



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

Notice of Decision

Decision Date: November 15, 2017

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000022834

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This Reserved Decision is being issued by the Appeals Unit of NY State of Health without a full hearing and with the consent of the parties' respective counsel.

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Albany, NY 12211

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Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(b).

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Decision

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[REDACTED]

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[REDACTED]

Issues

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

Based on Appellant's interactions with NY State of Health (NYSOH), did an information technology system error prevent her and her children from being determined eligible for financial assistance and from enrolling in health plans for four months during 2015?

Did NYSOH timely issue the August 14, 2015 eligibility determination notice so as to afford Appellant enough time to select and enroll herself and her children in health plans for a September 1, 2015 enrollment start date?

Procedural History

On July 21, 2015, Appellant updated her NYSOH application and requested health insurance for herself and her two children.

On July 22, 2017, NYSOH issued a notice stating that the income information Appellant provided did not match what NYSOH obtained from state and federal data sources and more information was needed to determine the household members' eligibility for health insurance. The notice instructed Appellant to submit income documentation for the household by August 6, 2015, to confirm the information provided in the application was accurate.

On August 14, 2015, NYSOH issued an eligibility determination notice stating that, effective September 1, 2015, Appellant was eligible to receive advance payments of the premium tax credit of up to \$129.00 per month and eligible for cost-sharing reductions, if she enrolled in a silver-level qualified health plan. The notice also stated her two children were eligible to enroll in Child Health Plus at a cost of \$9.00 each per month, effective September 1, 2015, and needed to pick a plan.

On August 19, 2015, NYSOH issued a plan enrollment notice confirming that Appellant's two children were enrolled in a Child Health Plus plan and coverage could start October 1, 2015. The notice also stated that Appellant had not selected a health plan yet for herself and needed to choose a plan in order for her coverage to start.

On October 18, 2015, NYSOH issued an eligibility determination notice, based on Appellant's October 16, 2015 updated application, stating in relevant part that she was eligible to receive advance payments of the premium tax credit of up to \$129.00 per month and cost-sharing reductions, effective December 1, 2015.

Also on October 18, 2015, NYSOH issued a plan enrollment notice stating in relevant part that Appellant's health coverage with a qualified health plan would not begin until she picked a health plan.

A fully executed Stipulation of Settlement, dated September 21, 2017, as to undisputed facts is being made part of the record as Appellant and Respondent's joint "Exhibit 1." The record is now closed and this Reserved Decision is being issued without a full hearing and with the consent of the parties' respective counsel.

Findings of Fact

According to Exhibit 1, Appellant and Respondent (the parties) have stipulated and agreed by and between themselves that the undisputed facts in the above-referenced matter on appeal before NYSOH's Appeals Unit are settled as follows:

- 1) Appellant and her two children have an account through [NYSOH].
- 2) Appellant and her children were receiving Medicaid through her local department of social services. The Medicaid coverage ended on March 31, 2015.
- 3) Appellant applied for coverage through [NYSOH] for her and her two children on April 14, 2015.
- 4) On April 14, 2015, Appellant was not able to receive an eligibility determination for financial assistance or select health plans because her account went into resequencing, which is a technical process within the [NYSOH] information technology system.
- 5) From approximately April 14, 2015 to July 21, 2015, the resequencing process prevented [NYSOH] from confirming Appellant's and her children's eligibility for Financial Assistance and prevented Appellant and her children from accessing plan selection to complete the application and enrollment process through [NYSOH].
- 6) Based on income data from federal and state sources at the time she applied, Appellant would have been eligible for advance payments of the premium tax credit and her children would have been eligible for Child Health Plus.
- 7) Appellant qualified for a special enrollment period in April 2015 based on newly qualifying for advance payments of the premium tax credit. Child Health Plus offers continuous open enrollment.
- 8) If Appellant had selected health plans on April 14, 2015, Appellant's and her children's coverage could have been effective May 1, 2015.
- 9) [NYSOH] resolved the technical issue with Appellant's account on July 21, 2015 but needed to verify Appellant's household income.

- 10) Appellant uploaded income documentation on August 11, 2015. [NYSOH] verified Appellant's household income on August 13, 2015, and sent notice on Friday, August 14, 2015 directing Appellant to choose health plans for herself and her children.
- 11) Appellant receives her notices by regular mail.
- 12) Appellant maintains that she did not become aware of the August 14, 2015 notice directing her to choose health plans until after August 15, 2015, the deadline to select plans with a September 1, 2015 effective date.
- 13) Appellant enrolled her children in a Child Health Plus plan on August 18, 2015, with coverage effective October 1, 2015.
- 14) [NYSOH] would have also allowed Appellant to enroll in a qualified health plan with advance payment of the premium tax credit at this time because her non-enrollment in April 2015 was the result of technical error in the [NYSOH] system. Additionally, [NYSOH] must "ensure that coverage is effective on an appropriate date based on the circumstances" for this triggering event [45 CFR 155.420(b)(2)(iii) (relating to special enrollment periods)].
- 15) Appellant states that she did not choose a qualified health plan in August 2015 because she maintains she had secured employer-sponsored insurance with an October 1, 2015 effective date.
- 16) [NYSOH] acknowledges that the gap in health insurance coverage experienced by Appellant and her two children for the four months covering May 1, 2015 through August 31, 2015 was the result of its inadvertent technical error. Additionally, Appellant and her children were also not able to enroll in coverage for the period of September 1, 2015 through 30, 2015, because of the timing on the [NYSOH] notice of August 14, 2015 directing them to choose health plans.

In addition, a review of the record supports additional findings of fact as follows:

- 17) According to Appellant's NYSOH account, on April 14, 2015 and April 15, 2015, a navigator assisted Appellant in attempting to process an application for health insurance for her and her children without success.
- 18) According to Appellant's NYSOH account, on May 7, 2015 and June 3, 2015, a NYSOH representative attempted to update and process Appellant's application for health insurance for her and her two children without success.

19) At Appellant's option under title 45, section 155.545(c) of the Code of Federal Regulations, this Decision is not retroactive.

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

Applicable Law and Regulations

Enrollment Periods

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a Qualified Health Plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). In 2015, the open enrollment period ended February 28, 2015.

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals if a triggering event occurs. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. One instance in which this is permitted is when the qualified individual or his or her dependent involuntarily loses certain health insurance coverage that is considered to be minimum essential coverage, such as employer-sponsored health insurance (45 CFR § 155.420(d)(1)(a); 26 CFR § 1.36B-2(c)(1)).

Generally, if a triggering life event occurs such as when a qualified individual loses minimum essential coverage, the qualified individual or enrollee has 60 days before and after the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

If a qualified individual who is losing minimum essential coverage selects a QHP prior to or on the date of loss of coverage, NYSOH "must ensure that the coverage effective date is on the first day of the month following the loss of coverage" (45 CFR § 155.420(b)(2)(iv)).

Child Health Plus – Enrollment Start Date

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

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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” (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).

Qualified Health Plan – Enrollment Start Date

The effective date of coverage by a qualified health 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)). 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)).

Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR §155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s) experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR §155.605(g)(1)(iii)).

NYSOH may adopt an exemption eligibility determination made by the Department of Health and Human Services (HHS). In the *Eligibility for Exemptions* final rule (79 FR 30349, May 27, 2014), HHS established in 45 CFR § 155.625(b) an option under which a State-based Marketplace (SBM) could

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adopt eligibility determinations for exemptions from the shared responsibility payment made by HHS, provided certain conditions are met by the SBM, for any applications submitted prior to October 15, 2014. The May 27, 2014 *Exchange and Insurance Market Standards for 2015 and Beyond* final rule extended the §155.625(b) option for exemption applications submitted before the start of the open enrollment period for 2016.

Centers for Medicare and Medicaid Services (CMS) intends to propose regulations that would authorize this option on a permanent basis, and, in the interim, will not take any enforcement action against SBMs that continue to use the HHS service for exemptions beyond the start of open enrollment for 2016 (see, CMS' Center for Consumer Information and Insurance Oversight, "Frequently Asked Questions on State-based Marketplace Options for Implementing Exemptions from the Shared Responsibility Payment," dated July 28, 2015).

Legal Analysis

The first issue under review is whether a NYSOH information technology system error prevented Appellant and her children from being determined eligible for financial assistance and from enrolling in health plans for four months during 2015; that is, from May 1, 2015 through August 31, 2015.

The record reflects that Appellant submitted an application on April 14, 2015. Therefore, she did not complete her application during the open enrollment for 2015, which ended February 28, 2015. Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered by NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

According to the record, Appellant's previous insurance coverage ended on March 31, 2015, which was reported as an involuntary loss of minimum essential coverage and is considered a triggering life event. On April 14, 2015, Appellant made a timely application within 60 days after this life event occurred on March 31, 2015. As such, Appellant was entitled to and was granted a special enrollment period at the time of her April 14, 2015 application and should have been afforded the opportunity to enroll herself and her children in health plans effective May 1, 2015. However, the record demonstrates that an information technology system error caused Appellant's application to go into a resequencing mode such that her and her children's eligibility for financial assistance could not be determined and health plans could not be selected for an effective start date of May 1, 2015.

The record further demonstrates that this technical system error was not resolved by NYSOH until on or about August 13, 2015, resulting in a four-month gap in coverage for Appellant and her children from May 1, 2015 through August 31, 2015.

The second issue under review is whether NYSOH timely issued the August 14, 2015 eligibility determination notice that in relevant part informed Appellant of the need to pick health plans for her family.

Of note, the record reflects that Appellant did not select a health plan for herself because her employer-sponsored insurance was slated to begin October 1, 2015, such that this portion of the Legal Analysis does not relate to her.

According to the record, Appellant receives her notices from NYSOH by regular mail and the notice informing her to pick health plans for her family was issued and mailed on August 14, 2015. As such, she could not have received enough notice to choose health plans by August 15, 2015, the deadline to select plans with a September 1, 2015 enrollment start date. The record establishes that Appellant was not aware of the August 14, 2015 notice directing her to choose health plans until after August 15, 2015. In fact, once Appellant received the notice, she was able to select a health plan for her children on August 18, 2015, with an October 1, 2015 enrollment start date. Had Appellant been informed before or by August 15, 2015 of the need to select and enroll her children in a health plan, their health insurance coverage would have started September 1, 2015.

Therefore, the credible evidence of record demonstrates that Appellant did not receive timely notice of the need to select a health plan by August 15, 2015, for her children's health insurance coverage to start September 1, 2015.

Since the Appeals Unit finds that a technical system error prevented Appellant from enrolling herself and her children in health plans through NYSOH from May 1, 2015 through August 31, 2015 and further finds NYSOH erred in not timely notifying Appellant of the need to select and enroll her children in a health plan by August 15, 2015 for coverage to begin September 1, 2015, the issue turns to the resultant consequences.

But for the unresolved technical system error preventing Appellant and her children from enrolling in health plans from May 1, 2015 through August 31, 2015, and lack of adequate notice to select a health plan for her children's coverage to start September 1, 2015, Appellant would have been able to choose health plans and enroll herself and her children in coverage with an effective date of May 1, 2015 in the first instance; and would have been able to select a health plan for her children by August 15, 2015 with a September 1, 2015 enrollment start date in the second instance. It is noted that both of these occurrences were

through no fault of Appellant and she should have been able to enroll herself and her children in health plans as of May 1, 2015.

It is equally noted that the technical system error was not resolved until on or about August 13, 2015, and that only by NYSOH staff verifying Appellant's income that date was Appellant able to enroll her children in a health plan, effective October 1, 2015. For these reasons, it is reasonable to conclude that a technical system error prevented Appellant from enrolling herself and her children in health plans with health insurance coverage effective May 1, 2015. It is further concluded that lack of adequate notice prevented Appellant from enrolling her children in a health plan with an enrollment start date of September 1, 2015.

At Appellant's option under title 45, section 155.545(c) of the Code of Federal Regulations, this Decision is not retroactive. This is especially so since she did not seek medical care for herself or her children during the four-month gap in coverage or during September 2015 for her children and it would be unjust to burden her with premium responsibilities for insurance coverage she and her children could not access during that period.

Further, NYSOH cannot redetermine Appellant's or her children's enrollment retroactively to May 2015 since we are now in 2017. Nevertheless, Appellant may have other claims or remedies as a result of the findings herein that resulted in her and her children going without health insurance coverage from May 1, 2015 through August 31, 2015, and during September 2015 relative to her children only.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance based on a hardship. If both of the following applied to Appellant in 2015, she might qualify for a health coverage exemption from the shared responsibility payment:

- In 2015, Appellant could not enroll in a QHP for coverage because of an appealable reason
- Appellant's appeal was eventually successful

If this is accurate, Appellant may not have to pay the penalty for the months she and her children were uncovered. If approved, Appellant's exemption generally also covers the month of the Decision itself. It will not cover the month of the Decision itself if the Decision is in the next plan year. For example, Appellant was prevented from enrolling in 2015 and we issue a Decision in 2017. In this case, Appellant's exemption would cover the months during 2015 she were uncovered, but does not apply in 2016.

Appellant must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, the NY State of Health Marketplace cannot and will not accept exemption applications.

Appellant will find all the information she needs to claim the exemption due to an appeal Decision at www.healthcare.gov/exemptions-tool/#/results/2015/details/eligible-based-on-appeal, or she can also call 1-800-318-2596.

Important: If Appellant does not get a response from HHS relative to her exemption application in time to file her tax return, write the word “pending” in column “c” and file her return. If HHS does not approve Appellant’s exemption, she will need to file an amended return later.

Decision

Appellant’s April 14, 2015 and April 15, 2015 applications for health insurance coverage through NYSOH for herself and her children were timely such that her eligibility for qualified health plan and her children’s eligibility for Child Health Plus through a special enrollment period for the months of April 2015 and May 2015 should have been granted, with their respective enrollments in health plans to start May 1, 2015.

However, a NYSOH technical system error prevented her and her children from being determined eligible for financial assistance through NYSOH and enrolling in their respective health plans, which resulted in Appellant and her children going without health insurance coverage from May 1, 2015 through August 31, 2015.

In addition, the credible evidence of record demonstrates that the technical system error was not resolved until on or about August 13, 2015 and the eligibility determination notice was not mailed until August 14, 2015, such that Appellant did not receive timely notice of the need to select a health plan by August 15, 2015, for her children’s health insurance coverage to start September 1, 2015.

At Appellant’s option under title 45, section 155.545(c) of the Code of Federal Regulations, this Decision is not retroactive.

This Decision does not grant Appellant an exemption for the shared responsibility payment.

Appellant will find all of the information she needs to claim the exemption due to this appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal, or she can also call 1-800-318-2596.

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Effective Date of this Decision: November 15, 2017

How this Decision Affects Your Eligibility

This Decision does not change the eligibility of her children for Child Health Plus and enrollment in a Child Health Plus plan, effective October 1, 2015.

This Decision does not grant Appellant an exemption for the shared responsibility payment.

Appellant will find all of the information she needs to claim the exemption due to this appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal, or she can also call 1-800-318-2596.

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 after the date 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 date 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):

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Summary

Appellant's April 14, 2015 and April 15, 2015 applications for health insurance coverage through NYSOH for herself and her children were timely such that her eligibility for qualified health plan and her children's eligibility for Child Health Plus through a special enrollment period for the months of April 2015 and May 2015 should have been granted, with their respective enrollments in health plans to start May 1, 2015.

However, a NYSOH technical system error prevented her and her children from being determined eligible for financial assistance through NYSOH and enrolling in their respective health plans, which resulted in Appellant and her children going without health insurance coverage from May 1, 2015 through August 31, 2015.

In addition, the credible evidence of record demonstrates that the technical system error was not resolved until on or about August 13, 2015 and the eligibility determination notice was not mailed until August 14, 2015, such that Appellant did not receive timely notice of the need to select a health plan by August 15, 2015, for her children's health insurance coverage to start September 1, 2015.

At Appellant's option under title 45, section 155.545(c) of the Code of Federal Regulations, this Decision is not retroactive.

This Decision does not grant Appellant an exemption for the shared responsibility payment.

Appellant will find all of the information she needs to claim the exemption due to this appeal decision at www.healthcare.gov/exemptions-tool/#/results/2015/details/eligible-based-on-appeal, or she can also call 1-800-318-2596.

This Decision does not change the eligibility of her children for Child Health Plus and enrollment in a Child Health Plus plan, effective October 1, 2015.

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Legal Authority

We are sending counsel for the parties this notice in accordance with 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

[REDACTED]

[REDACTED]

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