



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

Notice of Decision

Decision Date: March 08, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016395

[REDACTED]

Dear [REDACTED],

On March 8, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's February 17, 2017 eligibility determination notice, February 17, 2017 disenrollment notice, February 28, 2017 eligibility determination notice, and February 28, 2017 enrollment 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.

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Decision

Decision Date: March 08, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016395



Issues

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

Did NY State of Health provide you proper and adequate notice that your children's eligibility for and enrollment in Child Health Plus terminated as of February 28, 2017?

Did NY State of Health properly determine that you and your spouse's eligibility for and enrollment in your Essential Plan was effective April 1, 2017?

Procedural History

On January 20, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination, based on your January 19, 2016 application, stating that your children were eligible for Child Health Plus effective March 1, 2016, and that you and your spouse were eligible for the Essential Plan effective March 1, 2016. Your children were subsequently enrolled in a Child Health Plus plan and you and your spouse were enrolled in the Essential Plan.

On January 4, 2017, NYSOH issued a notice that it was time to renew your, your spouse's, and your children's health insurance for 2017. That notice stated that NYSOH did not have enough information from state and federal data sources to determine whether or not you, your spouse, and your children qualified for financial help paying for coverage. The notice asked that you update the information in your account by February 15, 2017 or the financial assistance you, your spouse, and your children were receiving may end.

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No updates were made to your account by February 15, 2017.

On February 17, 2017, NYSOH issued an eligibility determination notice stating that effective March 1, 2017 your children were no longer eligible for health insurance through NYSOH because you did not respond to the renewal notice and did not complete the renewal in the required time frame.

Also on February 17, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective March 1, 2017. The notice stated that you were not eligible for financial assistance because you did not respond to the renewal notice.

Additionally, on February 17, 2017, NYSOH issued a disenrollment notice stating that your children's coverage through their Child Health Plus plan would end February 28, 2017 because you did not renew their health insurance coverage, and that your and your spouse's coverage through your Essential Plan would end February 28, 2017 because you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

On February 27, 2017, NYSOH received your household's updated application for health insurance.

On February 28, 2017, NYSOH issued a notice of eligibility determination, based on your February 27, 2017 application, stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective April 1, 2017, and that your children were eligible to enroll in Child Health Plus, effective April 1, 2017. This same notice directed you to submit income documentation by May 28, 2017.

Also on February 28, 2017, NYSOH issued a notice of enrollment, based on your plan selection on February 27, 2017, stating that you and your spouse were enrolled in your Essential Plan and that coverage would start on April 1, 2017, and that your children were enrolled in a Child Health Plus plan and that coverage would start on April 1, 2017.

On March 1, 2017, you spoke to NYSOH's Account Review Unit and appealed the start date of your and your spouse's Essential Plan and your children's Child Health Plus plan insofar as your household did not have coverage for the month of March 2017.

On March 2, 2017, you submitted documentation from your younger child's doctor requesting an expedited appeal because of his urgent medical issues.

On March 3, 2017, your request for an expedited hearing was granted.

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On March 8, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to formal notice of the hearing. 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 seeking to have your children enrolled in their Child Health Plus plan and yourself and your spouse enrolled in your Essential Plan for the month of March 2016.
- 2) You testified that you receive electronic alerts from NYSOH as well as regular mail.
- 3) Your NYSOH account indicates that you have selected to receive electronic alerts from NYSOH.
- 4) You testified that you have never changed the preference of how you receive notices from NYSOH from regular mail to paperless or vice versa.
- 5) You testified that you believe you did receive an alert by email indicating that there was a new notice on your NYSOH account in January 2017. However, you are not sure if you checked the notice in your on-line account at that time.
- 6) The January 4, 2017 renewal notice does not indicate that your children's Child Health Plus plan enrollment would be terminated if you failed to respond. The notice does state that your children's financial eligibility may end.
- 7) You testified that you updated your account on-line on February 1, 2017. However, no completed application was submitted on February 1, 2017, and there is no evidence that you attempted to submit an application that day.
- 8) You testified that you became aware that your children had been disenrolled from their Child Health Plus plan in late February 2017. You explained that around that time you were having trouble receiving your regular mail which had resulted in some of your bills going unpaid, so you were contacting a number of entities, including your and your spouse's Essential Plan and your children's Child Health Plus plan, to

make sure that your outstanding bills had been paid. You further testified that when you spoke to your children's Child Health Plus plan you were advised that their coverage was ending. This prompted you to contact NYSOH, at which time you learned that your and your spouse's Essential Plan enrollment was ending as well.

- 9) You testified that when you became aware that your children had been disenrolled you contacted NYSOH to reenroll them.
- 10) On February 27, 2017 NYSOH received your household's updated application. You selected an Essential Plan for yourself and your spouse and a Child Health Plus plan for your children for reenrollment that day.

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 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) (NY Public Health Law § 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

(NY Public Health Law § 2511(2)(a)-(e)).

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,” including for periodic renewals (42 CFR § 457.340(f); 42 CFR §457.343).

In general, a child eligible for Child Health Plus must recertify their eligibility for enrollment through NYSOH once every twelve months (42 CFR § 457.343; 42 CFR § 435.916(a)(1), (d)). NYSOH must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (NY Public Health Law § 2511(2)(f)(ii)).42 CFR § 435.916(a)(2)).

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)(1)(D); 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).

Essential Plan Renewal

In general, NYSOH will review Essential Plan eligibility no more frequently than once every 12 months from the effective date of eligibility as long as enrollees are under age 65, not enrolled in minimum essential coverage elsewhere, remain state residents, and do not have any changes in circumstances. An individual enrolled in the Essential Plan shall have his or her coverage continued until the end of the 12-month period, provided he or she does not lose eligibility by reason of citizenship status, lack of state residence, failure to provide a valid social security number, providing inaccurate information that would affect eligibility when requesting or renewing health coverage, failure to make the applicable premium payment, or changes in circumstances (42 CFR § 600.340(a); 42 CFR § 600.320(d); NY Social Services Law § 369-gg(3) and (4)(d)); New York's Basic

Health Plan Blueprint, pp. 8 and 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

NYSOH must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (42 CFR § 600.340(e)). Once the 30-day period has lapsed, NYSOH must issue a redetermination as provided by the notice, with consideration given to any updates that may have been provided by the individual (42 CFR §600.345; (NY Social Services Law § 369-gg(4)(c); 45 CFR § 155.335(g); New York's Basic Health Plan Blueprint, p. 17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see *also* 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

Legal Analysis

The first issue under review is whether NYSOH provided you proper and adequate notice that your children's eligibility for and enrollment in Child Health Plus terminated as of February 28, 2017.

Your children were found eligible for Child Health Plus and enrolled effective March 1, 2016.

Generally, NYSOH must redetermine a qualified child's eligibility for Child Health Plus once every twelve months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's January 4, 2017 renewal notice stated that NYSOH did not have enough information from state and federal data sources to determine whether or not your children qualified for financial help paying for their coverage. The notice asked that you update the information in your account by February 15, 2017 or the financial assistance your children were receiving may end.

You testified that you attempted to update your account on February 1, 2017, however, there is no credible evidence that any updates were made to your NYSOH account prior to February 15, 2017.

On February 17, 2017 NYSOH issued a disenrollment notice stating that your children's coverage in their Child Health Plus plan would end effective February 28, 2017. According to the eligibility determination issued on February 17, 2017, this was because you did not respond to the renewal notice and did not complete the renewal in the required time frame.

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 considered received five days after the date on the notice. The January 4, 2017 renewal notice does not indicate that your children's Child Health Plus plan enrollment would be terminated if you failed to respond. You were first informed that your children's coverage through their Child Health Plus plan would end in the February 17, 2017 eligibility determination and February 17, 2017 disenrollment notices.

The record indicates that on February 27, 2017 you updated your NYSOH account and submitted an updated application for your children. The record reflects that you updated the account as soon as you received information that your children had been disenrolled from coverage.

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

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effective the first day of the next following month. Since you would have received NYSOH's notice terminating your children's Child Health Plus eligibility after the 15th of the month, any changes you would have made to your account to prevent a gap in coverage would not have been effective until April 1, 2017.

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 children for the month of March 2017 and the February 17, 2017 disenrollment notice and February 17, 2017 eligibility determination notice are RESCINDED, insofar as they found your children ineligible for and disenrolled from their Child Health Plus plan.

The second issue under review is whether NYSOH properly determined that you and your spouse's eligibility for and enrollment in your and your spouse's Essential Plan was effective April 1, 2017.

You and your spouse were originally found eligible for the Essential Plan effective March 1, 2016.

Generally, NYSOH will redetermine a qualified individual's eligibility for the Essential Plan once every 12 months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's January 4, 2017 renewal notice stated that there was not enough information to determine whether you and your spouse were eligible to continue your financial assistance for health insurance, and that you needed to supply additional information by February 15, 2017, or your and your spouse's financial assistance might end.

You testified that you attempted to update your account on February 1, 2017, however, there is no credible evidence that any updates were made to your NYSOH account prior to February 15, 2017.

Because there was no timely response to this notice, you and your spouse were terminated from your Essential Plan effective February 28, 2017.

The record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You testified that you did receive an electronic alert in January 2017 advising you that a new notice was available for your review.

Therefore, NYSOH properly notified you of your annual renewal and that information in your NYSOH account needed to be updated in order to ensure your enrollment in your health plan and eligibility for financial assistance would continue.

The record shows that on February 27, 2017 you updated the information in your NYSOH account and submitted a request to enroll yourself and your spouse in an Essential Plan.

The date on which the Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected after the fifteenth day of a month goes into effect on the first day of the second following month.

Since you selected your and your spouse's Essential Plan on February 27, 2017, it must take effect on the first day of the second month following after February 27, 2017; that is, on April 1, 2017.

Therefore, NYSOH's February 28, 2017 eligibility determination notice and enrollment confirmation notice are **AFFIRMED** because they properly began your and your spouse's eligibility for and enrollment in the Essential Plan on April 1, 2017.

Decision

The February 17, 2017 eligibility determination notice is **RESCINDED**, insofar as it found your children ineligible for Child Health Plus.

The February 17, 2017 disenrollment notice is **RESCINDED**, insofar as it found your children disenrolled from their Child Health Plus plan.

Your case is **RETURNED** to NYSOH to reinstate your children into their Child Health Plus plan for the month of March 2017, and to notify you accordingly.

The February 28, 2017 eligibility determination notice is **AFFIRMED**.

The February 28, 2017 enrollment confirmation notice is **AFFIRMED**.

Effective Date of this Decision: March 08, 2017

How this Decision Affects Your Eligibility

Your children should not have been terminated from their Child Health Plus plan in March 2017 because NYSOH failed to issue proper notice.

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).

Your case is being sent back to NYSOH to reinstate your children into their Child Health Plus for the month of March 2017. NYSOH will notify you once this has been completed.

If applicable, you will be responsible for any premiums due for coverage to resume that month.

This decision does not change your or your spouse's eligibility.

The effective date of your and your spouse's Essential Plan is April 1, 2017.

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:

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Summary

The February 17, 2017 eligibility determination notice is RESCINDED, insofar as it found your children ineligible for Child Health Plus.

The February 17, 2017 disenrollment notice is RESCINDED, insofar as it found your children disenrolled from their Child Health Plus plan.

Your children should not have been terminated from their Child Health Plus plan in March 2017 because NYSOH failed to issue proper notice.

Your case is RETURNED to NYSOH to reinstate your children into their Child Health Plus plan for the month of March 2017, and to notify you accordingly.

If applicable, you will be responsible for any premiums due for coverage to resume that month.

The February 28, 2017 eligibility determination notice is AFFIRMED.

The February 28, 2017 enrollment confirmation notice is AFFIRMED.

This decision does not change your or your spouse's eligibility.

The effective date of your and your spouse's Essential Plan is April 1, 2017.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

