



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

Notice of Decision

Decision Date: November 14, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021741

[REDACTED]

[REDACTED]

On October 26, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 14, 2017 disenrollment notice, and NYSOH's failure to determine your two youngest children eligible for Child Health Plus, effective July 1, 2017.

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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Decision

Decision Date: November 14, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021741



Issues

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

Did NY State of Health (NYSOH) properly disenroll your two youngest children (youngest children) from their Child Health Plus plan effective June 30, 2017?

Did NYSOH fail to determine your youngest children eligible for Child Health Plus, effective July 1, 2017?

Procedural History

On November 24, 2016, NYSOH issued an eligibility determination notice stating in part that your youngest children were eligible for Child Health Plus with a monthly premium of \$0.00 effective as of January 1, 2017.

Also on November 24, 2016, NYSOH issued a plan enrollment notice confirming in part that your children were enrolled in a Child Health Plus plan with an enrollment start date of January 1, 2017.

On June 13, 2017, you updated your NYSOH account.

On June 14, 2017, NYSOH issued a notice stating in part that your children might be eligible for health insurance through NYSOH but more information was

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needed to make a determination. The notice directed you to submit proof of income by June 28, 2017, to confirm your children's eligibility.

Also on June 14, 2017, NYSOH issued a disenrollment notice stating in part that your children's Child Health Plus plan would end effective June 30, 2017.

On June 15, 2017, you mailed additional documentation to [REDACTED]

On June 24, 2017, NYSOH issued a notice stating that the documentation reviewed did not confirm the information in your application. The notice requested that you send additional proof of income by July 13, 2017, to confirm your children's eligibility.

On July 7, 2017, you mailed additional documentation to [REDACTED]

On July 21, 2017, your account was updated.

On July 22, 2017, NYSOH issued an eligibility determination notice stating in part that your youngest children were eligible for Child Health Plus with a monthly premium of \$30.00, effective as of September 1, 2017.

On August 23, 2017, NYSOH issued a plan enrollment notice confirming that as of August 22, 2017, your youngest children were enrolled in a Child Health Plus plan with an enrollment start date of September 1, 2017.

Also on August 23, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as your youngest children not being enrolled in a Child Health Plus plan for the month of July 2017.

On October 26, 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 that your youngest children were not enrolled in a Child Health Plus plan in the month of July 2017.

- 2) According to your NYSOH account, your youngest children were born on [REDACTED] and [REDACTED] respectively.
- 3) According to your NYSOH account, your youngest children's sibling and your eldest child was born on [REDACTED].
- 4) According to your November 23, 2016 application, your family had the following expected yearly income:
 - (a) You expected to receive \$9,672.00 [REDACTED];
 - (b) Your domestic partner's earned income was \$34,950.00;
 - (c) Your eldest child's earned income was \$9,660.00;
 - (d) Your two youngest children each expected to receive \$300.00 in [REDACTED]
- 5) According to your NYSOH account, your youngest children were enrolled in a Child Health Plus effective January 1, 2017.
- 6) According to your NYSOH account, you and your domestic partner are the parents of your youngest children.
- 7) You testified that you contacted NYSOH on June 13, 2017, to report that your eldest child was [REDACTED]
- 8) According to the June 13, 2017 application, your eldest child's expected income was changed from \$9,660.00 to \$3,350.00.
- 9) According to your NYSOH account, you expect that your domestic partner will file a 2017 federal income tax return with the tax status of Head of Household (with qualifying individual), and claim you and your three children as dependents on that return.
- 10) On June 15, 2017, you mailed your domestic partner's most recent biweekly pay stubs to NYSOH. The pay stubs reflect that your domestic partner was issued \$1,474.37 on May 12, 2017, and \$1,515.03 on May 26, 2017 [REDACTED]
- 11) You testified that you want your youngest children to be enrolled in the Child Health Plus plan in the month of July 2017 to cover the medical costs that were incurred in that month.

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

Applicable Law and Regulations

Child Health Plus – Continuous Coverage

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” (NY Public Health Law § 2510(6)).

However, a child is not eligible for twelve months of continuous eligibility if:

- The child attains the age of 19;
- The child or child’s representative requests voluntary disenrollment;
- The child is no longer a resident of the state;
- The agency determines that eligibility was erroneously granted because of agency error or fraud, abuse, or perjury attributed to the child or the child’s representative;
- The child dies;
- Failure to pay required premiums or enrollment fees;
- The child becomes Medicaid eligible;
- The child has obtained other health insurance;
- The child has obtained access to a state health benefits plan subsequent to the initial/renewal period;

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

Modified Adjusted Gross Income (MAGI)

NYSOH bases its eligibility determinations on MAGI as defined in the federal tax code (45 CFR § 155.300(a)). MAGI means the 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.

The MAGI-based income of a child or tax dependent, who is not required to file a tax return, is not included in the household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(a)(1)(A)(i)). For the 2017 year, a dependent who had yearly gross earned income greater than \$6,350.00 or gross unearned income greater than \$1,050.00 would be required to file a tax return (see IRS Revenue Procedure 2016-55).

An individual's income from [REDACTED] is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC §§ 86(a)(1), (b)(1), (c)(1)(A)).

Household Composition

A child under the age of 19, who is living with both parents, and expects to be claimed by one parent as a tax dependent but whose parents do not expect to file a joint return, follow the relationship rule. The child's household includes: (1) the individual; (2) their parents; and (3) siblings under the age of 19 (42 CFR §§ 435.603(f)(2)(ii), (f)(3)(iii)).

Child Health Plus - Eligibility

A child who meets the eligibility requirements for 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) (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 CHP 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)).

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 \$28,780.00 for a five-person household (82 Fed. Reg. 8831).

Medicaid Eligibility - Children

Children who are at least one year of age but younger than nineteen are 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 154% of the FPL for the

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applicable family size (42 CFR § 435.118(c); New York State Department of Health Administrative Directive 13 OHIP/ADM-03).

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

Child Health Plus – Income Verification

NYSOH is required to verify the eligibility of an applicant for CHP subsidy payments, which includes verifying the applicant’s household income. If NYSOH is unable to verify the applicant’s household income using available data sources, then NYSOH must request additional information from the applicant. NYSOH must provide the applicant with a reasonable period to furnish such information (42 CFR § 457.380; 42 CFR § 435.952(c)).

Legal Analysis

The issue under review is whether NYSOH properly ended your youngest children’s Child Health Plan coverage effective June 30, 2017.

On November 24, 2016, NYSOH issued notices stating that your youngest children were eligible for and enrolled in Child Health Plus coverage as of January 1, 2017.

Generally, once a child is determined eligible for Child Health Plus, they are guaranteed 12 months of continuous coverage. This twelve-month period commences on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment. However, a child is not eligible for twelve months of continuous eligibility if the child is determined eligible for Medicaid.

On June 13, 2017, you contacted NYSOH and updated the information in your NYSOH account. According to your June 13, 2017 application, your domestic partner would be filing a 2017 federal income tax return, with the tax status of Head of Household (with qualifying individual), and would be claiming you and your three children as dependents on their tax return. Further, your domestic partner is the parent of your youngest children and all three children are siblings.

Children under the age of 19, who are living with both parents, and expect to be claimed by one parent as a tax dependent, but whose parents do not expect to

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file a joint return, follow a relationship rule. The children's household includes: (1) the individual; (2) their parents; and (3) siblings under the age of 19. Therefore, your two youngest children are in a five-person household.

To determine an individual's eligibility for financial assistance, NYSOH must determine a household's MAGI. Generally, a household's MAGI includes the adjusted gross income of all the individuals in that household. However, a child or a dependent's income is not included in the household's MAGI, if they are not required to file a federal income tax return.

A dependent will be required to file a tax return in 2017 if their earned income is greater than \$6,350.00. According to the information in your application, your eldest child has an expected earned income of \$3,350.00 from their employment. Since your eldest child has an earned income less than \$6,350.00, they are not required to file a tax return based on their earned income. Therefore, it is not included in your household income.

A dependent will also be required to file a tax return in 2017 when their unearned income is greater than \$1,050.00. Unearned income includes the taxable portion of [REDACTED]. To determine if any portion of a person's [REDACTED] is taxable, the IRS adds one-half of a person's income from Social Security to any other income that person receives. Any amount more than \$25,000.00 is considered taxable income.

At the time of your application, each of your youngest children expected to receive $(\$25.00 \times 12 \text{ months})$ \$300.00 in [REDACTED], and you expected to receive $(\$806.00 \times 12 \text{ months})$ \$9,672.00 in [REDACTED] in 2017. One-half of the amount of [REDACTED] that you and your two youngest children expect to receive in 2017 was less than \$25,000.00. You and your two youngest children are not required to file a tax return based on your [REDACTED]. Therefore, your and your two youngest children's benefits are not included in your household income.

According to the June 13, 2017 application, your domestic partner had an expected 2017 income of \$34,950.00. Therefore, your household's expected 2017 annual income was \$34,950.00.

A Medicaid-eligible child does not qualify to enroll in health insurance through Child Health Plus. Medicaid can be provided through the Marketplace to children between the ages of one and nineteen who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 154% of the FPL for the applicable family size. Since \$34,950.00 is 122.89% of the 2017 FPL for a five-person household, NYSOH properly found that your two youngest children to be ineligible for Child Health Plus and ended their coverage as of June 30, 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).

Therefore, the June 14, 2017, disenrollment notice is AFFIRMED.

The second issue under review is whether NYSOH failed to determine your children eligible for Child Health Plus for the month of July 2017.

The record does not contain an eligibility determination notice regarding your youngest children's eligibility for Child Health Plus for the month of July 2017. Here, the lack of a notice of eligibility determination on the issue does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. You testified that you want your children's Child Health Plus coverage reinstated for the month of July 2017. Your testimony is sufficient to deduce that NYSOH determined that your youngest children were ineligible for Child Health Plus for the month of July 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH. When an application requests financial assistance, NYSOH must verify an applicant's household income. If NYSOH cannot verify the household income attested to by the applicant, through the use of available data sources, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with reasonable time to provide documentation or information to resolve that inconsistency.

On June 13, 2017, you contacted NYSOH and updated the household's application. Based on that update, on June 14, 2017, NYSOH issued a notice stating that your youngest children might be eligible for health insurance through NYSOH but more information was needed to make a determination. The notice directed you to submit proof of income by June 28, 2017, to confirm your children's eligibility.

On June 15, 2017, you mailed your domestic partner's most recent biweekly pay stubs to NYSOH. The pay stubs reflect that your domestic partner was issued \$1,474.37 on May 12, 2017, and \$1,515.03 on May 26, 2017 [REDACTED] [REDACTED]. Based on the documentation submitted, your household's expected 2017 annual household income was $((\$1,474.37 + \$1,515.03) \times 13 \text{ periods})$ \$38,862.20.

Based on the legal analysis above, you were in a five-person household with an annual household income of \$38,862.20. As stated above, a Medicaid-eligible child is ineligible to enroll in Child Health Plus. A child, between the age of one and nineteen, is eligible for Medicaid if their modified adjusted gross income is at or below 154% of the FPL for the applicable family size. Since \$38,862.20 is 140.48% of the 2017 FPL for a five-person household, NYSOH did not fail to determine your two youngest children eligible for Child Health Plus effective July 1, 2017.

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Decision

The June 14, 2017 disenrollment notice is AFFIRMED.

NYSOH did not fail to determine your two youngest children eligible for Child Health Plus, effective July 1, 2017.

Effective Date of this Decision: November 14, 2017

How this Decision Affects Your Eligibility

Your youngest children were properly disenrolled from their Child Health Plus plan effective June 30, 2017.

Your youngest children were not eligible for Child Health Plus, effective July 1, 2017.

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.

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.

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).

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):

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- By mail at:
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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The June 14, 2017, disenrollment notice is AFFIRMED.

NYSOH did not fail to determine your two youngest children eligible for Child Health Plus, effective July 1, 2017.

Your youngest children were properly disenrolled from their Child Health Plus plan effective June 30, 2017.

Your youngest children were not eligible for Child Health Plus, effective July 1, 2017.

Legal Authority

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

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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.

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বাংলা (Bengali)

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.

Twí (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerE 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.

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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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.