



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

Notice of Decision

Decision Date: October 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006314

[REDACTED]

Dear [REDACTED]

On June 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's January 6, 2016 notices of eligibility redetermination and disenrollment regarding your infant 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 and the NY State of Health Account ID at the top of this notice.

Legal Authority

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

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Decision Date: October 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006314

[REDACTED]

Issues

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

Did NY State of Health properly determine that your infant child's eligibility for and enrollment in Child Health Plus terminated effective January 31, 2016?

Did NY State of Health properly determine that your infant child's eligibility for and enrollment in Child Health Plus was next effective March 1, 2016?

Procedural History

On October 2, 2015, your infant child was added to your NY State of Health (NYSOH) account and an application was submitted on her behalf.

On October 3, 2015, NYSOH issued an eligibility redetermination notice that in part stated your infant child (child) was conditionally eligible to enroll in Child Health Plus at a cost of \$15.00 per month, effective November 1, 2015. As that notice further stated, your child's eligibility was conditional pending submission of documentation before December 31, 2015, to confirm her citizenship status and her Social Security number.

Also on October 3, 2015, NYSOH issued an enrollment notice confirming your child's enrollment in a Child Health Plus plan, effective November 1, 2015.

No documentation regarding your child was provided before the December 31, 2015 deadline.

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On January 6, 2016, NYSOH issued an eligibility redetermination notice that stated your child was no longer eligible for financial assistance through any of the insurance affordability programs and could not enroll in a qualified health plan at full cost because you did not provide documentation to prove her citizenship and did not provide her Social Security number within the required timeframe. Your child's eligibility for coverage in her Child Health Plus plan was to end effective January 31, 2016.

Also on January 6, 2016, NYSOH issued a disenrollment notice that stated your child's coverage in her Child Health Plus plan would end effective January 31, 2016, because she was no longer eligible to enroll in health insurance through NYSOH.

On January 19, 2016, you updated your application by telephone with the assistance of a NYSOH representative and your child was preliminarily redetermined eligible for Child Health Plus, effective March 1, 2016.

That same day, you spoke with a representative from NYSOH's Account Review Unit and appealed NYSOH's denial of your request to backdate your child's Child Health Plus coverage to February 1, 2016.

On January 20, 2016, based on your January 19, 2016 updated application, NYSOH issued an eligibility redetermination notice that stated your child was eligible to enroll in Child Health Plus for a cost of \$15.00 per month, effective March 1, 2016.

Also on January 20, 2016, NYSOH issued an enrollment notice confirming your child's enrollment in the Child Health Plus plan you had selected, effective March 1, 2016.

On June 8, 2016, you 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 supports the following findings of fact:

- 1) According to your NYSOH account, your child was born on [REDACTED]
[REDACTED] You testified that she was born in the State of New York.
- 2) You testified that you are only appealing your child's disenrollment from her Child Health Plus plan as of January 31, 2016, which resulted in a gap in coverage for the month of February 2016.

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- 3) According to your October 2, 2015 NYSOH application, you and your spouse are listed as U.S. citizens and you provided your Social Security numbers. You also indicated on that application that your child was a U.S. citizen and you were in the process of obtaining a Social Security number for your child.
- 4) You testified that your child was born with [REDACTED], which was unexpected and overwhelming.
- 5) You testified that you were not aware you had to provide your child's Social Security number to NYSOH and would have provided it had you known it was required.
- 6) You testified that your child had received her Social Security number and card shortly after her birth and before December 31, 2015 deadline.
- 7) According to your NYSOH account, eligibility redetermination and disenrollment notices were issued on January 6, 2016, informing you that your child's eligibility to enroll in Child Health Plus would end January 31, 2016, because you had not provided proof of her citizenship status or her Social Security Number within the required timeframe. Neither notice provided an additional timeframe or instructions of what you needed to do or provide in order to comply.
- 8) You testified that you received the January 6, 2016 notices on Saturday, January 16, 2016, which was during your Sabbath so you did not open the mail until the following Monday, January 18, 2016.
- 9) You testified that since January 18, 2016 was a national holiday, you did not contact NYSOH until the next day, January 19, 2016, at which time you provided your child's Social Security number.
- 10) You testified that, during that telephone conversation, a NYSOH representative informed you that your child's coverage could not be made effective February 1, 2016, because you did not contact NYSOH by the 15th of the month.
- 11) You testified that the date you received the January 6, 2016 notices was January 16, 2016, which was already after the 15th of January 2016.
- 12) You testified that your child required [REDACTED] on February 27, 2016, even though she had no health insurance coverage at the time.

13) You testified that, had you been made aware that your child's Social Security number was required for her eligibility for and enrollment in Child Health Plus to continue, you would have promptly provided it so as to avoid a lapse and gap in her coverage.

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

Applicable Law and Regulations

Child Health Plus - Generally

A child who meets the eligibility requirements for Child Health Plus may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)).

To be eligible for Child Health Plus, the child:

- Must be under 19 years of age;
- Must be a New York State Resident;
- Must not have other health insurance coverage; and
- Must not be eligible for, or enrolled in, Medicaid

(N.Y. Pub. Health Law. § 2511(2)(a)-(e)).

As a condition of eligibility for Child Health Plus, a child must furnish their Social Security Number and evidence of their citizenship or status as a qualified immigrant or PRUCOL alien to NY State of Health for verification purposes (42 CFR § 435.910(a) and (b)(3); 42 CFR § 457.340(b); 18 NYCRR § 360-3.2(j)(2) and (3); *see generally* 18 NYCRR § 360-3.2(j)).

In the instance where this information is not readily ascertainable or available, the child is given Child Health Plus on a temporary basis known as "presumptive eligibility" and, as the eligibility determination notice states, is considered "conditionally eligible" pending submission within 90 days of the application of their Social Security number and evidence of their citizenship or status as a qualified immigrant or PRUCOL alien (42 CFR § 435.910(a) and (b)(3); 42 CFR § 457.340(b); 18 NYCRR § 360-3.2(j)(2) and (3); *see generally* 18 NYCRR § 360-3.2(j)).

In addition, NYSOH must require an applicant who has a Social Security Number to provide the number but does not require an applicant's Social Security Number as a condition of enrollment for Child Health Plus if the applicant is not eligible to receive one or his or her number is not yet available (42 CFR §

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457.340(b); 42 CFR § 435.910(h)(1); Model State Children's Health Insurance Program Plan, Section 4.1.9). Therefore, benefits cannot be delayed or denied while an application for a Social Security number is pending (42 CFR §435.910(b) and (f); Informational Letter 08 OIHP/INF-2).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must give the applicant 90 days to provide satisfactory documentary evidence. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period (45 CFR § 155.315(c)(3) and (f)(2)(i)).

If NYSOH remains unable to verify an individual's Social Security number and/or citizenship attestation after the 90 day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

"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 to avoid gaps or overlaps in coverage" (42 CFR § 457.340(f)).

Generally, 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 premiums are not timely paid or the child no longer resides in New York State, gains access to or obtains other health insurance coverage, reaches the age of 19 or becomes eligible for Medicaid (NY Public Health Law § 2510(6)).

NYSOH is required to provide proper written notice to an applicant of any decision affecting an enrollee's Child Health Plus eligibility (42 CFR § 457.340(e)).

When eligibility is denied, suspended or terminated, the State must provide written notice of any determinations subject to review that includes the reasons for the determination, an explanation of applicable rights to review of that determination, the standard and expedited time frames for review, the manner in which a review can be requested, and the circumstances under which enrollment may continue pending review (42 CFR § 457.1180).

In the case of a suspension or termination of eligibility, the State must also provide sufficient notice to enable the child's parent or caretaker relative to take

any appropriate actions that may be required to allow coverage to continue without interruption (42 CFR § 457.340(e)(2); 42 CFR § 457.1130(a)(3)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your child's eligibility for and enrollment in Child Health Plus terminated effective January 31, 2016.

NYSOH is required to determine whether children, including newborns, are eligible to enroll in Child Health Plus and must confirm, among other things, their Social Security number and their citizenship/immigration status.

If NYSOH cannot verify an individual's Social security number or citizenship status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency and provide the necessary information.

The record reflects that, as of the date of your October 2, 2015 application, you added your child, who was born on [REDACTED] to your NYSOH account and indicated that you were in the process of applying for a Social Security number for her. Since her Social Security number was pending, NYSOH determined her to be conditionally eligible to enroll in Child Health Plus at a cost of \$15.00 per month, effective November 1, 2015. In the eligibility redetermination notice issued October 3, 2015, you were advised of her conditional eligibility and instructed to confirm her Social Security number and citizenship status before December 31, 2015, which is 90 days from October 1, 2015.

The record further reflects that, based on your child's presumptive eligibility, she was allowed to enroll in a Child Health Plus plan through Fidelis Care, effective November 1, 2015, and she had coverage as of that date. The start date of her enrollment in that Child Health Plus plan is not in dispute.

The record also reflects that you and your spouse are U.S. citizens and you credibly testified that your child was born in the State of New York. Children born to U.S. citizen parents on U.S. soil automatically gain U.S. citizenship at the time of birth through the process of acquisition of citizenship. As such, your child satisfied the requirement of being a U.S citizen at the time of your October 2, 2015 initial application.

As to your child's Social Security number, the record reflects that you did not provide it by the December 31, 2015 deadline. You testified that you were not aware it was required and were overwhelmed with your newborn's medical conditions and care such that you did not provide her Social Security number

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even though one had been assigned to her shortly after her birth. The record reflects that you provided NYSOH with your child's Social Security number on January 19, 2016, after receiving the January 6, 2016 notice on Saturday, January 16, 2016. You credibly testified that you could not open the mail or make calls that weekend because of your religious observation of the Sabbath, and that you contacted NYSOH on Tuesday, January 19, 2016, after the January 18, 2016 national holiday, and provided your child's Social Security number. She was once again found eligible for Child Health Plus, effective March 1, 2016, and was re-enrolled in Fidelis Care Child Health Plus as of that date.

This leads to the second issue under review; that is, whether or not your child was properly disenrolled from her Child Health Plus plan as of January 31, 2016, without additional notice to afford you an additional opportunity to provide her Social Security number and avoid a lapse and gap in coverage.

Ordinarily, if a parent or caretaker relative does not timely provide proof of the child's Social Security number and the deadline to do so has passed, NYSOH will disenroll the child from their Child Health Plus plan after the 90 day period. When eligibility is denied, suspended or terminated, the State must provide written notice of any determinations subject to review that includes the reasons for the determination, an explanation of applicable rights to review of that determination, the standard and expedited time frames for review, the manner in which a review can be requested, and the circumstances under which enrollment may continue pending review.

In your case, on January 6, 2016, NYSOH issued an eligibility redetermination notice regarding your child that provided the requisite information to comport with the notice requirements for the Child Health Plus program specific review process in that they included the reasons for the determination, an explanation of applicable rights to review of that determination, the standard and expedited time frames for review, the manner in which a review can be requested, and the circumstances under which enrollment may continue pending review.

In addition, the January 6, 2016 disenrollment notice regarding your child informed you that coverage in her Child Health Plus plan would end effective January 31, 2016, because she was no longer eligible to enroll in health insurance through NYSOH, which also comported with the notice requirement.

However, in the case of a suspension or termination of eligibility, NYSOH must also provide sufficient notice to enable the child's parent or caretaker relative to take any appropriate action(s) that may be required to allow coverage to continue without interruption.

Of note in your case is that your child's eligibility was being terminated as of January 31, 2016, because you did not provide proof of her citizenship or her Social Security number by December 31, 2015. As noted above, her U.S.

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citizenship status was ascertainable at the time of your October 2, 2015 application such that no further proof in this regard was required.

Notwithstanding, there was no mention in the above-noted notices that informed you of the appropriate actions that may be required to allow your child's coverage to continue without interruption; that is, that her Social Security number was still required. Nor did NYSOH issue a separate notice to inform you that appropriate action was needed to avoid your child's eligibility for and enrollment in Child Health Plus from being terminated before January 31, 2016. As such, NYSOH failed to provide sufficient notice of the appropriate actions required by you to take to avoid a gap in her Child Health Plus eligibility and coverage.

The record reflects that your child's Social Security number was issued well before the December 31, 2015 deadline and the January 6, 2016 notices. Further you credibly testified that you would have complied had NYSOH issued proper and sufficient notice informing you of the appropriate action needed (providing her Social Security number) to avoid termination of her eligibility for and enrollment in Child Health Plus as of January 31, 2016. Therefore, it is reasonable to conclude that you would have taken appropriate action by providing her Social Security number so as to avoid a lapse and resultant gap in her Child Health Plus coverage.

To bring the NYSOH notices in line with this finding, the following rulings are made:

- 1) The January 6, 2016 eligibility redetermination notice regarding your child is **RESCINDED**;
- 2) The January 6, 2016 disenrollment notice regarding your child is **RESCINDED**;
- 3) Your case is **RETURNED** to NYSOH to restore your child's coverage in her Child Health Plus plan with Fidelis Care, effective February 1, 2016;

Decision

The January 6, 2016 eligibility redetermination notice regarding your child is **RESCINDED**.

The January 6, 2016 disenrollment notice regarding your child is **RESCINDED**.

Your case is **RETURNED** to NYSOH to restore your child's coverage in her Child Health Plus plan with Fidelis Care, effective February 1, 2016.

Effective Date of this Decision: October 4, 2016

How this Decision Affects Your Eligibility

NYSOH will facilitate and restore your child's Child Health Plus plan with Fidelis Care, effective February 1, 2016 and will notify you accordingly.

You will be responsible for the monthly Child Health Plus premium payment, if any is due, for February 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 must be done within four months after 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):

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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Summary

The January 6, 2016 eligibility redetermination notice regarding your child is **RESCINDED**.

The January 6, 2016 disenrollment notice regarding your child is **RESCINDED**.

Your case is **RETURNED** to NYSOH to restore your child's coverage in her Child Health Plus plan with Fidelis Care, effective February 1, 2016.

NYSOH will facilitate and restore your child's Child Health Plus plan with Fidelis Care, effective February 1, 2016 and will notify you accordingly.

You will be responsible for the monthly Child Health Plus premium payment, if any is due, for February 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

