



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

## Notice of Decision

Decision Date: January 23, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023418

[REDACTED]

[REDACTED]

On December 7, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 24, 2017 discontinuance notice, September 24, 2017 disenrollment notice, October 18, 2017 eligibility determination notice and October 18, 2017 enrollment confirmation 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 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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## Decision

Decision Date: January 23, 2018

NY State of Health Account [REDACTED]  
Appeal Identification Number: AP000000023418

[REDACTED]

## Issues

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

Did NY State of Health (NYSOH) properly determine that your youngest child's eligibility for and enrollment in Child Health Plus terminated effective October 1, 2017?

Did NYSOH properly determine that your youngest child's eligibility and enrollment in his Child Health Plus plan was effective December 1, 2017?

## Procedural History

On June 20, 2017, your youngest child was added to your NYSOH account and an application was submitted on his behalf.

On June 21, 2017, NYSOH issued a notice of eligibility determination stating that your youngest child was conditionally eligible to enroll in Child Health Plus with a \$60.00 per month premium effective June 1, 2017. The notice requested that you provide documentation confirming his citizenship status and social security number before September 18, 2017.

On June 22, 2017, NYSOH issued a notice confirming your youngest child's enrollment in a Child Health Plus plan, effective June 1, 2017.

On September 24, 2017, NYSOH issued an eligibility determination notice stating that your youngest child was not eligible for health insurance through NYSOH

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because you had not confirmed his citizenship status and social security number within the required timeframe.

Also on September 24, 2017, NYSOH issued a disenrollment notice stating that your youngest child's coverage in his Child Health Plus plan would end effective September 30, 2017 because he is no longer eligible to enroll in health insurance through NYSOH.

On October 17, 2017, your youngest child's social security number was added to your NYSOH account. That day, a preliminary eligibility determination was prepared stating that your youngest child was eligible to enroll in Child Health Plus and you selected a plan for his enrollment.

Also on October 17, 2017, you spoke to NYSOH's Account Review Unit and appealed your youngest child's disenrollment from his Child Health Plus plan as of October 1, 2017.

On October 18, 2017, NYSOH issued an eligibility determination notice based on the October 17, 2017 application, stating that your youngest child was eligible to enroll in Child Health Plus with a \$60.00 per month premium, effective December 1, 2017.

Also on October 18, 2017, NYSOH issued an enrollment confirmation notice based on the plan selection you made on October 17, 2017, stating that your youngest child was enrolled in a Child Health Plus plan, effective December 1, 2017.

On December 7, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to December 21, 2017 to allow you time to submit supporting documentation.

On December 13, 2017, you uploaded documentation into your NYSOH account. It was incorporated into the record as "Appellant's Exhibit #1." The record was closed that day.

## **Findings of Fact**

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

- 1) You testified that you are only appealing your youngest child's disenrollment from his Child Health Plus plan for the months of October 2017 and November 2017.

- 2) You testified that you previously received all of your notices from NYSOH by electronic alert, and that you requested to receive notices by regular mail in November 2017.
- 3) The record indicates that your youngest child was added to your NYSOH account on June 20, 2017. The application that was submitted that day indicates that he was a U.S Citizen but he did not have a social security number because you were in the process of applying for one.
- 4) You testified that you received his social security number prior to September 18, 2017, but did not add it to your account by the deadline.
- 5) You testified that you paid premiums for youngest child's Child Health Plus plan for the months of October and November 2017.
- 6) You uploaded a copy of a Child Health Plus Premium Invoice, which states that health plan billed you for a November 2017 premium for your youngest child.
- 7) You testified that you did not know your youngest child had been disenrolled from his Child Health Plus plan until you received a cancellation letter from the health plan in October 2017.
- 8) You uploaded a copy of the letter, which is dated October 4, 2017, and states that the health plan would not be providing coverage for your children effective September 30, 2017.
- 9) You testified that you did not receive the September 24, 2017 discontinuance and disenrollment notices, and you did not receive an electronic alert.
- 10) The record indicates that on October 17, 2017, your youngest child's social security number was added to your NYSOH account.
- 11) NYSOH uploaded an evidence packet to your NYSOH account. Contained within that evidence packet under the heading of "electronic notice requirement" is a three-page memorandum dated August 21, 2017. The memorandum sets forth the federal requirements regarding use of electronic communications and asserts that NYSOH is in compliance with federal regulation and guidance on the use of electronic notices. The memorandum asserts that "the electronic notification rules do not require that exchanges track and monitor consumers actual receipt of electronic notices".

- 12) NYSOH has submitted no evidence that an electronic alert was sent to you regarding the September 24, 2017 discontinuance and disenrollment notices.

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

## **Applicable Law and Regulations**

### Child Health Plus

A child who meets the eligibility requirements for Child Health Plus may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)).

To be eligible for Child Health Plus, the child:

- Must be under 19 years of age;
- Must be a New York State Resident;
- Must not have other health insurance coverage; and
- Must not be eligible for, or enrolled in, Medicaid

(N.Y. Pub. Health Law. § 2511(2)(a)-(e)).

As a condition of eligibility for Child Health Plus, an individual, including children, must furnish their Social Security Number and evidence of their citizenship or status as a qualified immigrant or PRUCOL alien to NY State of Health for verification purposes (42 CFR § 435.910(a) and (b)(3); 42 CFR § 457.340(b); 18 NYCRR § 360-3.2(j)(2) and (3); *see generally* 18 NYCRR § 360-3.2(j)).

NYSOH must require an applicant who has a Social Security Number to provide the number but does not require an applicant's Social Security Number as a condition of enrollment for Child Health Plus if the applicant is not eligible to receive one or his or her number is not yet available (42 CFR § 457.340(b), 42 CFR § 435.910(h)(1); Model State Children's Health Insurance Program Plan, Section 4.1.9).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NY State of Health must then provide the applicant with 90 days to provide satisfactory documentary evidence. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5-day period (45 CFR § 155.315(c)(3), (f)(2)(i)).

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If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

NYSOH is required to provide proper written notice to an applicant of any decision effecting an enrollee's Child Health Plus eligibility (42 CFR § 457.340(e)). When Child Health Plus coverage is denied, suspended or terminated NYSOH must provide sufficient notice to enable the child's parent or caretaker relative to take appropriate actions in order to allow Child Health Plus coverage to continue without interruption (42 CFR § 457.340(e)(2); 42 CFR § 457.1130(a)(3)).

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 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)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your youngest child's eligibility for and enrollment in Child Health Plus terminated effective October 1, 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, their social security number and citizenship status.

If NYSOH cannot verify an individual's citizenship status or social security number, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency.

The record indicates that your youngest child was added to your NYSOH account on June 20, 2017. The application that was submitted that day indicates that he

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was a U.S Citizen but he did not have a social security number because you were in the process of applying for one.

In the eligibility determination issued on June 21, 2017, you were advised that your youngest child's eligibility for Child Health Plus was only conditional, and that you needed to confirm his social security number and citizenship status before September 18, 2017.

You testified that you received your youngest child's social security number prior to September 18, 2017, but did not add it to your account by the deadline. The record indicates that NYSOH did not have his social security number before the September 18, 2017 deadline.

On September 24, 2017, NYSOH issued a disenrollment notice stating that your youngest child's coverage in his Child Health Plus plan would end effective October 1, 2017 because he was no longer eligible to enroll in health insurance through NYSOH. According to the eligibility determination issued on that day, this was because NYSOH did not receive documentation of his citizenship status and social security number.

When NYSOH denies, terminates, or suspends a child's Child Health Plus coverage, they are required to provide sufficient notice so that a child's parent is able to take action to prevent a gap in coverage for the child. Notice is considered received five days after the date on the notice. In this case, the notice formally disenrolling your child from her Child Health Plus plan was dated September 24, 2017. Therefore, the notice terminating your youngest child's enrollment would be considered received as of September 29, 2017.

When changes are made to an individual's application after the 15th of any month, NYSOH must make the redetermination that results from a change effective the first day of the next following month. Since you would have received NYSOH's notice terminating your child's Child Health Plus eligibility after the 15<sup>th</sup> of the month, any changes you would have been made to your account to prevent a gap in coverage would not have been effective until November 1, 2017.

Therefore, NYSOH failed to provide you with sufficient notice that would have allowed you to take action in order to prevent a gap in Child Health Plus coverage for your youngest child, and the September 24, 2017 discontinuance and disenrollment notices are MODIFIED to state that your youngest child's eligibility for and enrollment in his Child Health Plus plan ends October 31, 2017.

The second issue is whether NYSOH properly determined that your youngest child's eligibility for and enrollment in his Child Health Plus plan was effective December 1, 2017.



The record indicates that on October 17, 2017 you updated your NYSOH account and submitted an updated application for your youngest child. You enrolled him into a Child Health Plus plan the same day. You testified that you updated the account as soon as you were aware that your youngest child had been disenrolled from coverage.

You testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically until November 2017. Although NYSOH contends that it complied with federal mandates regarding electronic notices, there is no evidence in the file that NYSOH sent you an electronic alert notifying you of a new notice available in your account on September 24, 2017. You credibly testified that you did not receive an electronic alert regarding the discontinuance and disenrollment notices. There is also no evidence in your account documenting that any email alert was sent to you regarding the notice, that any such electronic alert failed, or that the notice was later sent to you by regular mail.

NYSOH is required to send applicants proper notice in order for applicants to take appropriate action. Since there is no evidence that NYSOH sent you an email alert, and you testified that you did not receive one, there is insufficient evidence in the record that NYSOH provided you with proper notice by electronic means that your youngest child's coverage would end.

Had you been properly notified regarding your youngest child's disenrollment from his Child Health Plus plan, you could have updated your application as early as September 24, 2017. Although you first updated your youngest child's eligibility for financial assistance through NYSOH on October 17, 2017, we must assume that this is the information that would have been used had you been properly informed of your youngest child's disenrollment.

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

Since you would have been able to update your account as of September 24, 2017 with proper notice, your youngest child's eligibility for and enrollment in a Child Health Plus plan would have been effective on the first day of the second following month, or November 1, 2017.

Therefore, the October 18, 2017 notice of eligibility redetermination is MODIFIED to state that, effective November 1, 2017, your child is eligible to enroll in Child Health Plus, and the October 18, 2017 notice of enrollment confirmation is MODIFIED to state that your youngest child's enrollment in his Child Health Plus plan is effective November 1, 2017.

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## **Decision**

The September 24, 2017 discontinuance notice is MODIFIED to state that your youngest child was no longer eligible for Child Health Plus, effective October 31, 2017.

The September 24, 2017 disenrollment notice is MODIFIED to state that your youngest child's enrollment in a Child Health Plus plan would end on October 31, 2017.

The October 18, 2017 eligibility determination notice is MODIFIED to state that, effective November 1, 2017, your youngest child is eligible to enroll in Child Health Plus.

The October 18, 2017 enrollment confirmation notice is MODIFIED to state that your youngest child's enrollment in his Child Health Plus plan is effective November 1, 2017.

Your case is RETURNED to NYSOH to reinstate your youngest child into his Child Health Plus plan effective October 1, 2017, and to notify you accordingly.

**Effective Date of this Decision:** January 23, 2018

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

Your youngest child should not have been terminated from his Child Health Plus plan on September 30, 2017 because NYSOH failed to issue proper notice.

Your case is being sent back to NYSOH to reinstate your youngest child into his Child Health Plus effective October 1, 2017. NYSOH will notify you once this has been completed.

## **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

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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.

### **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  
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Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

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The September 24, 2017 discontinuance notice is MODIFIED to state that your youngest child was no longer eligible for Child Health Plus, effective October 31, 2017.

The September 24, 2017 disenrollment notice is MODIFIED to state that your youngest child's enrollment in a Child Health Plus plan would end on October 31, 2017.

Your youngest child should not have been terminated from his Child Health Plus plan on September 30, 2017 because NYSOH failed to issue proper notice.

The October 18, 2017 eligibility determination notice is MODIFIED to state that, effective November 1, 2017, your youngest child is eligible to enroll in Child Health Plus.

The October 18, 2017 enrollment confirmation notice is MODIFIED to state that your youngest child's enrollment in his Child Health Plus plan is effective November 1, 2017.

Your case is RETURNED to NYSOH to reinstate your youngest child into his Child Health Plus plan effective October 1, 2017, and to notify you accordingly.

If applicable, you will be responsible for any premiums due for coverage to resume that month.

## **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&etumi 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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