



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

## Notice of Decision

Decision Date: February 15, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012788



Dear [REDACTED]

On February 8, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 14, 2016 eligibility determination and disenrollment notices.

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.

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## Decision

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NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012788



## Issues

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

Was your appeal of NY State of Health's (NYSOH) August 14, 2016 eligibility determination notice and August 14, 2016 disenrollment notice timely?

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

## Procedural History

On May 9, 2016, your NYSOH account was created and an application was submitted on your newborn child's behalf.

On May 11, 2016, NYSOH issued a notice of eligibility determination stating that your child was conditionally eligible to enroll in Child Health Plus with a \$45.00 per month premium effective June 1, 2016. The notice requested that you provide documentation confirming her citizenship status and Social Security number before August 8, 2016.

Also on May 11, 2016, NYSOH issued a notice confirming your child's enrollment in a Child Health Plus plan, effective June 1, 2016.

On August 14, 2016, NYSOH issued an eligibility determination notice stating that your child was not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. She also

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could not enroll in a qualified health plan at full cost because you had not confirmed her citizenship status and Social Security number within the required timeframe. The notice stated that her eligibility would end effective August 31, 2016.

Also on August 14, 2016, NYSOH issued a disenrollment notice stating that your child's coverage in her Child Health Plus plan would end effective August 31, 2016 because she is no longer eligible to enroll in health insurance through NYSOH.

On August 19, 2016, your child's Social Security number was added to your NYSOH account.

On August 20, 2016, NYSOH issued an eligibility determination notice stating that your child was eligible to enroll in Child Health Plus with a \$45.00 per month premium, effective October 1, 2016.

Also on August 20, 2016, NYSOH issued an enrollment confirmation notice stating that your child was enrolled in a Child Health Plus plan and that plan would start as of October 1, 2016.

On September 23, 2016, you contacted NYSOH and updated your application. That day, a complaint was also filed.

On October 25, 2016, you spoke to NYSOH's Account Review Unit and formally appealed your child's disenrollment from her Child Health Plus plan for the month of September 2016.

On February 8, 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 only appealing your child's disenrollment from her Child Health Plus plan for the month of September 2016.
- 2) On May 10, 2016, you submitted an application for health insurance on your child's behalf. The application that was submitted that day indicates that she was a U.S Citizen but she did not have a Social Security number because you were in the process of applying for one.

- 3) You testified that you received her Social Security number in late July or early August 2016.
- 4) The record indicates that on August 19, 2016 your child's Social Security number was added to your NYSOH account. You testified that you updated the account as soon as you received the disenrollment notice.
- 5) You testified that you did not know your child would have a gap in coverage for September because you thought when you provided the Social Security number in August her coverage would continue.
- 6) On September 23, 2016, a complaint was filed on your behalf with NYSOH ( [REDACTED] ) in regards to your child's plan being cancelled for failure to submit her Social Security number.
- 7) You testified that you did not file a formal appeal at the time of the September 23, 2016 phone call because you were not aware at that time that your child had a gap in coverage for the month of September 2016.
- 8) A formal appeal was filed by you on October 25, 2016.

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

## **Applicable Law and Regulations**

### Valid Appeal Requests

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

### Child Health Plus

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, an individual, including children, 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)).

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 § 457.340(b), 42 CFR § 435.910(h)(1); Model State Children's Health Insurance Program Plan, Section 4.1.9).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NY State of Health must then provide the applicant with 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), (f)(2)(i)).

If NYSOH remains unable to verify the 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)).

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NYSOH is required to provide proper written notice to an applicant of any decision effecting an enrollee's Child Health Plus eligibility (42 CFR § 457.340(e)). When Child Health Plus coverage is denied, suspended or terminated NYSOH must provide sufficient notice to enable the child's parent or caretaker relative to take appropriate actions in order to allow Child Health Plus coverage to continue without interruption (42 CFR § 457.340(e)(2); 42 CFR § 457.1130(a)(3)).

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).

## **Legal Analysis**

The first issue under review is whether your appeal of NYSOH's August 14, 2016 eligibility determination and August 14, 2016 disenrollment notice was timely.

On August 14, 2016 NYSOH issued an eligibility determination notice stating that your child was not eligible for enrollment through NYSOH because you had not confirmed her citizenship status and Social Security number within the required timeframe. The notice stated that her eligibility would end effective August 31, 2016. Also on August 14, 2016 NYSOH issued a disenrollment notice confirming her disenrollment from her Child Health Plus plan as of August 31, 2016.

A formal appeal was filed by you on October 25, 2016 in regards to your child's disenrollment from her Child Health Plus plan for the month of September 2016.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of the notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of your child's disenrollment from Child Health Plus as stated in the August 14, 2016 eligibility determination and August 14, 2016 disenrollment notice, an appeal should have been filed by October 13, 2016.

Although your appeal was untimely on its face, the record reflects that you called NYSOH on September 23, 2016 regarding your child's Social Security number and eligibility. You credibly testified that you spoke with a representative at that time and were not informed that your child was disenrolled for the month of September 2016.

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As you originally contacted NYSOH within sixty (60) days of the August 14, 2016 eligibility determination and August 14, 2016 disenrollment notice, provided the required information, and were not notified that your child had been disenrolled for the month of September 2016, your failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal.

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

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, their Social Security number and citizenship status.

If NYSOH cannot verify an individual's citizenship status or Social Security number, 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.

On May 10, 2016, you submitted an application for health insurance on your child's behalf. The application that was submitted that day, indicates that she was a U.S Citizen but she did not have a Social Security number because you were in the process of applying for one.

In the eligibility determination issued on May 11, 2016, you were advised that your child's eligibility for Child Health Plus was only conditional, and that you needed to confirm her Social Security number and citizenship status before August 8, 2016.

You testified that you received your child's Social Security number in late July or early August 2016. The record indicates that NYSOH did not have her Social Security number before the August 8, 2016 deadline.

On August 14, 2016, NYSOH issued a disenrollment notice stating that your child's coverage in her Child Health Plus plan would end effective August 31, 2016 because she was no longer eligible to enroll in health insurance through NYSOH. According to the eligibility determination issued on that day, this was because NYSOH did not receive documentation of her citizenship status and Social Security number. A subsequent disenrollment notice was issued confirming that her Child Health Plus plan would end as of August 31, 2016 because you she was no longer eligible to remain enrolled.

When NYSOH denies, terminates, or suspends a child's Child Health Plus coverage, they are required to provide sufficient notice so that a child's parent is able to take action to prevent a gap in coverage for the child. Notice is

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considered received five days after the date on the notice. In this case, the notice formally disenrolling your child from her Child Health Plus plan was dated August 14, 2016. Therefore, the notice terminating your child's enrollment would be considered received as of August 19, 2016.

The record indicates that on August 19, 2016, your child's Social Security number was added to your NYSOH account. You testified that you updated the account as soon as you received the disenrollment notice.

When changes are made to an individual's application after the 15th of any month, NYSOH must make the redetermination that results from a change effective the first day of the next following month. Since you would have received NYSOH's notice terminating your child's Child Health Plus eligibility after the 15<sup>th</sup> of the month, any changes you would have made to your account to prevent a gap in coverage would not have been effective until October 1, 2016.

Therefore, NYSOH failed to provide you with sufficient notice that would have allowed you to take action in order to prevent a gap in Child Health Plus coverage for your child for the month of September 2016 and the August 14, 2016 eligibility determination and disenrollment notices are RESCINDED.

## **Decision**

The August 14, 2016 eligibility determination and disenrollment notices are RESCINDED.

Your case is RETURNED to NYSOH to reinstate your child into her Child Health Plus plan for the month of September 2016.

**Effective Date of this Decision:** February 15, 2017

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

Your child should not have been terminated from her Child Health Plus plan in September 2016 for failure to submit proof of her citizenship status and Social Security number.

Your case is being sent back to NYSOH to reinstate your child into her Child Health Plus for the month of September 2016.

## **If You Disagree with this Decision (Appeal Rights)**

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).

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

### **Summary**

The August 14, 2016 eligibility determination and disenrollment notices are **RESCINDED**.

Your child should not have been terminated from her Child Health Plus plan in September 2016 for failure to submit proof of her citizenship status and Social Security number.

Your case is **RETURNED** to NYSOH to reinstate your child into her Child Health Plus plan for the month of September 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:**



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