



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

Notice of Decision

Decision Date: January 27, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012949

[REDACTED]

[REDACTED]

On December 20, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's the November 1, 2016 eligibility redetermination 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 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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Decision

Decision Date: January 27, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012949

[REDACTED]

Issue

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

Did NY State of Health properly determine that your youngest child was disenrolled from his Child Health Plus plan, effective October 31, 2016, and was not re-enrolled until December 1, 2016, resulting in a gap in coverage during the month of November 2016?

Procedural History

On July 20, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination, based on your July 19, 2016 updated application, stating that your children were conditionally eligible for Child Health Plus (CHP) effective September 1, 2016. That notice stated that you must provide proof of income for your children by September 17, 2016 or they might lose the health insurance or the financial assistance they were currently receiving.

Also on July 20, 2016, NYSOH issued an enrollment confirmation notice, based on your July 19, 2016 plan selection, stating that your children were enrolled in a CHP plan, effective September 1, 2016.

On August 4, 2016, you faxed your paystubs to NYSOH as proof of your income, which were subsequently validated by NYSOH on August 9, 2016 (see Document #: [REDACTED]).

On August 9, 2016, NYSOH's system re-ran your children's application for financial assistance.

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On August 10, 2016, NYSOH issued a notice of eligibility redetermination, based on the August 9, 2016 updated application, stating that your children were conditionally eligible for CHP, effective September 1, 2016. That notice stated that you must provide proof of income for your children by September 17, 2016 or they might lose the health insurance or the financial assistance they were currently receiving.

Also on August 10, 2016, NYSOH issued an enrollment confirmation notice, based on your August 9, 2016 plan selection, stating that your children were enrolled in a CHP plan, effective August 1, 2016.

On August 11, 2016 and August 16, 2016, you faxed additional paystubs to NYSOH as proof of your income. These documents were invalidated by NYSOH on August 16, 2016 (see Documents #: [REDACTED])

On August 17, 2016, NYSOH issued a notice stating that additional information is required to confirm your children's eligibility for health insurance through NYSOH.

On October 1, 2016, you faxed additional paystubs to NYSOH as proof of your income (see Documents # [REDACTED])

On October 5, 2016, NYSOH's system re-ran your children's application for financial assistance.

On October 6, 2016, NYSOH issued a disenrollment notice stating that your children's CHP coverage would end October 31, 2016.

On October 10, 2016, NYSOH issued an eligibility redetermination, based on the October 5, 2016 update, stating that your youngest child may be able to enroll in coverage if he qualifies for a special enrollment period, effective November 1, 2016. This was because NYSOH could not verify the income listed in your application. That notice also stated that your two older children were eligible for CHP at a cost of \$9.00 per month, effective November 1, 2016.

On October 31, 2016, NYSOH received your youngest child's updated application for health insurance.

Also on October 31, 2016 you spoke to NYSOH's Account Review Unit and appealed the start date of your youngest child's CHP plan insofar as it did not begin November 1, 2016.

On November 1, 2016, NYSOH issued a notice of eligibility redetermination, based on your October 31, 2016 application, stating that your youngest child was

eligible to enroll in CHP with a \$9.00 monthly premium, effective December 1, 2016. Your other children remained eligible for CHP, effective November 1, 2016.

Also on November 1, 2016, NYSOH issued a notice of enrollment, based on your plan selection on October 31, 2016, stating that your children were enrolled in a CHP plan, with a plan enrollment start date of November 1, 2016.

On December 20, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to allow you time to submit your divorce decree and divorce settlement agreement.

On December 28, 2016, you uploaded a copy of your executed divorce decree entitled "Judgment of Divorce" and your executed divorce settlement agreement entitled "Separation/Opting Out Agreement." This evidence made part of the record as "Appellant's Exhibit A." The record remained open until January 4, 2017 and no other documents were submitted. The record is now closed.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) On July 20, 2016, you updated your children's application for health insurance and listed your two older children as your dependents on that application. You did not list your youngest child as a dependent because your former spouse will be taking him as a deduction on his 2016 tax return.
- 2) You testified that you did receive a notice telling you that you needed to provide proof of income in order to confirm your children's coverage for 2016. You further testified that the notice requested only your proof of income.
- 3) On August 4, 2016, you submitted proof of your income, which was subsequently validated by NYSOH on August 9, 2016.
- 4) On August 9, 2016, NYSOH's system re-ran your children's eligibility and sent out a notice to you requesting additional proof of your income.
- 5) On August 11 and August 16, 2016, you submitted additional proof of your income, which was invalidated by NYSOH on August 16, 2016.
- 6) On October 1, 2016, you submitted additional proof of your income.

- 7) On October 10, 2016, NYSOH issued an eligibility redetermination, based on the October 5, 2016 system rerun, stating that your youngest child may be able to enroll in coverage if he qualifies for a special enrollment period, effective November 1, 2016. Your two older children were eligible for CHP at a cost of \$9.00 per month, effective November 1, 2016.
- 8) You testified that the process was very confusing and you were not told, until much later in the process, that you needed to provide your former spouse's income tax return because he claims your youngest child as a dependent on his tax return. As a result, you waited to update your youngest child's application for health insurance until October 31, 2016 and he was redetermined eligible for CHP, effective December 1, 2016.
- 9) You testified that you have a divorce decree that proves that you have custody of your youngest child and that you are responsible to ensure he has health coverage. The record was kept open until January 4, 2017 for submittal of your divorce settlement agreement or divorce judgment. On December 28, 2016, you submitted a copy of your executed divorce decree entitled "Judgment of Divorce" and your executed divorce settlement agreement entitled "Separation/Opting Out Agreement" (see Appellant's Exhibit A).
- 10) According to the third paragraph on page 2 of your divorce decree, you were granted "primary physical custody" of all your children, including your youngest child. Additionally, according to section 17 on page 7 of your divorce settlement agreement, you are responsible "to provide health coverage for the benefit of the children" (see Appellant's Exhibit A).
- 11) You testified that you are only seeking that your youngest child be enrolled in his CHP plan as of November 1, 2016, to avoid a gap in coverage for the month of November 2016. You have no medical bills, but felt this was an issue that needed to be dealt with so as to be in compliance with the Divorce Settlement Agreement.

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

Applicable Law and Regulations

Child Health Plus

The “period of eligibility” for CHP 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 [CHP], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between [CHP] and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage,” including for periodic renewals (42 CFR § 457.340(f); 42 CFR §457.343).

The State of New York has provided that a child’s period of eligibility for CHP begins on the first day of the month during which a child is eligible. The State of New York will furnish benefits by 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).

Custodial Parent

In the case where a child is claimed by one parent as a dependent and not the other parent, the custodial parent for purposes of eligibility, is the parent who the child is living with (1) pursuant to a court order or (2) if no court order or there is shared custody, the parent with whom the child spends the majority of his or her nights (42 CFR § 435.603(f)(2)(iii)). The child’s family includes the following persons, if living with the child: (1) the child’s parent(s), (2) the child’s spouse, (3) the child’s children and siblings under the age of 19, or 21 if a full-time student (42 CFR § 435.603(f)(3)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your youngest child was disenrolled from his CHP plan effective October 31, 2016 and was not re-enrolled until December 1, 2016, resulting in a gap in coverage during the month of November 2016.

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).

On July 20, 2016, NYSOH issued an eligibility redetermination notice, based on your July 19, 2016 updated application, stating that your children were conditionally eligible for CHP effective September 1, 2016. That notice stated that you must provide proof of income for your children by September 17, 2016 or they might lose the health insurance or the financial assistance they were currently receiving.

You testified that you did receive the notice telling you that you needed to provide proof of income in order to confirm your children's coverage for 2016. In fact, according to your NYSOH account, on August 4, 2016, you submitted proof of your income, which was subsequently validated by NYSOH on August 11, 2016.

After validating your income, NYSOH's system re-ran your children's eligibility and sent notices requesting additional proof of your income. You obliged by submitting further proof of your income on August 11, 2016 and August 16, 2016. That proof of income was invalidated on August 16, 2016.

According to your NYSOH account and your testimony, you did not supply any further proof of income until October 1, 2016. NYSOH's system re-ran your children's eligibility for health insurance on October 5, 2016, based on your submission of proof of income and found your two older children eligible for CHP, effective November 1, 2016. However, NYSOH found your youngest child to be eligible for insurance only if he qualified for a special enrollment period.

According to your NYSOH account, your youngest child was disenrolled from his CHP plan because NYSOH could not verify the income listed in your application. You testified that this process was very confusing and the notice did not state that you needed to supply your former spouse's proof of income, which you did not have in your possession. You found out that you needed to provide your former spouse's income tax return, much later in the process, because he claims your youngest child on his tax return.

Your youngest child's eligibility and enrollment subsequently ended on October 31, 2016. You next updated your youngest child's application for health insurance on October 31, 2016. As a result of the updated application, he was re-determined eligible for CHP, effective December 1, 2016.

However, when determining eligibility for a child who is living with one parent but is being claimed by the other parent as a tax dependent, the custodial parent for purposes of eligibility, is the parent who the child is living with (1) pursuant to a court order or (2) if there is no court order or there is a shared custody agreement, the parent with whom the child spends the majority of his or her nights. According to the third paragraph on page 2 of your divorce decree, you were granted "primary physical custody" of all your children, including your youngest child. On the date of your NYSOH application, your child resided with

you and his siblings pursuant to a divorce decree and divorce settlement agreement. Therefore, you are the custodial parent of your youngest child.

Despite this and the fact that your proof of income documentation was verified on August 9, 2016, NYSOH continued to request additional proof of income information to determine your children's eligibility. Consequently, NYSOH disenrolled all three of your children on October 6, 2016, effective October 31, 2016. On October 10, 2016, NYSOH re-enrolled your two younger children, but not your youngest child. Therefore, it is reasonable to make the inference that NYSOH verified your proof of income for your two older children, whom you claim as dependents on your tax return, but did not verify your proof of income for your youngest child, who is claimed on his father's tax return.

Since you are the custodial parent of your youngest child, not only did NYSOH improperly deny your youngest child coverage after the October 5, 2016 system re-run, their request for additional proof of income after they validated your proof of income on August 9, 2016 was also improper. Therefore, the November 1, 2016 eligibility redetermination notice is MODIFIED to state that your youngest child's enrollment in his CHP plan was effective as of November 1, 2016.

Your case is RETURNED to NYSOH to reinstate your youngest child in his CHP for the month of November 2016.

Decision

The November 1, 2016 eligibility redetermination notice is MODIFIED to state that your youngest child's enrollment in his CHP plan was effective as of November 1, 2016.

Your case is RETURNED to NYSOH to reinstate your youngest child in his CHP for the month of November 2016 and to notify you accordingly.

Effective Date of this Decision: January 27, 2017

How this Decision Affects Your Eligibility

Your youngest child should not have been disenrolled from his CHP plan, effective October 31, 2016.

Your case is being sent back to NYSOH to reinstate your youngest child into his CHP plan for the month of November 2016. NYSOH will notify you once this has been completed.

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).

If applicable, you will be responsible for the premium due for your youngest child's coverage for the month of November 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
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The November 1, 2016 eligibility redetermination notice is MODIFIED to state that your youngest child's enrollment in his CHP plan was effective as of November 1, 2016.

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Your case is RETURNED to NYSOH to reinstate your youngest child in his CHP for the month of November 2016 and to notify you accordingly.

Your youngest child should not have been disenrolled from his CHP plan, effective October 31, 2016.

Your case is being sent back to NYSOH to reinstate your youngest child into his CHP plan for the month of November 2016. NYSOH will notify you once this has been completed.

If applicable, you will be responsible for the premium due for your youngest child's coverage for the month of November 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

