



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

Notice of Decision

Decision Date: October 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008673/AP000000009408

[REDACTED]

Dear [REDACTED],

On October 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health’s December 22, 2016 disenrollment notice and their failure to issue a timely notice of 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 (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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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 coverage through their Child Health Plus plan ended effective December 31, 2015?

Did NYSOH fail to issue a timely eligibility determination based on the documentation you had submitted?

Procedural History

On October 25, 2015 NYSOH issued a renewal notice stating that NYSOH did not have enough information to determine if your family could get help with paying for insurance coverage next year. You were asked to update the information in your NYSOH account by December 15, 2015.

On November 2, 2015 NYSOH received your family's updated application for health insurance.

On November 3, 2015 NYSOH issued an eligibility determination notice stating that you and your spouse were conditionally eligible to receive advance premium tax credits, and cost-sharing reductions, effective December 1, 2015. Your children were conditionally eligible to enroll in Child Health Plus at no cost, effective December 1, 2015. This eligibility was based on a household income of \$38,700.00.

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Also on November 3, 2015 NYSOH issued an enrollment confirmation notice stating that your children were enrolled in a Child Health Plus plan, effective December 1, 2015.

On December 21, 2015 an eligibility determination notice was issued stating that your children were no longer eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions. Your children could also not enroll in a qualified health plan at full cost. This was because you did not respond to the renewal notice and did not complete your children's renewal in the required time frame. Your children's eligibility would end December 31, 2015.

On December 22, 2015 NYSOH issued a disenrollment notice stating that your children's coverage through their Child Health Plus plan would end effective December 31, 2015.

On January 5, 2016 NYSOH received your family's updated application for health insurance. The application submitted that day listed a household income of \$18,000.00.

On January 6, 2016 NYSOH issued a notice stating that your, your spouse's and your children's eligibility could not be determined because the income information you provided does not match state and federal data sources. You were asked to submit documentation confirming your household income by January 21, 2016.

On January 7, 2016 NYSOH received your family's updated application for health insurance. The application submitted that day listed a household income of \$30,886.00.

On January 8, 2016 NYSOH issued a notice stating that your, your spouse's and your children's eligibility could not be determined because the income information you provided does not match state and federal data sources. You were asked to submit documentation confirming your household income by January 23, 2016.

On January 14, 2016 and January 16, 2016 you provided income documentation to NYSOH.

On February 12, 2016 an NYSOH representative updated the income in your NYSOH account to \$34,442.00 in accordance with the documentation you provided.

On February 13, 2016 NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to enroll in the Essential Plan, effective March 1, 2016.

Also on February 13, 2016 NYSOH issued a notice stating that your children's eligibility could not be determined because the income information you provided

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does not match state and federal data sources. You were asked to submit documentation confirming your household income by February 23, 2016.

On February 9, 2016, February 23, 2016, and March 15, 2016 you provided additional documentation of your household's income to NYSOH.

On March 31, 2016 an NYSOH representative updated the income in your NYSOH account to \$33,601.00 in accordance with the documentation you provided.

On April 1, 2016 NYSOH issued a notice stating that your children's eligibility could not be determined because the income information you provided does not match state and federal data sources. You were asked to submit documentation confirming your household income by April 16, 2016.

On April 5, 2016 an NYSOH representative updated the income in your NYSOH account to \$33,654.00.

Also on April 5, 2016 you spoke to NYSOH's Account Review Unit and appealed NYSOH's failure to provide a timely notice of eligibility determination for your children ([REDACTED]). You also requested Aid to Continue for your children pending the outcome of your appeal.

On April 6, 2016 NYSOH issued a notice stating that your children's eligibility could not be determined because the income information you provided does not match state and federal data sources. You were asked to submit documentation confirming your household income by April 21, 2016.

On April 9, 2016 you provided additional documentation of your household's income to NYSOH.

On May 4, 2016 an NYSOH representative updated the income in your NYSOH account to \$33,654.00.

Also on May 4, 2016 you spoke to NYSOH's Account Review Unit and appealed your children's disenrollment from their Child Health Plus plan [REDACTED]). You also requested Aid to Continue for your children pending the outcome of your appeal.

On May 10, 2016 NYSOH granted your request for Aid to Continue.

On May 11, 2016 NYSOH issued a notice stating that your children were eligible for Child Health Plus for a limited time because you have been granted Aid to Continue until a decision is made on your appeal, effective May 1, 2016.

Also on May 11, 2016 NYSOH issued an enrollment confirmation notice stating that your children were enrolled in a Child Health Plus plan, effective June 1, 2016.

On October 13, 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) You testified that you are appealing your two children's eligibility.
- 2) The record indicates that you file your taxes with a tax filing status of married filing jointly and claim your two children as dependents.
- 3) The record indicates that on November 2, 2015 you updated the income information in your NYSOH account to \$38,700.00. You testified that this amount was correct for what you and your spouse expected to receive in 2015.
- 4) You testified, and the record indicates, that your children were eligible for and enrolled in a Child Health Plus plan for the month of December 2015.
- 5) You testified that in January 2016 you updated the income information in your account for the 2016 tax year.
- 6) The record indicates that on January 5, 2016 you updated the income information in your NYSOH account to \$18,000.00. You testified that the income on this application was incorrect because you had provided a three month estimate of what your income was and not what you expected to earn for the full year.
- 7) The record indicates that on January 7, 2016 you updated the income information in your NYSOH account to \$30,886.00.
- 8) You testified that your expected annual income decreased in 2016 because you were not working at the same jobs you had worked in 2015.
- 9) The record indicates that you provided numerous pieces of documentation of your income to NYSOH with uploads dated January 14, 2016, January 16, 2016, February 9, 2016, February 23, 2016, March 15, 2016, March 29, 2016, and April 9, 2016.

10) You testified that you called NYSOH two or three times a week asking if your documentation was sufficient and whether your children were eligible to enroll. You testified that during these conversations you were told to either wait for your documents to be verified or that everything was good.

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

Applicable Law and Regulations

Child Health Plus

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

In an analysis of Child Health Plus eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your first application for your two youngest children, that was the 2015 FPL, which was \$24,300.00 for a four-person household (80 Federal Register 3236, 3237).

“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, <https://www.medicaid.gov/chip/state-program-information/chip-state-program-information.html>).

The State of New York has elected to provide presumptive eligibility to children if the child appears eligible for coverage but is missing one or more documents needed to verify eligibility. A child may be enrolled presumptively for two months while the missing documentation is collected (see *e.g.* 42 CFR § 457.355, SPA NY-14-0005, approved February 3, 2015 and effective January 1, 2014,

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<https://www.medicaid.gov/chip/state-program-information/chip-state-program-information.html>).

Temporary Child Health Plus coverage is also available to any child under the age of 19 whose family's household income does not exceed 400% of the FPL and appears to be Medicaid eligible at recertification. This eligibility period of temporary enrollment continues until the earlier of the date a Medicaid eligibility determination is made or two months after the temporary eligibility period begins. A temporary enrollment period may be extended in the event a Medicaid eligibility determination is not made within the two-month period through no fault of the applicant, as long as all the required documentation has been submitted within the two-month period (Model State Application Section 4.1.8 CHP presumptive eligibility on recertification where child appears to be MA eligible - Approved by CMS 7/17/14).

Medicaid for Children

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

In an analysis of Medicaid eligibility, the determination is based on the FPL "for the applicable budget period used to determine an individual's eligibility" (42 CFR § 435.4). On the date of your application, that was the 2016 FPL, which is \$24,300.00 for a four person household (81 Fed. Reg. 4036).

Timely Notice of Medicaid Eligibility

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

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Legal Analysis

The first issue is whether NYSOH properly determined that your children's coverage through their Child Health Plus plan ended effective December 31, 2015.

Your children were originally found eligible for Child Health Plus effective December 1, 2015. This eligibility was based on your household's attested income of \$38,700.00.

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.

However, on December 21, 2015 NYSOH issued a notice stating that your children were no longer eligible for Child Health Plus because you did not respond to the October 25, 2015 renewal notice and did not complete your children's renewal in the required time frame. Your children's eligibility would end December 31, 2015. Your children were terminated from their Child Health Plus plan, effective December 31, 2015 which was only one month into their 12 month coverage period.

The record indicates that on January 5, 2016 and January 7, 2016 you updated the income information in your NYSOH account to \$18,000.00 and \$30,886.00, respectively. During the hearing, you testified that the \$18,000.00 income was in error and it will therefore not be considered credible for the purposes of this decision.

According to the record, you expect to file a joint federal income tax return with your spouse and claim your two children as dependents. Therefore, your children are in a four-person household.

The submitted household income on the January 7, 2016 application of \$30,886.00 is 127.10% of the 2016 FPL, and your children would have an income below 400% of the FPL based on the information contained in your NYSOH application.

However, instead of issuing an eligibility for your children based on your application, NYSOH issued a notice stating that their eligibility could not be determined and that more information regarding the household's income was needed.

Notwithstanding the fact that NYSOH should not have required your children to recertify after only a month of being enrolled in Child Health Plus, a child is

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deemed temporarily eligible to enroll in Child Health Plus upon recertification whose family's household income does not exceed 400% of the FPL and appears to be Medicaid eligible at recertification.

Therefore, your children should not have been disenrolled from their Child Health Plus plan as of December 31, 2015 and their eligibility in their Child Health Plus plan should have continued for an additional two months.

Therefore, the December 22, 2015 disenrollment notice is **RESCINDED**.

The second issue is whether NYSOH fail to issue a timely eligibility determination based on the documentation you had submitted.

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. 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 14, 2016 and January 16, 2016 you provided income documentation to NYSOH. On February 12, 2016 an NYSOH representative updated the income in your NYSOH account to \$34,442.00 in accordance with the documentation you provided. Based on this information, NYSOH provided you and your spouse an eligibility determination. For reasons that are unclear, NYSOH was unable to provide an eligibility determination for your children based on this same information.

Therefore, it is concluded that NYSOH did not issue a timely notice of eligibility determination for your two children even though it was clear from the record that as of February 12, 2016 there was enough information to issue an eligibility determination for the other people in your household.

Under the current law, your children's temporary Child Health Plus eligibility should continue until the date a Medicaid eligibility determination is made or two months after the temporary eligibility period begins. This enrollment period may be extended in the event a Medicaid eligibility determination is not made within the two-month period through no fault of the applicant, as long as all the required documentation has been submitted.

Since NYSOH failed to issue a timely notice of eligibility determination, even though you had submitted the required documentation, it is determined that your children's Child Health Plus coverage should be effective as of January 1, 2016 and it continues until such a time as NYSOH makes a full eligibility determination based on the current information you have provided in your NYSOH account.

Decision

The December 22, 2015 disenrollment notice is RESCINDED.

NYSOH failed to issue a timely notice of eligibility determination for your children.

Your case is RETURNED to NYSOH to ensure that your children are covered through Child Health Plus as of January 1, 2016 and that coverage continues until such a time as NYSOH makes a full eligibility determination based on the current information you have provided in your NYSOH account.

Effective Date of this Decision: October 26, 2016

How this Decision Affects Your Eligibility

Your children were improperly disenrolled from their Child Health Plus coverage.

Your case is being sent back to NYSOH to ensure that your children are covered through Child Health Plus as of January 1, 2016. They will continued to be covered under Child Health Plus until such a time as NYSOH can make a proper eligibility determination.

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.

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If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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- By fax: 1-855-900-5557

Summary

The December 22, 2015 disenrollment notice is **RESCINDED**.

Your children were improperly disenrolled from their Child Health Plus coverage.

NYSOH failed to issue a timely notice of eligibility determination for your children.

Your case is **RETURNED** to NYSOH to ensure that your children are covered through Child Health Plus as of January 1, 2016 and that coverage continues until such a time as NYSOH makes a full eligibility determination based on the current information you have provided in your NYSOH account.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

