



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

## Notice of Decision

Decision Date: February 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011729

[REDACTED]

Dear [REDACTED],

On January 12, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's, August 19, 2016 preliminary eligibility determination, August 20, 2016 disenrollment notice, and the August 20, 2016 enrollment confirmation notice.

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

Decision Date: February 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011729

[REDACTED]

## Issues

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

Did NY State of Health properly determine your child eligible for Medicaid for the month of September 2016 and not Child Health Plus?

Did NY State of Health properly determine that your child's enrollment in his Child Health Plus plan was effective October 1, 2016?

## Procedural History

On January 12, 2016, NY State of Health (NYSOH) issued an eligibility determination notice stating that your child was newly eligible for Child Health Plus for a cost of \$15.00 per month effective February 1, 2016.

On January 12, 2016, an enrollment confirmation notice was issued confirming your child's enrollment in a Child Health Plus plan effective February 1, 2016.

On August 19, 2016, NYSOH received two applications for financial assistance. The first application submitted that day listed a household income of \$30,900.00. A preliminary eligibility determination was prepared based on the first application finding your child eligible for Medicaid, effective September 1, 2016.

The second application that was filed on August 19, 2016 listed a household income of \$42,900.00. A preliminary eligibility determination was prepared based on the second application finding your child eligible for Child Health Plus, effective October 1, 2016.

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On August 20, 2016, a cancellation notice was issued, based on the first application filed on August 19, 2016, terminating your child's enrollment in his Child Health Plus plan effective September 1, 2016.

Also on August 20, 2016, an eligibility determination notice was issued, based on the second application filed on August 19, 2016, stating that your child was eligible to enroll in Child Health Plus for a cost of \$9.00 per month effective October 1, 2016.

Finally, on August 20, 2016, an enrollment confirmation notice was issued confirming your child's enrollment on August 19, 2016 in a Child Health Plus plan effective October 1, 2016.

On August 29, 2016, you spoke to NYSOH's Account Review Unit and appealed the start date of your child's Child Health Plus plan insofar as it did not begin September 1, 2016.

On January 12, 2017, 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 only your youngest child's eligibility.
- 2) You plan on filing your 2016 taxes as Head of Household, and will claim two dependents.
- 3) An NYSOH agent submitted two applications to NYSOH on your behalf for financial assistance on August 19, 2016.
- 4) As a result of your first application on August 19, 2016 your child was found preliminarily eligible for Medicaid effective September 1, 2016.
- 5) An incident filed on August 26, 2016 with NYSOH states the incorrect income information was updated in your application causing your child's Child Health Plus plan to end August 31, 2016. The incident further states "the phone call was reviewed and it showed that there was agent error. 'Consumer called to provide updated Income information (self-employment & Dividends) and wanted to make an update. However, agent did not inform consumer that by making the update after the 15<sup>th</sup> of the month may cause a gap in coverage.'" See Incident [REDACTED]

- 6) You testified that when you called on August 19, 2016, you told the NYSOH representative to keep your original income information of \$42,900.00 and to not complete the application with the income amount of \$30,900.00.
- 7) You testified you paid your premium payment for September, 2016.
- 8) Your child was disenrolled from his Child Health Plus plan effective August 31, 2016.
- 9) You testified, and the record reflects, that you reenrolled your child into a Child Health Plus plan on August 19, 2016.
- 10) You testified that you need your child's Child Health Plus plan to begin on September 1, 2016 because he experienced a gap in coverage for which you have outstanding medical bills as a result.

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 at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be "eligible for medical assistance"; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq. and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child's family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL (PHL § 2510(9)(d)(ii)).

The CHP premium is \$15.00 per month for a child whose family household income is between 223% and 250% of the FPL (PHL § 2510(9)(d)(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 application, that was the 2016 FPL, which was \$20,160.00 for a three-person household (81 Fed. Reg. 4036).

### Child Health Plus Enrollments

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)).

“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 e.g. State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

### Medicaid for Children

A child who is under one year of age 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 223% of the FPL for the applicable family size. (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

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

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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 the case of an individual who expects to file a tax return and does not expect to be claimed by another taxpayer, the household consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1)).

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 was \$20,160.00 for a three-person household (81 Fed. Reg. 4036).

## **Legal Analysis**

The first issue is whether NYSOH properly determined your child eligible for Medicaid for the month of September 2016, and not Child Health Plus.

Your child was first found eligible for Child Health Plus for a cost of \$15.00 per month effective February 1, 2016. You then submitted an enrollment for him in a Child Health Plus plan effective February 1, 2016.

On August 19, 2016, an NYSOH agent submitted two applications to NYSOH on your behalf.

According to the record, you expect to file tax return as Head of Household for the 2016 tax year and claim your two children as dependents. Therefore, your child is in a three-person household.

On your first August 19, 2016 application, an NYSOH agent entered in an expected household income of \$30,900.00. The application also stated that your child was sixteen years old.

Medicaid can be provided through NYSOH to children between the ages of one and nineteen who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 154% of the FPL for the applicable family size. Since \$30,900.00 is 153.27% of the 2016 FPL for a three-person household NYSOH found your child preliminarily eligible for Medicaid.

To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid. As a result of the August 19, 2016 preliminary determination finding your child eligible

for Medicaid, he was no longer eligible for Child Health Plus or to remain enrolled in his plan. He was then disenrolled effective August 30, 2016.

However, you credibly testified that when you called on August 19, 2016, you told the NYSOH representative to keep your original income information of \$42,900.00 and to not complete the application using the income amount of \$30,900.00.

An incident filed on August 26, 2016 with NYSOH corroborates your testimony that you were not aware the change in income would result in your child's disenrollment for the month of September, 2016. The incident that was filed on August 26, 2016 states that the phone call was reviewed and it showed that there was agent error.

Therefore, NYSOH improperly found your child eligible for Medicaid and the preliminary eligibility determination that was made on August 19, 2016 as well as the August 20, 2016 disenrollment notice stating that your child's enrollment in his Child Health Plus plan was terminated effective September 1, 2016 are **RESCINDED**.

The second issue is whether NYSOH properly determined that your youngest child's enrollment in his Child Health Plus plan was effective October 1, 2016.

The second application submitted on August 19, 2016 found your child eligible for Child Health Plus for a cost of \$9.00 per month effective October 1, 2016, this was based on your attested household income of \$42,900.00.

The date on which a Child Health Plus plan can take effect depends on the day a person selects the plan for enrollment. 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.

You testified that on August 19, 2016 you reenrolled your child into a Child Health Plus plan for \$9.00 per month. This led to an enrollment for the first day of the second month following August which is October 1, 2016.

However, as stated above your child's disenrollment from his previous Child Health Plus plan was a result of agent error. But for the agent's error, your child's Child Health Plus plan would have continued uninterrupted. Therefore, the August 20, 2016, enrollment confirmation notice stating that your child's enrollment in his Child Health Plus plan was effective October 1, 2016, is **MODIFIED** to reflect a September 1, 2016 start date.



## **Decision**

The August 19, 2016 preliminary eligibility determination is RESCINDED.

The August 20, 2016 cancellation notice is RESCINDED.

The August 20, 2016, enrollment confirmation notice is MODIFIED to state that your child's enrollment in his Child Health Plus plan is effective as of September 1, 2016.

Your case is RETURNED to NYSOH to reinstate your child's Child Health Plus plan effective September 1, 2016 for a cost of \$9.00 per month. You will be responsible for any premium payment not yet received by your health plan for that month.

**Effective Date of this Decision:** February 21, 2017

## **How this Decision Affects Your Eligibility**

NYSOH improperly found your child preliminary eligible for Medicaid in September 2016.

Your child was improperly without Child Health Plus coverage for the month of September 2016.

Your case is sent back to NYSOH to make the effective date of your child's Child Health Plus plan September 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

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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  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The August 19, 2016 preliminary eligibility determination is **RESCINDED**.

The August 20, 2016 cancellation notice is **RESCINDED**.

NYSOH improperly found your child preliminary eligible for Medicaid in September 2016.

Your child was improperly without Child Health Plus coverage for the month of September 2016.

The August 20, 2016, enrollment confirmation notice is **MODIFIED** to state that your child's enrollment in his Child Health Plus plan is effective as of September 1, 2016.

Your case is **RETURNED** to NYSOH to reinstate your child's Child Health Plus plan effective September 1, 2016 for a cost of \$9.00 per month. You will be responsible for any premium payment not yet received by your health plan for that month.

Your case is sent back to NYSOH to make the effective date of your child's Child Health Plus plan September 1, 2016.

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## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

