



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

Notice of Decision

Decision Date: October 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019295



Dear [REDACTED]

On August 31, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's May 24, 2017 eligibility determination and enrollment 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 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.

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 child was enrolled in a Child Health Plus plan at full cost with an enrollment start date of July 1, 2017?

Did NYSOH properly determine that your child was eligible to enroll in a Child Health Plus plan or a Child-Only qualified health plan at full cost, effective as of July 1, 2017?

Procedural History

On May 23, 2017, an application for financial assistance was submitted for your child.

On May 24, 2017, NYSOH issued an eligibility determination notice stating that your child was eligible to enroll in a Child Health Plus plan or a Child-Only qualified health plan at full cost, effective as of July 1, 2017. The notice stated, in relevant part, that because your child had access to employer-sponsored coverage, your child cannot enroll into Child Health Plus.

Also on May 24, 2017, NYSOH issued a plan enrollment notice confirming that as of your May 23, 2017 health plan selection, your child was enrolled in a Child Health Plus plan with a monthly premium of \$172.08 and an enrollment start date of July 1, 2017.

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On May 25, 2017, you spoke with NYSOH's Account Review Unit and requested an appeal relative to the amount of financial assistance your child was determined eligible to receive and the enrollment start date of your child's health plan.

On May 26, 2017, NYSOH issued an eligibility determination notice stating that your child was eligible to enroll in a Child Health Plus plan or a Child-Only qualified health plan at full cost, effective as of July 1, 2017. The notice stated, in relevant part, that because your child had access to employer-sponsored coverage, your child cannot enroll into Child Health Plus.

Also on May 26, 2017, NYSOH issued a plan enrollment notice confirming that as of your May 25, 2017 health plan selection, your child was enrolled in a Child Health Plus plan with a monthly premium of \$177.67 and an enrollment start date of July 1, 2017.

On July 15, 2017, NYSOH issued an eligibility determination notice stating that your child was eligible for Child Health Plus with a monthly premium of \$45.00, effective August 1, 2017.

Also on July 15, 2017, NYSOH issued a plan enrollment notice confirming your child was enrolled in a Child Health Plus plan with a monthly premium of \$45.00, effective August 1, 2017.

On August 31, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing, and left open until September 1, 2017, to allow you to submit to NYSOH's Appeals Unit a copy of your employment separation agreement.

On September 3, 2017, you faxed five-pages of documentation to NYSOH's Appeals Unit. That documentation was made part of the record as "Appellant's Exhibit A." The record is now complete and closed.

Findings of Fact

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

- 1) According to your NYSOH account and testimony, your child was born on [REDACTED].
- 2) You testified that you and your child were enrolled in a family health insurance plan through your former employer.
- 3) You submitted a copy of the separation agreement between you and your former employer. The agreement stated that your employment was

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terminated on February 7, 2017, and your health insurance would continue until April 7, 2017 (see Appellant's Exhibit A, p. 2).

- 4) You also submitted an email from your employer announcing your separation from the company. The announcement stated that your position was eliminated because of job overlap and costs (see Appellant's Exhibit A, p. 5).
- 5) According to your NYSOH account, your child was determined by NYSOH to be in a "Waiting Period, Full Cost CHIP Only."
- 6) According to your NYSOH account and testimony, you expect to file a 2017 federal income tax return with the tax status of Health of Household (with qualifying individual), and expect to claim one dependent on that return.
- 7) According to your NYSOH account and testimony, you expect your annual household income to be \$50,000.09.
- 8) According to your NYSOH account, you enrolled your child in a Child Health Plus plan on May 23, 2017, with a monthly premium of \$177.67 and an enrollment start date of July 1, 2017.
- 9) According to the enrollment history in your NYSOH account, your child was enrolled in a Child Health Plus plan as of July 1, 2017, with a premium amount of \$45.00.
- 10) You testified that your child's Child Health Plus plan billed you \$172.08 for the July 2017 monthly premium and \$177.67 for the August 2017 monthly premium.
- 11) You testified that your child incurred approximately \$240.00 in medical expenses in June 2017 and want the health plan to cover those expenses.

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

Applicable Law and Regulations

Child Health Plus - Enrollment

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

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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).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

Child Health Plus – Eligibility

Generally, a tax dependent's household is the same as the household of the taxpayer who is claiming them as a tax dependent (42 CFR § 435.603(f)(2)).

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 PHL § 2511(2)(a)(iii)).

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in a Child Health Plus plan depends upon the child's family household income (NY PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL (NY PHL § 2510(9)(d)(1)). If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (NY PHL § 2510(9)(d)).

The CHP premium is \$45.00 per month for a child whose family household income is between 301% and 350% of the FPL, but no more than \$135.00 per month per family (NY PHL § 2510(9)(d)(v)).

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 2017 FPL, which was \$16,240.00 for a two-person household (82 Federal Register 8831).

Child Health Plus – Waiting Period

"A state plan must include a description of reasonable procedures to ensure that health benefits coverage provided under the State plan does not substitute for coverage provided under group health plans" (42 CFR § 457.805(a)).

The State of New York has chosen to impose a 90-day waiting period during which an individual is ineligible for health insurance coverage, such as subsidized Child Health Plus coverage, through NYSOH due to dropping group health coverage. The applicable federal regulations and state plan provide exemptions from the waiting period including that, "[a] change in employment, including involuntary separation, resulted in child's loss of employer-sponsored insurance...." (42 CFR § 457.805(b); see e.g., 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 NYSOH properly determined that your child was enrolled in a Child Health Plus plan with an enrollment start date of July 1, 2017.

The record reflects that your child was determined eligible for Child Health Plus and enrolled in a health plan on May 23, 2017.

The date on which a Child Health Plus plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected between the first day and fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month and the end of the month goes into effect on the first day of the second following month.

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Your child's Child Health Plus plan was selected on May 23, 2017. As such, the health plan properly began the first day of the second month following May 23, 2017; that is, on July 1, 2017.

Therefore, the May 24 and 26, 2017 plan enrollment notices confirming that your child was enrolled in a Child Health Plus plan with a plan enrollment start date of July 1, 2017, is correct to this extent and must be AFFIRMED.

The second issue under review is whether your child was properly determined eligible to enroll in a Child Health Plus plan or a Child-Only qualified health plan at full cost and without any subsidy, effective as of July 1, 2017.

On May 23, 2017, you submitted an application for financial assistance for your child. In that application, you attested that your child lost employer-sponsored insurance because you were no longer employed by the employer who was providing the insurance.

New York has opted to impose a 90-day waiting period during which an individual is ineligible to enroll in a subsidized Child Health Plus plan due to dropping group health coverage. According to your May 23, 2017 application, your child lost employer-sponsored insurance on April 7, 2017. Based on that information, NYSOH imposed a 90-day waiting period on your child's eligibility for subsidy when it determined them to be eligible to enroll in a full pay Child Health Plus plan, effective July 1, 2017, and ineligible for subsidized Child Health Plus coverage.

However, the applicable federal regulations and state plan provide various exemptions from the 90-day waiting period. An exemption is created when an individual changes employment, including involuntary separation, which results in a child losing employer-sponsored insurance.

The credible evidence of record reflects that your child was enrolled with you in a family health insurance plan through your former employer. You submitted documentation to demonstrate that your employment was terminated on February 7, 2017, because your position was eliminated, and your family's employer-sponsored insurance ended as of April 7, 2017 (see Appellant's Exhibit A pp. 2, 5).

Based on the foregoing, there is sufficient evidence in the record to support that your separation from your former employer was involuntary, as indicated in the separation agreement and company announcement. As such, it is reasonable to conclude that your involuntary separation from your employment resulted in your child losing employer-sponsored insurance and your child should have been determined exempt from the 90-day waiting period and determined eligible for a subsidy as of July 1, 2017, to assist with the Child Health Plus monthly premiums.

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You testified that you expect to file a 2017 federal income tax return, with the tax status of Head of Household (with qualifying individual), and expected to claim your child as your only dependent on that return. Generally, a tax dependent's household is the same as the household of the taxpayer who is claiming them as a tax dependent. Therefore, your child is in a two-person household.

According to your May 23, 2017 application, you attested to an expected household income of \$50,000.09, and NYSOH relied upon that information. On the date of your application, the relevant FPL was \$16,240.00 for a two-person household. A two-person household, with an income of \$50,000.09, is 307.88% of the 2017 FPL.

A child is eligible to enroll in a Child Health Plus with financial assistance (subsidy), if they meet the non-financial requirements and have a household income below 400% FPL. A household with an annual income between 301% and 350% of that FPL is responsible for a \$45.00 per month Child Health Plus premium payment.

Since \$50,000.09 is 307.88% of the 2017 FPL, your child was eligible for Child Health Plus with a \$45.00 monthly premium payment. Therefore, NYSOH incorrectly determined your child eligible to enroll in a Child Health Plus at full cost, and the May 24 and 26, 2017 eligibility determination and plan enrollment notices to that effect are MODIFIED to state that your child was eligible for Child Health Plus with a monthly premium of \$45.00 as of July 1, 2017.

It is noted that the enrollment history in your NYSOH account reflects that your child was enrolled in a Child Health Plus plan as of July 1, 2017, with a premium amount of \$45.00.

Therefore, your case is RETURNED to NYSOH to ensure that your child is enrolled in a Child Health Plus plan with a \$45.00 monthly premium, effective July 1, 2017.

It is further noted that, according to the July 15, 2017 eligibility determination and plan enrollment notices, your child was enrolled in a Child Health Plus plan with a \$45.00 monthly premium and an enrollment start date of August 1, 2017.

During the hearing, you testified that your child's health plan billed you at full cost of premiums in the amount of \$172.08 for July 2017 and \$177.67 for the August 2017. Therefore, your case is RETURNED to NYSOH to coordinate with the health plan to ensure its compliance with the subsidy findings as set forth in this decision for the months of July 2017 and August 2017.

Decision

The May 24 and 26, 2017 plan enrollment notices are **AFFIRMED** to the extent that your child's enrollment start date in a Child Health Plus plan is effective July 1, 2017.

The May 24 and 26, 2017 eligibility determination and plan enrollment notices are **MODIFIED** in relevant part to state that your child was eligible for Child Health Plus with a monthly premium of \$45.00 as of July 1, 2017.

Your case is **RETURNED** to NYSOH to ensure that your child is enrolled in a Child Health Plus plan with a \$45.00 monthly premium, effective July 1, 2017, and to notify you accordingly.

Your case is also **RETURNED** to NYSOH to coordinate with the health plan to ensure its compliance with the subsidy findings for the months of July 2017 and August 2017, as set forth in this decision, and to notify you accordingly.

Effective Date of this Decision: October 3, 2017

How this Decision Affects Your Eligibility

Your child should have been eligible to enroll in a Child Health Plus plan with a \$45.00 monthly premium, effective July 1, 2017.

Your case is being sent back to NYSOH to ensure the \$45.00 monthly premium is applied as of July 1, 2017, and to address premium reimbursement or credit by the Child Health Plus plan for the full cost premium payments you made less \$45.00 for each of the months of July 2017 and August 2017. NYSOH will notify you of the outcomes.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace 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.

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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 Federal Marketplace. 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

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 May 24 and 26, 2017 plan enrollment notices are **AFFIRMED** to the extent that your child's enrollment start date in a Child Health Plus plan is effective July 1, 2017.

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).

The May 24 and 26, 2017 eligibility determination and plan enrollment notices are MODIFIED in relevant part to state that your child was eligible for Child Health Plus with a monthly premium of \$45.00 as of July 1, 2017.

Your case is RETURNED to NYSOH to ensure that your child is enrolled in a Child Health Plus plan with a \$45.00 monthly premium, effective July 1, 2017, and to notify you accordingly.

Your case is also RETURNED to NYSOH to coordinate with the health plan to ensure its compliance with the subsidy findings for the months of July 2017 and August 2017, as set forth in this decision, and to notify you accordingly.

Your child should have been eligible to enroll in a Child Health Plus plan with a \$45.00 monthly premium, effective July 1, 2017.

Your case is being sent back to NYSOH to ensure the \$45.00 monthly premium is applied as of July 1, 2017, and to address premium reimbursement or credit by the Child Health Plus plan for the full cost premium payments you made less \$45.00 for each of the months of July 2017 and August 2017. NYSOH will notify you of the outcomes.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您免费提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

বাংলা (Bengali)

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এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye b e tumi ama wo obi a okyer e kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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