on filing a 2016 federal income tax return with the tax filing status of single and expect to claim your newborn child as your only dependent on that return.
- 11) According to your January 11, 2016 NYSOH application, you attested to an expected yearly income of \$6,000.00 for 2016, based on receiving \$500.00 in interest on a monthly basis.
- 12) On January 11, 2016, income documentation was uploaded to your NYSOH account (Document [REDACTED]). You uploaded:
 - (a) 2014 Tax Reporting Statement from [REDACTED] showing 2014 Dividends and Distributions of \$4,382.86 and 2014 Interest Income of \$1.01;
 - (b) 2014 1099 Consolidated Tax Statement from [REDACTED] showing 2014 Dividends and Distributions of \$14,573.77 and 2014 Interest Income of \$7.60.
- 13) On January 20, 2016 NYSOH issued a notice stating that additional information was requested to confirm your eligibility for health insurance through NYSOH. However, the documentation appears to be insufficient to resolve the request. The notice stated that additional proof of income is required to confirm your eligibility.
- 14) On January 25, 2016, income documentation was uploaded to your NYSOH account (Document [REDACTED] Document [REDACTED]; Document [REDACTED]). You uploaded:
 - (a) 2014 FORM 1065 U.S. Return of Partnership Income;
 - (b) 2014 W-2 Wage and Tax Statements for [REDACTED] and [REDACTED]; and
 - (c) 2014 1065 Tax Return Comparison for 2012, 2013 and 2014.
- 15) According to your NYSOH account, on January 28, 2016 you changed your application from a "Financial Assistance" to a "Non-Financial Assistance" application.
- 16) As of the date of your April 28, 2016 hearing, your NYSOH application is designated as "Non-Financial Assistance."
- 17) On May 5, 2016 you faxed income documentation to NYSOH Appeals Unit. You faxed:

- (a) a printout of your [REDACTED] Account Activity from February 4, 2016 through May 2, 2016 to show your income from your employers (Appellant Ex. A pgs. 2, 4-5);
- (b) illegible documents were submitted to show your income and expenses of your private practice for February, March and April 2016 (Appellant Ex. A pgs. 2, 6-12);
- (c) 2015 FORM 1040 U.S. Individual Income Tax Return showing an adjusted gross income of \$160,220.00 in 2015 (Appellant Ex. A pgs. 13-18).

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).

The NYSOH 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)).

Special Enrollment Period- Newborn Child:

The NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another plan. One circumstance under which a special enrollment can be authorized is when the qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care ((45 CFR § 155.420(d)(2)(i)).

Special Enrollment Effective Date:

In the case of birth, adoption, placement for adoption, or placement in foster care of a child for Marketplace Exchanges. The NYSOH 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

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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)).

If the NYSOH 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 NYSOH must ensure coverage is effective on the date duly selected by the qualified individual or enrollee (45 CFR § 155.420(b)(2)).

Income Verification Process

For all individuals whose income is needed to calculate the household's eligibility, the NYSOH must request data that will allow the Marketplace to verify the household's income (45 CFR §155.320(c)(1)(i)).

If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f)(1)).

Financial Eligibility Determinations

NYSOH must permit an applicant to request only an eligibility determination for enrollment in a qualified health plan. If an applicant elects a financial assistance determination, NYSOH may not permit an applicant to request an eligibility determination for less than all insurance affordability programs (45 CFR §155.310(b)).

NYSOH must verify information for eligibility for an insurance affordability program only for an applicant or tax filer who requested an eligibility determination for insurance affordability programs (45 CFR §155.320(a)).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term "modified adjusted gross income" means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

"Adjusted gross income" means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, and deductions attributable to royalties (26 USC § 62(a)).

Legal Analysis

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The first issue under review is whether NYSOH failed to enroll your newborn child in a qualified health effective their date of birth.

The record does not contain a notice of eligibility determination or redetermination regarding the issue of whether or not your newborn child is eligible to enroll in a qualified health plan effective their date of birth. It does, however, contain within the "Appeal Summary" in the Evidence Packet that was created in anticipation of your appeal, that you are appealing to have your child's coverage backdated.

The lack of a notice of eligibility determination on the issue of QHP enrollment does not prevent the Appeals Unit from reaching the merits of the case. 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 Appeal Summary, which acknowledges the appeal on the issue of your newborn's QHP enrollment, permits an inference that the Marketplace did deny your request that your newborn child be enrolled in a QHP for December 2015. 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 determination had it been issued.

The NYSOH must provide special enrollment periods during which qualified individuals may enroll in qualified health plans and enrollees may change qualified health plans. The Marketplace must allow for a special enrollment period when the qualified individual gains a dependent through birth.

According to the record, on January 2, 2016, you added your newborn child to your qualified health plan. Furthermore, you contacted the NYSOH's Customer Service and expressly stated that you wanted to add your newborn child to your qualified health plan for the month of December 2015.

When an enrollee gains a dependent through birth, the NYSOH must ensure that coverage is effective for a qualified individual or enrollee on the date of birth or permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following the date of birth.

The record shows that you contacted the Marketplace on January 2, 2016 and January 11, 2016 with the purpose to enroll your newborn child in your QHP effective their date of birth, [REDACTED] 2015.

Therefore, the January 3, 2016 NYSOH enrollment notice confirming your newborn child's Fidelis Care coverage with a plan enrollment start date of January 1, 2016 is MODIFIED to stated that the coverage is effective December [REDACTED] 2015.

The second issue is whether NYSOH failed to provide you with a timely eligibility determination regarding you and your newborn child's application for financial assistance.

The record supports that you changed your NYSOH account from a "Non-Financial Assistance to a "Financial Assistance" application on January 11, 2016. On that application, you attested to filing a 2016 federal income tax return, with the tax filing status of single, and expected to claim your newborn child as your only dependent. Furthermore you attested to an expected 2016 annual household income of \$6,000.00, based on receiving \$500.00 of interest per month.

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income.

Based on your January 11, 2016 application, NYSOH issued a notice stating that you and your child's application was reviewed but more information was needed to make a determination. The notice directed you to submit income documentation to confirm that the information you provided in your application was accurate. The "Documentation List" on this notice lists records of earnings and expenses to document self-employment income (for the last 3 months), and paycheck stubs or a letter from employer on a company letterhead, signed and dated to document wages (for the last 4 weeks).

On January 11, 2016, you uploaded 2014 Tax Reporting Statements from [REDACTED] and [REDACTED] indicating combined 2014 Dividends and Distributions of \$18,956.63 and 2014 Interest Income of \$8.61 to your NYSOH account.

Since the record supports that interest income was not your only source of income in 2014 and 2015, and is not your only source of income in 2016, you did not provide sufficient documentation as of January 11, 2016.

If NYSOH cannot verify the income information required to determine eligibility, they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence.

On January 20, 2016, NYSOH issued a notice stating that the documentation you submitted appears to be insufficient to resolve the request. The notice stated that additional proof of income is required to confirm your eligibility.

On January 25, 2016, you uploaded additional income documentation to your NYSOH account. You uploaded: 2014 FORM 1065 U.S. Return of Partnership Income; 2014 W-2 Wage and Tax Statements for [REDACTED] and [REDACTED]; and 2014 1065 Tax Return Comparison for 2012, 2013 and 2014 (Documents [REDACTED]; Document [REDACTED]; Document [REDACTED]).

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NYSOH must permit an applicant to request only an eligibility determination for enrollment in a qualified health plan. If an applicant elects an eligibility determination only for enrollment in a qualified health plan, NYSOH will not verify the information for eligibility for an insurance affordability program.

The record supports that you contacted NYSOH on January 28, 2016 and changed your application from a "Financial Assistance" to a "Non-Financial Assistance" application. Furthermore, as of the date of your April 28, 2016 hearing, your NYSOH application is designated as "Non-Financial Assistance."

Therefore, the NYSOH did not fail to provide you with a timely eligibility determination regarding you and your newborn child's application for financial assistance.

During your April 28, 2016 hearing, the Hearing Officer from NYSOH Appeals Unit requested that you submit: (1) business records of income and expenses to show your self-employment income for January, February and March 2016; (2) earnings statements or paycheck stubs from your employers for January, February and March 2016; and (3) 2015 FORM 1040.

On March 5, 2016 you submitted a printout of your [REDACTED] Account Activity from February 4, 2016 through May 2, 2016 to show your income from your employers (Appellant Ex. A pgs. 2, 4-5), and illegible documents that were submitted to show your income and expenses of your private practice for February, March and April 2016 (Appellant Ex. A pgs. 2, 6-12). These documents are not sufficient to return your case to NYSOH to make a financial eligibility determination.

However, you submitted your 2015 FORM 1040 U.S. Individual Income Tax Return showing an adjusted gross income of \$160,220.00 in 2015 (Appellant Ex. A pgs. 13-18).

Based on the available record, your 2015 Form 1040 is the best evidence of your expected 2016 annual household income. Typically, your case would be returned to NYSOH to recalculate your household's financial assistance eligibility based on an expected 2016 household income of \$160,200.00. However, your NYSOH account still reflects that you have opted for a "Non-Financial Assistance" application.

Therefore, based on your preference, you may opt to have your NYSOH account continue to reflect a "Non-Financial Assistance" application or RETURN your case to NYSOH to calculate your household's financial eligibility based on a two-person household with an expected 2016 income of \$160,200.00.

Decision

The January 3, 2016 NYSOH enrollment notice confirming your newborn child's Fidelis Care coverage is MODIFIED to state that their plan enrollment start date is December [REDACTED] 2015.

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The case is REMANDED to NYSOH to effectuate your newborn's coverage effective December [REDACTED] 2015.

The case is REMANDED to the Marketplace to enroll your newborn child in Fidelis Care ST INN Pediatric Dental Dep25 from December [REDACTED], 2015 through January 31, 2016.

NYSOH did not fail to provide you with a timely eligibility determination regarding you and your newborn child's application for financial assistance.

Based on your preference, you may opt to have your NYSOH account continue to reflect a "Non-Financial Assistance" application or RETURN your case to NYSOH to calculate your household's financial eligibility based on a two-person household with an expected 2016 income of \$160,200.00.

Effective Date of this Decision: July 1, 2016

How this Decision Affects Your Eligibility

Your newborn child is eligible to be enrolled in Fidelis Care ST INN Pediatric Dental Dep25 effective December [REDACTED] 2015.

You will be responsible for any premiums due for your newborn child's coverage to be effectuated for the months of December 2015 and January 2016, and you will be billed directly by the insurance carrier.

At your option, your NYSOH account will continue to reflect a "Non-Financial Assistance" application or you may have your case RETURNED to NYSOH to calculate your household's financial eligibility based on a two-person household with an expected 2016 income of \$160,200.00.

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

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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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P.O. Box 11729
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- By fax: 1-855-900-5557

Summary

Your newborn child is eligible to be enrolled in Fidelis Care ST INN Pediatric Dental Dep25 effective December [REDACTED], 2015.

You will be responsible for any premiums due for your newborn child's coverage to be effectuated for the months of December 2015 and January 2016, and you will be billed directly by the insurance carrier.

At your option, your NYSOH account will continue to reflect a "Non-Financial Assistance" application or you may have your case RETURNED to NYSOH to calculate your household's financial eligibility based on a two-person household with an expected 2016 income of \$160,200.00.

Legal Authority

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A Copy of this Decision Has Been Provided To:

