



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: AP000000007829

[REDACTED]

Dear [REDACTED]

On August 24, 2016, you appeared by telephone at a hearing on the NY State of Health's failure to enroll your newborn child in a qualified health plan effective their date of their birth.

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).

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: October 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007829

[REDACTED]

Issue

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

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

Procedural History

On December 20, 2014, NYSOH issued an enrollment notice confirming, in relevant part, that your spouse and children were enrolled in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25 and coverage could start as early as January 1, 2015.

On November 23, 2015, NYSOH issued a disenrollment notice, in relevant part, that your spouse and children's Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25 coverage would end December 31, 2015

On November 26, 2015, your NYSOH account was updated and your newborn child was added to your account.

On November 27, 2015, your NYSOH account was updated.

On December 4, 2015, NYSOH issued an eligibility determination notice, in relevant part, that based on the on the updated information received on November 27, 2015, your newborn child was eligible to purchase a qualified health plan at full cost through NYSOH, effective as of October 1, 2015.

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On December 30, 2015, NYSOH issued an enrollment notice confirming, in relevant part, that as of December 29, 2015, your newborn child was enrolled in Empire HMO 4000 X for HSA Bronze ST INN Pediatric Dental Dep 25 (Empire Blue Cross Blue Shield) with a plan enrollment start date of January 1, 2016.

On March 10, 2016, you spoke to NYSOH's Account Review and requested an appeal insofar as the coverage start date of your newborn's health insurance coverage.

On August 24, 2016 you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. Testimony was taken during the hearing. You gave the Hearing Officer permission to review and request your telephone conversations with NYSOH's customer service and enter them into the record as "Appellant Exhibit A."

The Hearing Officer made an internal request for the recording of your November 27, 2015 and December 29, 2015, conversations with NYSOH's customer service. Those conversations have been incorporated into the record. 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, your spouse was enrolled in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25 in 2015.
- 2) Your newborn child was born on [REDACTED]
- 3) According to your NYSOH account, your newborn child was added to your account on November 26, 2015. However, it was indicated that your newborn child was not applying for health insurance through NYSOH.
- 4) According to your NYSOH account, your account was updated on November 27, 2015, to reflect that your newborn son was applying for health insurance through NYSOH.
- 5) You testified that you contacted NYSOH in November 2015 and enrolled your newborn child in your spouse's qualified health plan.
- 6) On November 27, 2015, you contacted NYSOH and requested that your newborn child be added to your spouse's qualified health plan. The representative stated that they were unable to enroll your newborn child because of technical problems with their computer (Appellant Exhibit A).
- 7) According to NYSOH's December 4, 2015 eligibility determination notice, on November 27, 2015, your newborn child was found eligible to purchase a

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qualified health plan at full cost through NYSOH, effective October 1, 2015
[REDACTED]

- 8) You testified you paid approximately \$500.00 in medical expenses because your newborn child's coverage was not effective their date of birth and are seeking to be reimbursed for those expenses.
- 9) On March 11, 2016, NYSOH issued a notice confirming that on March 10, 2016, you requested telephone hearing to review: "Coverage start date for newborn to be effective 10/1/2015" [REDACTED]

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 NYSOH 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).

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)).

Special Enrollment Period- Newborn Child:

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)).

Length of Special Enrollment Period:

Generally, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

Special Enrollment Effective Date:

In the case of birth, adoption, placement for adoption, or placement in foster care of a child, 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

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care, or it may permit the qualified individual or enrollee 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)).

Legal Analysis

The first issue is whether NYSOH failed to enroll your newborn child in your qualified health plan, 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, a notice confirming that on March 12, 2016 you requested a hearing to review, “[c]overage start date for newborn to be effective 10/1/2015.”

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. The text of March 12, 2016 notice, which acknowledges that you requested an appeal on the issue of your newborn’s QHP enrollment, permits an inference that NYSOH did deny your request that your newborn child be enrolled in a QHP effective their date of birth. Since Appeal Unit review of NYSOH determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

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

According to the available record, on November 27, 2015, you contacted NYSOH to add your newborn to your spouse’s qualified health plan. Furthermore, the NYSOH customer service representative stated that they were unable to enroll your newborn child because of technical issues with their equipment.

When an enrollee gains a dependent through birth, NYSOH must ensure that the effective date of coverage is either the dependent’s date of birth or a date selected by the qualified individual or enrollee, if the selection is made within sixty days of the dependent’s date of birth.

The record reflects that your newborn child was born on [REDACTED]. Since you took the proper steps to enroll your newborn child in coverage, within sixty days of their date of birth, their coverage should have been effective their date of birth.

Therefore, this case is REMANDED to NYSOH to enroll your newborn child in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25, effective [REDACTED] through December 31, 2015.

Decision

This case is REMANDED to NYSOH to enroll your newborn child in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25, effective [REDACTED] through December 31, 2015.

Effective Date of this Decision: October 4, 2016

How this Decision Affects Your Eligibility

Your newborn child will be enrolled in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25, effective [REDACTED] through December 31, 2015.

You may be responsible for any additional premiums for your newborn child's coverage for October 2015, November 2015 and December 2015, in order to effectuate their coverage.

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 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.

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Summary

Your newborn child will be enrolled in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25, effective [REDACTED] through December 31, 2015.

You may be responsible for any additional premiums for your newborn child's coverage for October 2015, November 2015 and December 2015, in order to effectuate their coverage.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

