



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

## Notice of Decision

Decision Date: January 24, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023151

[REDACTED]

Dear [REDACTED],

On December 8, 2017, your spouse appeared by telephone at a hearing on your appeal of NY State of Health's October 3, 2017 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the 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.

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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: January 24, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023151

[REDACTED]

## Issues

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

Did the NY State of Health (NYSOH) properly determine your oldest child was conditionally eligible for Child Health Plus (CHP) with a \$9.00 monthly premium, effective November 1, 2017?

## Procedural History

On March 1, 2017, NYSOH issued an eligibility determination notice stating your oldest child was eligible for CHP with no monthly premium, effective April 1, 2017.

On March 2, 2017, NYSOH issued an enrollment notice confirming your oldest child had been enrolled in a CHP plan since January 1, 2017.

On September 30, 2017, NYSOH issued an eligibility determination notice, based on your September 21, 2017 updated application, stating your oldest child was conditionally eligible for CHP with no monthly premium, effective November 1, 2017. The notice directed you to submit proof of the termination of your child's Tricare insurance coverage by November 5, 2017 or she might lose her insurance or receive less help paying for coverage.

On October 2, 2017, NYSOH systematically redetermined your family's eligibility.

On October 3, 2017, NYSOH issued an eligibility determination notice stating your oldest child was conditionally eligible for CHP with a \$9.00 monthly

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premium, effective November 1, 2017. The notice directed you to submit proof of the termination of your child's Tricare insurance coverage by November 5, 2017 or she might lose her insurance or receive less help paying for her coverage.

Also, on October 3, 2017, NYSOH issued an enrollment notice confirming your child was enrolled in a CHP plan with a \$9.00 monthly premium.

On October 5, 2017, you or someone on your behalf spoke to NYSOH's Account Review Unit and appealed insofar as your oldest child was not fully eligible for CHP with no monthly premium, effective November 1, 2017.

On December 8, 2017, your spouse appeared on your behalf for a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to allow you to submit supporting documentation. On December 8, 2017 and December 12, 2017, the Appeals Unit received your documentation which was incorporated into the record as Appellant's Exhibit # 1. The record closed thereafter.

On December 21, 2017, NYSOH received an updated application submitted on behalf of your family.

On December 22, 2017, NYSOH issued an eligibility determination notice stating your oldest child was conditionally eligible for CHP with no monthly premium, effective February 1, 2018. The notice directed you to submit proof of the termination of your child's Tricare insurance coverage by October 31, 2018 or she might lose her insurance or receive less help paying for her coverage.

## **Findings of Fact**

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

- 1) Your oldest child was determined eligible for CHP with no monthly premium, effective April 1, 2017. She was enrolled in a CHP plan.
- 2) On September 21, 2017, an updated application was received by NYSOH to renew your other child's health coverage.
- 3) That day, NYSOH received information from data sources indicating your oldest child was enrolled in health coverage through Tricare, effective September 1, 2017.
- 4) Your oldest child was determined conditionally eligible for CHP with no monthly premium, effective November 1, 2017. You were directed to submit proof of the termination of her Tricare insurance coverage.



- 5) On October 2, 2017, NYSOH recalculated your income based on paystubs you submitted and increased the annual household income to \$44,999.76.
- 6) NYSOH redetermined your oldest child's eligibility based on the recalculated income amount and found her conditionally eligible for CHP with a \$9.00 monthly premium, effective November 1, 2017.
- 7) Your spouse testified you were seeking review of that determination insofar as your oldest child was not fully eligible for CHP with no monthly premium.
- 8) Your spouse testified that she was not sure whether the October 2, 2017 income recalculation by NYSOH was accurate.
- 9) Your spouse was offered the opportunity to submit updated income documentation and on December 12, 2017, you uploaded to your NYSOH account a letter from your employer dated December 12, 2017 indicating your gross weekly income was \$865.38.
- 10) Your spouse testified, and your applications indicate, that you would file your 2017 tax return with a tax filing status of married filing jointly and you would claim two dependents.
- 11) Your spouse testified, and your applications indicate, your household income consists solely of income you receive from your employment.
- 12) Your spouse testified, and your applications indicate, you will not take any deductions on your 2017 tax return.
- 13) Your spouse testified that your oldest child was currently enrolled in Tricare coverage through her stepfather who was [REDACTED]. Your spouse was not sure of the start date of that coverage.
- 14) Your spouse testified that you share custody of your oldest child with the child's maternal grandparents.
- 15) Your spouse testified that your oldest child has no contact with her stepfather pursuant to [REDACTED] and you did not consent to him enrolling her in health coverage.
- 16) On December 8, 2017, you uploaded to your NYSOH account part of a 2014 custody order indicating that your oldest child's stepfather is [REDACTED].
- 17) Your spouse testified that the child has an insurance card from Tricare.

- 18) Your spouse testified that your oldest child's stepfather had previously enrolled her in Tricare which was later cancelled, because of the custody order [REDACTED].
- 19) Your spouse testified that she has tried to obtain information regarding your oldest child's Tricare coverage, but Tricare will not provide her with information, because she is not the insured.
- 20) On December 21, 2017, your application was updated to report your spouse's pregnancy. Your oldest child was subsequently determined conditionally eligible for CHP with no monthly premium, effective February 1, 2018. You were again directed to submit proof of the termination of her Tricare coverage to confirm her eligibility.
- 21) Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Child Health Plus - Eligibility

Child Health Plus (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.

NY PHL § 2511(2) provides eligibility rules for Child Health Plus, including:

1. Child must have a household income at or below four hundred percent of the Federal Poverty Line; and
2. Child must not be eligible for Medicaid; and
3. Child must not be enrolled in other health care coverage; and
4. Child must be a resident of New York state.

### Child Health Plus – Premium Determination

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)).

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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)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL, but no more than \$27.00 per month per family (NY PHL § 2510(9)(d)(ii)).

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 \$24,600.00 for a four-person household (80 Federal Register 3236, 3237).

#### Child Health Plus – Continuous Coverage

The period of eligibility shall begin on the first day of the month an eligible child is enrolled or recertified for enrollment on an annual basis, based on all required documentation, and shall continue for 12 months ending on the last day of the twelfth month. Presumptive enrollees are not eligible for 12 months of continuous coverage until all required documentation is submitted and a child is determined fully eligible for CHP at which time the 12 months of continuous coverage shall run from the date presumptive eligibility began.

The 12-month period of continuous coverage is subject to the following exclusions:

1. The child no longer resides in New York State.
2. The child turns 19 years of age.
3. The child has obtained other health insurance coverage.
4. The child has access to a State Health Benefits Plan.
5. The required family premium contribution is not received.
6. The child becomes Medicaid eligible.
7. The child was not eligible either because the health plan did not comply with program rules or because the eligibility determination was based on fraudulent information.

Households are not required to report a change in income within the 12-month period of continuous coverage, however:

1. If a household reports an increase in income within the 12-month period of continuous coverage, the plan shall not redetermine eligibility or the required family premium contribution. However, if that household reports an increase in income during a presumptive or temporary enrollment period, the health plan must redetermine eligibility and the required family premium contribution.

2. If a household reports a decrease in income within the 12-month period of continuous coverage, the plan shall screen the child(ren) for Medicaid eligibility and redetermine the required family premium contribution.

(NYS Department of Health Model Contract 2008-2012, Appendix C, Section 4.9; see *also*, Plan Manual p. 1-8).

## Legal Analysis

The issue is whether NYSOH properly determined your oldest child was conditionally eligible for CHP with a \$9.00 monthly premium, effective November 1, 2017.

According to your account, your oldest child was determined eligible for CHP with no monthly premium, effective April 1, 2017, and she was enrolled in a CHP plan. On September 21, 2017, an updated application was received by NYSOH to renew your other child's health coverage. That day, NYSOH received information from data sources indicating your oldest child was enrolled in health coverage through Tricare, effective September 1, 2017. She was determined conditionally eligible for CHP with no monthly premium, effective November 1, 2017. You were directed to submit proof of the termination of her Tricare insurance coverage.

Generally, a child is eligible for 12-months of continuous CHP coverage running from the first day of the month the eligible child is enrolled barring the occurrence of certain events; one such exclusion being that the child obtains "other health insurance coverage."

Although your oldest child was determined fully eligible for CHP, effective April 1, 2017, on September 21, 2017 NYSOH received information indicating she was enrolled in third party health coverage through Tricare, effective September 1, 2017. As a result, your child was determined *conditionally* eligible for CHP pending receipt of documentation that her Tricare insurance coverage had ended, to confirm her eligibility for CHP.

As discussed above, one exception to CHP continuous coverage is when the child obtains other health insurance. Since, according to your account, data

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sources indicated your child had obtained other health insurance, NYSOH properly determined she was no longer eligible for continuous CHP coverage. Thus, NYSOH found your child temporarily, or *conditionally*, eligible for CHP and provided you with the opportunity to submit documentation to show her Tricare insurance coverage had ended to confirm her CHP eligibility. As NYSOH's determination was supported by the record and the regulations, it is concluded that this determination was proper.

Subsequently, on October 2, 2017, NYSOH recalculated your income based on paystubs you submitted and increased the annual household income to \$44,999.76. Although your wife testified she was unsure whether NYSOH's calculation of your income was accurate, a letter from your employer submitted on December 12, 2017 confirmed that calculation. NYSOH redetermined your oldest child's eligibility based on the recalculated income amount and found her conditionally eligible for CHP with a \$9.00 monthly premium, effective November 1, 2017. You appealed that determination insofar as your oldest child was not fully eligible for CHP with no monthly premium.

Generally, when a household reports an increase in income within the 12-month period of continuous CHP coverage, the plan may not redetermine eligibility or the required family premium contribution. However, as discussed above, at the time of the October 2, 2017 eligibility redetermination, NYSOH was in receipt of information indicating your oldest child was enrolled in third-party health coverage, thus breaking the continuous coverage and resulting in a conditional eligibility.

According to the above cited rules, for increases to household income reported during a presumptive or temporary enrollment period, the health plan must redetermine eligibility and the required family premium contribution. Thus, due to your oldest child's temporary CHP eligibility, it was required that her eligibility be redetermined based on the reported increase in the household income.

Your account confirms that at the time of the October 2, 2017 eligibility redetermination, your child was in a four-person household, because you and your spouse would file your 2017 tax return as married filing jointly and you would claim your oldest child and your other child as dependents.

Pursuant to the regulations, 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. No payments are required for eligible children whose family household income is less than 160% of the FPL. However, the CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL. Since an annual income of \$44,999.76 is 182.93% of the 2017 FPL for a four-person household, NYSOH properly assessed your oldest daughter a \$9.00 monthly premium, effective November 1, 2017.

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Since the October 2, 2017 eligibility determination properly stated that your oldest child was conditionally eligible for CHP with a \$9.00 monthly premium, effective November 1, 2017, based on the information available at the time of the determination, it was correct and is AFFIRMED.

It is noted that subsequent to the hearing, your application was updated on December 21, 2017 to report your spouse's pregnancy and your oldest daughter was determined conditionally eligible for CHP with no monthly premium, based on a household size of five, effective February 1, 2018. Documentation of the termination of your child's Tricare coverage was again requested to confirm her eligibility.

However, as of the date of this decision, no documentation confirming the termination of your child's Tricare coverage has been received by NYSOH. In fact, your spouse acknowledged at the hearing that your child was currently enrolled in Tricare coverage and that she was in possession of a Tricare insurance card. Given this evidence it is concluded that the record now contains sufficient information to conclude that your child is enrolled in third-party health insurance. Accordingly, your case is RETURNED to NYSOH to redetermine your oldest child's eligibility for health coverage through NYSOH based on the now developed record establishing she is enrolled in third-party health coverage with a household size of five and an annual household income of \$44,999.76.

It is noted that despite your spouse's testimony and the evidence that your child's step father does not have your consent to enroll the child in health coverage, NYSOH is without authority to address the propriety of said enrollment nor do the governing regulations make any such distinction. In the event the child is disenrolled from her third-party health coverage, you are encouraged to submit documentation evidencing the end date of that coverage for redetermination of her eligibility for health insurance through NYSOH.

## **Decision**

The October 2, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your oldest child's eligibility for health coverage through NYSOH based on the now developed record establishing she is enrolled in third-party health coverage with a household size of five and an annual household income of \$44,999.76.

NYSOH is also directed to assist you in determining whether the coverage from Tricare is still in effect, or to work with you in discontinuing that coverage.

**Effective Date of this Decision:** January 24, 2018

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

Your oldest child was conditionally eligible for CHP with a \$9.00 monthly premium, effective November 1, 2017.

Your case is being sent back to NYSOH to redetermine your oldest child's eligibility for health coverage based on the record establishing she is currently enrolled in third party health insurance.

## **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.  
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.

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## **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 2, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your oldest child's eligibility for health coverage through NYSOH based on the now developed record establishing she is enrolled in third-party health coverage with a household size of five and an annual household income of \$44,999.76.

NYSOH is also directed to assist you in determining whether the coverage from Tricare is still in effect, or to work with you in discontinuing that coverage.

Your oldest child was conditionally eligible for CHP with a \$9.00 monthly premium, effective November 1, 2017.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**





## 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)

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।

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## **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&btumi ama wo obi a okyerε 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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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