



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

Notice of Decision

Decision Date: May 19, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006352

[REDACTED]

Dear [REDACTED],

On May 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's January 9, 2016 enrollment notice regarding your family.

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 (CFR) § 155.545.

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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Albany, NY 12211

Decision

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006352



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 children's enrollment in their Child Health Plus (CHP) plan was effective February 1, 2016?

Did NYSOH properly redetermine that you and your spouse were enrolled in the Essential Plan effective February 1, 2016?

Procedural History

On October 24, 2015, NYSOH issued a renewal notice that stated a decision could not be made about your family's eligible for financial assistance for the upcoming year and that you needed to update your NYSOH account before December 15, 2015 to avoid a lapse in coverage.

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

On December 21, 2015, NYSOH issued a notice of eligibility redetermination that stated your children no longer qualified for financial assistance or to enroll in a qualified health plan at full cost through NYSOH because you did not update your account within the required timeframe.

Also on December 21, 2015, NYSOH issued a notice of eligibility redetermination that stated you and your spouse were newly eligible to purchase a qualified

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health plan (QHP) at full cost through NYSOH, effective January 1, 2016, because you did not update your account within the required timeframe.

On December 22, 2015, NYSOH issued a disenrollment notice that stated your and your spouse's 2015 coverage in your silver-level QHP would end December 31, 2015, and your children's 2015 coverage in their CHP plan would also end December 31, 2015.

Also on December 22, 2015, NYSOH issued an enrollment notice confirming that you and your spouse were enrolled in a silver-level QHP with a monthly premium of \$905.54 and a plan start date of January 1, 2016. The notice further stated that you would receive an invoice from your health plan for the monthly premium, which you must pay to start and keep your coverage.

On January 9, 2016, based on your January 8, 2016 updated application, you and your spouse were each found eligible to enroll in the Essential Plan effective February 1, 2016 and, therefore, no longer qualified for a QHP as of January 31, 2016. That notice also stated that your children were eligible to enroll in CHP with a monthly premium of \$9.00 each, effective February 1, 2016.

Also on January 9, 2016, NYSOH issued a disenrollment notice informing you that your coverage with the silver-level QHP you were enrolled in as of January 1, 2016 would end January 31, 2016.

That same day, NYSOH issued an enrollment notice confirming that you and your spouse were enrolled in an Essential Plan with \$20.00 monthly premiums each and an enrollment start date of February 1, 2016; and your children were enrolled in Empire BCBS CHP plan, with \$27.00 monthly premium in total and an enrollment start date of February 1, 2016. The notice also stated that you would receive invoices from your health plans for the monthly premium, which you must pay to start and keep your coverage.

On January 20, 2016, you spoke with a representative from NYSOH's Account Review Unit and appealed NYSOH's failure to provide timely notices of eligibility redetermination for your family and the February 1, 2016 start date of your household's health insurance coverages.

On February 23, 2016, NYSOH issued a cancellation notice regarding your spouse that stated her coverage in the Essential Plan was cancelled effective February 1, 2016, due to nonpayment of premium.

That same day, NYSOH issued an enrollment notice confirming that you were still enrolled in the Essential Plan as of February 1, 2016, with a \$20.00 monthly premium.

On February 24, 2016, however, NYSOH issued a cancellation notice regarding you that stated your coverage in the Essential Plan was also cancelled effective February 1, 2016, due to nonpayment of premium.

On March 19, 2016, NYSOH issued an enrollment notice confirming your enrollment in the Essential Plan you selected with a \$20.00 monthly premium and an enrollment start date of May 1, 2016 and your spouse's enrollment in the same Essential Plan with a \$20.00 monthly premium and an enrollment start date of April 1, 2016. The notice also confirmed that your children were enrolled in their CHP plan as of February 1, 2016.

According to your NYSOH account, on April 11, 2016, your Essential Plan coverage was backdated to April 1, 2016, to correct an error in your start date.

On April 12, 2016, NYSOH issued another enrollment notice confirming in part your enrollment in the Essential Plan you selected as of April 1, 2016.

On May 12, 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 support the following findings of fact:

- 1) According to your NYSOH account and testimony, at all times relevant, you and your spouse expected to file your 2015 and 2016 federal tax returns as married filing jointly, on which you will claim your three children as dependents.
- 2) On your January 8, 2016 application, you also listed an annual household income of \$48,500.00, consisting of your earnings of \$45,000.00 and your spouse's earnings of \$3,500.00, which NYSOH was able to verify.
- 3) According to your NYSOH account, in 2015, you and your spouse were eligible for advance payments of the premium tax credit (APTC) and cost sharing reductions and were enrolled in a silver-level qualified health plan from January 1, 2015 to December 31, 2015.
- 4) According to your NYSOH account, your children were eligible for and enrolled in a Child Health Plus plan from January 1, 2014 to December 31, 2014, and again from January 1, 2015 to December 31, 2015.

- 5) You are appealing the 2016 start dates of your family's eligibilities for and enrollments in their respective plans.
- 6) According to your NYSOH account, you elected to receive notices by email alerts.
- 7) According to your NYSOH account, on December 19, 2013, you provided your work email address at your business on your initial application, which is currently still listed as your email address on your account.
- 8) You testified that you did not elect to receive email alerts of notices from NYSOH, were unaware that this method was listed on your NYSOH account, and that you had always preferred to receive notices by regular mail because you are not technologically savvy.
- 9) You testified that you did not receive the October 24, 2015 renewal notice by regular mail and did not know to look in your email or spam email accounts for an email alert from NYSOH.
- 10) You testified that you were used to dealing with the insurance carriers regarding insurance identification cards, invoices and payments, and explanation of benefits so you did not know you had to also deal with NYSOH for 2016 renewals.
- 11) According to your NYSOH account, on December 13, 2014, you updated your NYSOH account for coverage in 2015 with the assistance of a NYSOH representative.
- 12) You testified that you would not have knowingly allowed your family to go without health insurance coverage and would have timely responded had you received the October 24, 2015 and subsequent notices by regular mail.
- 13) You testified that you learned your children no longer had coverage in their CHP plan in early January 2016 when you had to pay out of pocket for their prescription medication for ongoing medical conditions.
- 14) You further testified that you did not understand that the Essential Plan is issued as individual plans and not as a couple's plan, so you only paid one premium thinking coverage for both of you would start on February 1, 2016.
- 15) According to your NYSOH account, Essential Plan coverage for both you and your spouse was cancelled effective February 1, 2016 due to non-payment of premium.

16) According to your NYSOH account and your testimony, after you learned your children no longer had health insurance coverage through their CHP plan, you contacted NYSOH on January 8, 2016 to reinstate health insurance coverage for all family members, effective January 1, 2016, and your request to backdate coverages was denied.

17) You are seeking to have your children's enrollment in their CHP plan backdated to January 1, 2016, as well as your and your spouse's Essential Plan coverage.

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)).

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).

Essential Plan Eligibility and Effective Date

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York’s Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential 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); see *also* 42 CFR § 600.320). 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)).

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)).

Appealable Issues

An applicant has the right to appeal (1) an eligibility determination, (2) an eligibility determination for an exemption, (3) a failure by the Exchange to provide timely notice of an eligibility determination and (4) a denial of a request to vacate dismissal made by a State Exchange appeals entity (45 CFR § 155.505).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your children's disenrollment in their Child Health Plus plan was effective December 31, 2015 and their re-enrollment in that plan was effective February 1, 2016.

In 2015, your children were found eligible for Child Health Plus and enrolled in a Child Health Plus plan, effective January 1, 2015 and, therefore, were entitled to and had 12 months of continuous coverage through December 31, 2015.

Generally, NYSOH must redetermine qualified children'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 in part that there was not enough information to determine whether your children were 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 children were determined no longer eligible for CHP and were terminated from their Child Health Plus plan, effective December 31, 2015, as stated in the December 21, 2015 eligibility redetermination notice and December 22, 2015 disenrollment notice. Therefore, the December 21, 2015 eligibility redetermination notice and the December 22, 2015 disenrollment notice were correct and must be **AFFIRMED**.

Your NYSOH account reflects that you elected to receive notices from NYSOH via email alerts. Although you testified that you did not elect email alerts of notices to receive communications from NYSOH, your NYSOH account reflects that you initially applied through NYSOH on December 19, 2013 via your email account and provided your work email address at your business on that application, which address is still currently listed on your account. In addition, while you testified that you were used to dealing with the CHP plan and were not aware that you had to renew through NYSOH in December 2015 for 2016 coverage for your children, your account reflects that on December 19, 2013, you created a NYSOH account via your email account and on December 13, 2014, contacted NYSOH for assistance in renewing your family's coverage for 2015. Since your past practices suggest that you were aware of the initial and renewal processes and timeframes, successfully gained insurance in 2014 and 2015 through NYSOH for your children with January 1st start dates each year, and that your work email has always been listed on your NYSOH account, your testimony that you did not receive the 2015 renewal, eligibility redetermination, and disenrollment notice regarding your children via email alert is not reliable.

The record does reflect that you first updated your NYSOH account on January 8, 2016, and your children were redetermined eligible for CHP, effective February 1, 2016.

The date on which a CHP plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected between the first day and fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month and the end of the month goes into effect on the first day of the second following month.

The record reflects that your CHP plan selection for your children was made on January 8, 2016, which is between the 1st and 15th of January 2016. As such, your children's coverage was to take effect the first day of the next following month; that is, February 1, 2016. Therefore, the January 9, 2016 notices of eligibility and enrollment confirming your children's eligibility for CHP and enrollment in their CHP plan, effective February 1, 2016, are correct and must be AFFIRMED.

The second issue is whether NYSOH properly determined that you and your spouse's enrollment in the Essential Plan was effective February 1, 2016.

Initially, your NYSOH account reflects that you and your spouse were both automatically enrolled in a qualified health plan at full cost, effective January 1, 2016, as is stated in the December 21, 2015 notice of eligibility redetermination as confirmed in the December 22, 2015 enrollment notice. The December 21, 2015 notice makes clear that your automatic enrollment in a qualified health plan was necessitated because you did not timely respond and update your NYSOH account within the required timeframe. Similarly, the December 22, 2015

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enrollment notice confirms your enrollments as of January 1, 2016. In addition, your respective enrollment histories in your NYSOH account indicate that you and your spouse were enrolled in a qualified health plan for the month of January 2016, and there is no evidence to otherwise indicate that either of you was not. As such, it is concluded that you and your spouse had minimum essential coverage in January 2016 and did not qualify for the Essential Plan. Therefore, the December 21, 2015 eligibility redetermination notice and the December 22, 2015 enrollment notice regarding you and your spouse are AFFIRMED.

Next, you testified and the record indicates that you updated your NYSOH application on January 8, 2016. As a result, you and your spouse were found eligible for the Essential Plan as of February 1, 2016 and enrolled into a plan that day with an enrollment start date of February 1, 2016.

The date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

Since on January 8, 2016, you selected an Essential Plan, your and your spouse's enrollment must take effect on the first day of the first month following January 8, 2016; that is, on February 1, 2016.

Therefore, the January 9, 2016 notices of eligibility and enrollment confirming your and your spouse's eligibility for and enrollment in the Essential Plan, effective February 1, 2016, were correct and must be AFFIRMED.

Lastly, you appealed not being reinstated in your Essential Plan as of February 1, 2016 and not being re-enrolled until April 1, 2016. The record reflects that your and your spouse's respective coverage in the Essential Plan were cancelled effective February 1, 2016 due to nonpayment of the February 2016 monthly premium. The issue of whether you and your spouse should be able to have your coverage re-instated as of February 1, 2016 after being cancelled for nonpayment of premium as of that date is not an appealable issue properly before the Appeals Unit of the NY State of Health. Therefore, we must dismiss your appeal on this issue.

Thereafter, you and your spouse were properly re-enrolled in your Essential Plan as of April 1, 2016, which remains in effect.

Decision

The December 21, 2015 notice of eligibility redetermination and the December 22, 2015 disenrollment notice regarding your children are **AFFIRMED**.

The January 9, 2016 notices of eligibility redetermination and enrollment confirming your children's eligibility for CHP and enrollment in their CHP plan, effective February 1, 2016, is **AFFIRMED**.

The December 21, 2015 notice of eligibility redetermination and the December 22, 2015 enrollment notice regarding you and your spouse's January 1, 2016 eligibility for and enrollment in a qualified health plan are **AFFIRMED**.

The January 9, 2016 notices of eligibility redetermination and enrollment regarding you and your spouse's eligibility for and enrollment in the Essential Plan, effective February 1, 2016, are **AFFIRMED**.

The issue of you and your spouse being re-instated in your Essential Plan after being cancelled for nonpayment of premium is not an appealable issue and, therefore, is **DISMISSED**.

If you wish to have the method of notice changed from email alerts to regular mail, you can contact NYSOH at the toll free 855 number listed below to have your preference changed.

Effective Date of this Decision: May 19, 2016

How this Decision Affects Your Eligibility

This decision does not change your children's eligibility for CHP or their enrollment start date in CHP plan.

Your children were disenrolled from their CHP plan effective December 31, 2015.

Your children's eligibility for and enrollment in their Child Health Plus plan is effective as of February 1, 2016.

Your children experienced a gap in coverage during January 2016.

This decision does not change you and your spouse's eligibility for the Essential Plan or your respective enrollment start dates in the Essential Plan.

You and your spouse were eligible for and enrolled in a qualified health plan at full cost from January 1, 2016 to January 31, 2016.

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You and your spouse were not eligible for the Essential Plan in January 2016 because you had active minimum essential coverage that month.

The Appeals Unit is dismissing your appeal on the issue of being re-instated in your Essential Plan, effective February 1, 2016, after being cancelled for nonpayment of premium because this issue is not appealable.

You and your spouse did not have coverage through NYSOH for the months of February 2016 and March 2016.

You and your spouse were re-enrolled thereafter in your Essential Plan, effective April 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 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):

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

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- By fax: 1-855-900-5557

Summary

The December 21, 2015 notice of eligibility redetermination and the December 22, 2015 disenrollment notice regarding your children are **AFFIRMED**.

The January 9, 2016 notices of eligibility redetermination and enrollment confirming your children's eligibility for CHP and enrollment in their CHP plan, effective February 1, 2016, is **AFFIRMED**.

The December 21, 2015 notice of eligibility redetermination and the December 22, 2015 enrollment notice regarding you and your spouse's January 1, 2016 eligibility for and enrollment in a qualified health plan are **AFFIRMED**.

The January 9, 2016 notices of eligibility redetermination and enrollment regarding you and your spouse's eligibility for and enrollment in the Essential Plan, effective February 1, 2016, are **AFFIRMED**.

The issue of you and your spouse being re-instated in your Essential Plan after being cancelled for nonpayment of premium is not an appealable issue and, therefore, is **DISMISSED**.

If you wish to have the method of notice changed from email alerts to regular mail, you can contact NYSOH at the toll free 855 number listed below to have your preference changed.

This decision does not change your children's eligibility for CHP or their enrollment start date in CHP plan.

Your children were disenrolled from their CHP plan effective December 31, 2015.

Your children's eligibility for and enrollment in their Child Health Plus plan is effective as of February 1, 2016.

Your children experienced a gap in coverage during January 2016.

This decision does not change you and your spouse's eligibility for the Essential Plan or your respective enrollment start dates in the Essential Plan.

You and your spouse were eligible for and enrolled in a qualified health plan at full cost from January 1, 2016 to January 31, 2016.

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You and your spouse were not eligible for the Essential Plan in January 2016 because you had active minimum essential coverage that month.

The Appeals Unit is dismissing your appeal on the issue of being re-instated in your Essential Plan, effective February 1, 2016, after being cancelled for nonpayment of premium because this issue is not appealable.

You and your spouse did not have coverage through NYSOH for the months of February 2016 and March 2016.

You and your spouse were re-enrolled thereafter in your Essential Plan, effective April 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

