



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

### Notice of Decision

Decision Date: December 12, 2017

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000023083

[REDACTED]

On November 30, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's the October 4, 2017 eligibility determination and plan 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 at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: December 12, 2017

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000023083



## Issue

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

Did NY State of Health properly determine that your child was eligible to enroll in full price Child Health Plus plan, effective November 1, 2017?

## Procedural History

According to your NY State of Health (NYSOH) account, your child was found eligible and enrolled in a Child Health Plus (CHP) plan with a \$45.00 monthly premium, effective October 1, 2016.

On August 2, 2017, NYSOH issued a notice stating that it was time to renew your child's health insurance for 2017. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether your child would qualify for financial help paying for his health coverage, and that you needed to update his account between August 16, 2017 and September 15, 2017, or your child might lose the financial assistance he was currently receiving.

No updates were made to your child's account by September 15, 2017.

On September 17, 2017, NYSOH issued a notice stating that your child was not eligible for health insurance through NYSOH. This was because you had not responded to the renewal notice and had not completed his renewal within the required time frame. Your child's eligibility was to end effective October 1, 2017.

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Also on September 17, 2017, NYSOH issued a disenrollment notice stating that your child's CHP plan would end on September 30, 2017.

On October 3, 2017, you updated your child's application for health insurance. That day, NYSOH prepared a preliminary eligibility determination finding your child eligible to enroll in a full price CHP plan, effective November 1, 2017.

Also on October 3, 2017, you spoke to NYSOH's Account Review Unit and appealed your child's disenrollment from his CHP plan as of September 30, 2017 and the termination of his financial assistance as of November 1, 2017.

On October 4, 2017, NYSOH issued an eligibility determination notice, consistent with your preliminary eligibility determination, stating that your child was eligible to enroll in a full price CHP plan, effective November 1, 2017. This was because the income you provided of \$77,999.00 was over the allowable limit for financial assistance for that program.

Also on October 4, 2017, a plan enrollment notice was issued confirming your child's enrollment in a CHP plan with a premium of \$260.76 and an enrollment start date of November 1, 2017.

On October 14, 2017, NYSOH issued an eligibility determination notice stating that your child was eligible for CHP for a limited time, effective October 1, 2017. The notice further stated you have been granted Aid to Continue until a decision is made on your appeal.

Also on October 14, 2017, a plan enrollment notice was issued confirming your child's enrollment in a CHP plan with a premium of \$45.00 and that coverage would start on October 1, 2017.

On November 30, 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 expect to file your 2017 tax return with a tax filing status of single. You will claim your one child as a dependent on that tax return.
- 2) The application that was submitted on October 3, 2017, listed annual household income of \$77,999.99 in your earnings from employment. You testified that this amount was correct.

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- 3) At the time of your October 3, 2017 application, your child was [REDACTED].
- 4) According to your NYSOH account and your testimony, you will not be taking any deductions on your 2017 tax return.
- 5) You testified that you would like financial assistance to help cover the cost of your child's CHP premium.
- 6) According to your NYSOH account, and your testimony, you and your child live in [REDACTED].
- 7) According to your NYSOH account, you received your notices from NYSOH by electronic mail.
- 8) You testified that you were advised that you were getting your notices by email from NYSOH and that you may have changed your account preferences when you spoke to that NYSOH representative. You are now getting your notices by regular mail.
- 9) You testified that you did not receive any electronic alerts regarding any notice in your NYSOH account telling you that you needed to update your application to renew your children's coverage.
- 10) You testified that you did not know that you needed to update your NYSOH account until you received a notice from Fidelis stating that they were "[S]orry that you decided to cancel [your child's coverage]."
- 11) According to your NYSOH account, on October 3, 2017, NYSOH received your child's updated application for health insurance.
- 12) You testified that you are seeking to have your child reinstated in his CHP plan as of October 1, 2017, because your child had a visit with [REDACTED] 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 Premium Assistance

CHP is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

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)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY PHL § 2511(2)(b)).

In an analysis of CHP 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).

### Annual Eligibility Redetermination

Generally, when NYSOH conducts annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 Code of Federal Regulations (CFR) § 155.335(a), (b)).

NYSOH must send an annual renewal notice that contains the individual's projected eligibility for the upcoming year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information and projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)).

### Child Health Plus

The “period of eligibility” for CHP is “that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and

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documentation and ending on the last day of the twelfth month following such date,” unless the CHP premiums are not timely paid, or the child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law § 2510(6)).

“A State must specify a method for determining the effective date of eligibility for CHP], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between CHP and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage” (42 CFR § 457.340(f)).

The State of New York has provided that a child’s period of eligibility CHP 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).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or 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 (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4)). If an electronic notice is undeliverable, NYSOH must send a notice by regular mail within three business days of the date of a failed electronic communication (42 CFR § 435.918(b)(5)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined your child was eligible to enroll in full price Child Health Plus plan, effective November 1, 2017.

You testified that you expect to file your 2017 tax return with a tax filing status of single. You will claim your one child as a dependent on that tax return. Therefore, for purposes of these analyses your child is in a two-person household.

In your October 3, 2017 application, you attested to an expected household income of \$77,999.99. The application also stated that your child is [REDACTED] NYSOH relied upon this information.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income at or below 400% of the FPL. Households with an income above 400% of the FPL are

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responsible for full price CHP premium payment. On the date of your application, the relevant FPL was \$16,240.00 for a two-person household. Since \$77,999.99 is 480.3% of the 2017 FPL, NYSOH properly found your child to be eligible for full price CHP premium payment.

Since the October 4, 2017 eligibility determination notice properly stated that, based on the information you provided, your child was eligible to enroll in a full price CHP plan, it is correct and must be AFFIRMED.

Therefore, the issue under review is refined to whether NYSOH properly determined that your child's enrollment in his full price CHP was effective November 1, 2017.

According to your NYSOH account, your child was found eligible and enrolled in a CHP plan, effective October 1, 2016.

Generally, NYSOH must redetermine a qualified child's eligibility for financial assistance once every 12 months without requiring information from the individual, if it is 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 August 2, 2017 renewal notice stated that there was not enough information to determine whether your child was eligible to continue to receive financial assistance for health insurance, and that you needed to supply additional information by September 15, 2017, or any such financial assistance might end.

Because there was no timely response to this notice, your child was terminated from his CHP plan, effective September 30, 2017.

However, you testified and the record reflects that, at all times relevant, you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the renewal notice, which notice was intended to direct you to update the information in your NYSOH account on behalf of your child. There is no evidence in your account documenting that any email alert was sent to you regarding the need to renew your child's application or that it failed such that notice was sent by regular mail.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to update your account on your child's behalf.

You first renewed your child's eligibility for financial assistance through NYSOH for the new coverage year on October 3, 2017. Therefore, we must assume that this is the information that would have been used had you been timely informed of the need to update your account by September 15, 2017, as stated in the renewal notice. Had you been able to update your NYSOH account by that deadline so that your child's eligibility could be redetermined, you would have



been able to select a CHP plan for your child for coverage to begin October 1, 2017

Therefore, the October 4, 2017 plan enrollment notice is MODIFIED to state that your child's enrollment in his CHP plan is effective October 1, 2017.

Ordinarily, your case would be returned to NYSOH to reinstate your child's coverage as of October 1, 2017, but that is not necessary since your child was granted Aid-To-Continue as of that date.

## **Decision**

The October 4, 2017 eligibility determination notice is AFFIRMED to the extent that your child was determined eligible to enroll in a full price CHP plan.

The October 4, 2017 plan enrollment notice is MODIFIED to state your child's enrollment in his CHP plan is effective October 1, 2017.

Ordinarily, your case would be returned to NYSOH to reinstate your child's coverage as of October 1, 2017, but that is not necessary since your child was granted Aid-To-Continue as of that date.

**Effective Date of this Decision:** December 12, 2017

## **How this Decision Affects Your Eligibility**

Your child remains eligible for a full price CHP plan.

Your children's enrollment in his CHP plan should have been effective as of October 1, 2017, because NYSOH failed to give you proper notice of the need to renew your application.

## **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 October 4, 2017 eligibility determination notice is **AFFIRMED** to the extent that your child was determined eligible to enroll in a full price CHP plan.

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The October 4, 2017 plan enrollment notice is MODIFIED to state your child's enrollment in his CHP plan is effective October 1, 2017.

Ordinarily, your case would be returned to NYSOH to reinstate your child's coverage as of October 1, 2017, but that is not necessary since your child was granted Aid-To-Continue as of that date.

Your child remains eligible for a full price CHP plan.

Your children's enrollment in his CHP plan should have been effective as of October 1, 2017, because NYSOH failed to give you proper notice of the need to renew your application.

### **Legal Authority**

We are sending you this notice in accordance with Code of Federal Regulation 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 مجانًا.

### **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 bɛtumi ama wo obi a okyerɛ 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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