

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

Notice of Decision

Decision Date: March 2, 2018

NY State of Health Account ID
Appeal Identification Number: AP00000025178





On February 7, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's November 17, 2017 eligibility determination and plan enrollment notices, and NYSOH's denial of your request for retroactive Medicaid.

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.



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

Decision

Decision Date: March 2, 2018

NY State of Health Account ID:

Appeal Identification Number: AP000000025178



Issue

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

Did NY State of Health (NYSOH) properly determine that your child's enrollment in his Child Health Plus plan was effective January 1, 2018?

Did NYSOH properly determine that your child was not eligible for Medicaid for the months of September 2017, October 2017 and November 2017?

Procedural History

On November 2, 2017, you submitted an application for financial assistance with health insurance on behalf of your child. That application indicated that you were seeking help for paying for medical bills for your child for the previous three months.

On November 3, 2017, NYSOH issued an eligibility determination notice stating that your child was eligible to enroll in Child Health Plus with a \$9.00 monthly premium, effective December 1, 2017. That notice directed you to select a health plan for enrollment.

Also on November 3, 2017, NYSOH issued a notice stating that additional information was required in order to determine your child's eligibility for retroactive Medicaid coverage. The notice directed you to provide proof of your household income for September 2017 by November 17, 2017.

On November 16, 2017, you updated your application for health insurance. That day a preliminary eligibility determination was prepared stating that your child was eligible for Child Health Plus. That day, you selected a plan for his enrollment.

On November 17, 2017, NYSOH issued an eligibility determination notice stating that your child was eligible to enroll in Child Health Plus with a \$9.00 monthly premium, effective January 1, 2018.

Also on November 17, 2017, NYSOH issued a plan enrollment notice, based on your plan selection on November 16, 2017, confirming your child's enrollment in a Child Health Plus plan as of January 1, 2018.

On December 1, 2017, you spoke to NYSOH's Account Review Unit and appealed the start date of your child's Child Health Plus plan, insofar as his coverage did not begin on December 1, 2017, and he was not eligible for retroactive Medicaid.

On December 2, 2017, NYSOH issued an appeal confirmation notice stating that the reason for your appeal was "Failure of the Exchange to provide timely notice of eligibility determination.

On February 7, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, you gave permission for the Hearing Officer to listen to recordings of telephone calls you had with NYSOH. The record was developed during the hearing the record was held open until February 23, 2018, to allow you time to submit income documentation.

On February 21, 2017, NYSOH received the requested documentation and it was made part of 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:

- You testified that you are appealing you child's Child Health Plus plan start date of January 1, 2018, and that you are seeking to have your child's Child Health Plus begin a month earlier, on December 1, 2017.
- 2) According to your NYSOH account and your testimony, you contacted NYSOH by telephone to apply for health insurance for your child on November 2, 2017, with the assistance of a NYSOH representative.

- 3) You testified that, during your call on November 2, 2017, the NYSOH representative enrolled your child into Child Health Plus, and told you that his coverage would start on December 1, 2017.
- 4) You testified that you believed you had completed everything that was required of you in order to enroll your child into Child Health Plus.
- 5) You testified that you were not asked by the NYSOH representative if you wanted to select a Child Health Plus plan for enrollment during that call.
- 6) The NYSOH Appeals Unit reviewed the recording of the November 2, 2017 telephone call between you and a NYSOH representative. During that call, your child was determined eligible for Child Health Plus plan, the NYSOH representative stated that your child's Child Health Plus started on December 1, 2017, and you were not asked to further select a plan for enrollment during that call.
- 7) According to your NYSOH account and your testimony, you receive all your notices from NYSOH by email alert.
- 8) You testified that you received an email alert from NYSOH after you applied for health insurance on November 2, 2017, and that you attempted to login to your NYSOH account several times, but were unable to do so because there was a problem with the website. You testified that you also attempted to correct the problem yourself, but were unable to do so.
- 9) You testified that you contacted NYSOH on November 16, 2017, because you could not login to your NYSOH account. You testified that you were told during that call that there was a problem with your account, that it was now fixed, and that you completed another application for health insurance.
- 10) The NYSOH Appeals Unit reviewed the recording of the November 16, 2017 telephone call between you and a NYSOH representative. During that call, the NYSOH representative told you that the reason you could not access your NYSOH account was because the previous NYSOH representative erroneously entered your personal information, and as a result you could not access your account. The NYSOH representative corrected the information in your account, and assisted you with submitting another application for health insurance. You selected a Child Health Plus plan for enrollment during that call.
- 11) You testified that, had the NYSOH representative you spoke with on November 2, 2017 asked you to enroll your child into a Child Health Plus plan, you would have done so.

- 12) You testified that, had the NYSOH representative you spoke with on November 2, 2017, correctly entered your personal information into your NYSOH account, you would have been able to access the notice directing you to select a plan and would have done so.
- 13) You testified that you are also appealing NYSOH's denial of retroactive health insurance for your child.
- 14) You submitted an application for financial assistance for your child on November 2, 2017, which states that you are seeking assistance with paying medical bills for the previous three months.
- 15) You also testified that you are seeking retroactive health for your child for September 2017, October 2017, and November 2017.
- 16) On February 21, 2018, a fax of your payment history from your employer was uploaded to your NYSOH account as Document
- 17) The payment history shows that for the month of September 2017, you received five paychecks:
 - a. A gross payment of \$708.44 dated September 1, 2017;
 - b. A gross payment of \$455.52 dated September 8, 2017;
 - c. A gross payment of \$336.13 dated September 15, 2017;
 - d. A gross payment of \$797.06 dated September 22, 2017; and
 - e. A gross payment of \$317.16 dated September 29, 2017.
- 18) The payment history shows that for the month of October 2017, you received four paychecks:
 - a. A gross payment of \$1,210.42 dated October 6, 2017;
 - b. A gross payment of \$613.00 dated October 13, 2017;
 - c. A gross payment of \$336.18 dated October 20, 2017; and
 - d. A gross payment of \$550.69 dated October 27, 2017.
- 19) The payment history shows that for the month of November 2017, you received four paychecks:
 - a. A gross payment of \$688.31 dated November 3, 2017;
 - b. A gross payment of \$348.17 dated November 10, 2017;
 - c. A gross payment of \$662.22 dated November 17, 2017; and
 - d. A gross payment of \$481.79 dated November 24, 2017.

20) Your application states that you expect to file your 2017 federal income tax return as single, that you will claim one dependent on that tax return, and that you do not plan on taking any deductions.

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

Applicable Law and Regulations

Child Health Plus

The "period of eligibility" for Child Health Plus is "that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date," 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).

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)).

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR §

155.535(f)). "De novo review means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

Medicaid for Children

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the federal poverty level (FPL) for the applicable family size (42 CFR § 435.118(c); New York State Department of Social Services Administrative Directive 13 OHIP/ADM-03).

In the case of an individual who expects to file a tax return and does not expect to be claimed by another taxpayer, the household consists of the taxpayer and all persons whom such individual expects to claim as a tax dependent (42 CFR § 435.603(f)(1).

In an analysis of Medicaid 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 is \$16,240.00 per year, or \$1,354.00 per month for a two-person household (82 Fed. Reg. 8831).

Retroactive Medicaid

The Department of Health must make Medicaid coverage start retroactively for up to three months prior to the month of an initial application if the individual received medical services that would have been covered under Medicaid and the individual would have been eligible for Medicaid at the time he received the services if he had applied (42 USCA § 1396A(34); 42 CFR § 435.915(a)). The Department of Health may make eligibility effective for fee-for-service Medicaid on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your child's enrollment in his Child Health Plus plan was effective January 1, 2018.

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 first selected a Child Health Plus plan for your child's enrollment on November 16, 2017, ordinarily the effective date would be the first day of the second month following the month of November 2017; that is January 1, 2018. However, the credible evidence in the record indicates that you were not able to select a Child Health Plus plan for your child through no fault of your own.

You testified that on November 2, 2017 you contacted NYSOH by telephone and completed an application for health insurance for your child. You testified that you were not advised that you needed to select a plan for health insurance during that call, had nothing further to do, and that the NYSOH representative disconnected the call without offering to enroll or enrolling your child into coverage. The November 2, 2017 telephone recording corroborates this testimony. You further testified that had you known you were required to select a plan you would have done so that day.

You also testified that you elected to receive electronic alerts from NYSOH. You testified that you received an email alert from NYSOH alerting you to a new notice in your NYSOH account after you applied for health insurance on November 2, 2017, but that you were unable to login to your NYSOH account due to a website error. You testified that you contacted NYSOH on November 16, 2017, because you were unable to login to your NYSOH account. The November 16, 2017 telephone recording corroborates this testimony. During that call, a NYSOH representative stated that when your account was created on November 2, 2017, NYSOH incorrectly entered your personal information and, as a result, you were unable to login to your account. She corrected your account information, assisted you with another application for health insurance, and you enrolled your child into a Child Health Plus plan that day, November 16, 2017.

Based on your testimony and the credible evidence in the record, it is reasonable to conclude that had you been offered the opportunity to enroll your child in a Child Health Plus plan on November 2, 2017, you would have done so that day. It is also reasonable to conclude that had you been able to access your NYSOH account when you received the November 3, 2017 email alert, you would have seen the eligibility determination notice informing you to select a plan for enrollment, and you would have selected a Child Health Plus plan that day.

Therefore, the November 17, 2017 eligibility determination notice is MODIFIED to state that, effective December 1, 2017, your child is eligible to enroll in Child Health Plus with a \$9.00 monthly premium, and the November 17, 2017 plan enrollment notice is MODIFIED to state that your child's enrollment in his Child Health Plus plan is effective December 1, 2017.

Your case is RETURNED to NYSOH to effectuate these changes and notify you accordingly.

The second issue under review is whether NYSOH properly determined that your child was not eligible for Medicaid for September 2017, October 2017 and November 2017.

You testified that you are appealing the denial of retroactive Medicaid for your child for the months of September 2017, October 2017 and November 2017. However, the record does not contain a notice of eligibility determination or redetermination on the issue of retroactive coverage for September 2017, October 2017 and November 2017.

The lack of a notice of eligibility determination on the issue of retroactive Medicaid coverage for September 2017, October 2017 and November 2017, does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Your testimony, along with the December 2, 2017 appeal confirmation notice stating that the reason for your appeal was "Failure of the Exchange to provide timely notice of eligibility determination," permits an inference that NYSOH did not find your child eligible for retroactive Medicaid for September 2017, October 2017 and November 2017.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

When an individual files an initial application for Medicaid, his or her eligibility for retroactive Medicaid depends on the date of application. To this end, it does not matter whether or not that initial application resulted in Medicaid going forward. Instead, an individual, who has filed an initial application for Medicaid through NYSOH, has the right to be evaluated for Medicaid for the three months before the month of his or her application.

Medicaid coverage can be made effective retroactively for up to three months prior to an individual's initial application if the individual received medical services that would have been covered under Medicaid and if they would have been eligible for Medicaid in those three months had they applied.

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

You file your taxes with a tax filing status of single and claim one dependent on your tax return. Therefore, your child is in a two-person household. At that time, your child was between the ages of one and nineteen.

To be eligible for Medicaid on a monthly basis, your child would have needed to meet the non-financial criteria and have an income no greater than 154% of the FPL of \$16,240.00, which is \$2,085.00 per month for a two-person household.

The record reflects that your gross income for September 2017 was \$2,614.31 (the sum of \$708.44, \$455.52, \$336.13, \$77.06 and \$317.16). Since your gross income of \$2,614.31 is more than the \$2,085.00 monthly Medicaid limit, NYSOH properly determined that your child was not eligible for Medicaid during September 2017.

The record reflects that your gross income for October 2017 was \$2,710.29 (the sum of \$1,210.42, \$613.00, \$336.18 and \$550.69). Since your gross income of \$2,710.29 is more than the \$2,085.00 monthly Medicaid limit, NYSOH properly determined that your child was not eligible for Medicaid during October 2017.

You testified that you are seeking Medicaid coverage November 2017. Your initial application was submitted on November 2, 2017. Medicaid coverage can only be made effective for up to three months prior to the date of an application, it does not include the month in which an application was made. Therefore, NYSOH properly determined that your child was not eligible for retroactive Medicaid during November 2017. Even if you were able to request retroactive Medicaid for November 2017, the record reflects your gross income for that month was \$2,180.49 (the sum of 688.31, \$348.17, \$662.22 and \$481.79). Since \$2,180.49 is more than the \$2,085.00 monthly Medicaid limit, and your child would also not be eligible for Medicaid for November 2017 on a financial basis.

Therefore, NYSOH's determination that your child is not eligible for retroactive Medicaid for September 2017, October 2017 or November 2017 is AFFIRMED.

Decision

The November 17, 2017 eligibility determination notice is MODIFIED to state that, effective December 1, 2017, your child is eligible to enroll in Child Health Plus with a \$9.00 monthly premium.

The November 17, 2017 enrollment notice is MODIFIED to state that your child's enrollment in his Child Health Plus plan is effective December 1, 2017.

Your case is RETURNED to NYSOH to effectuate these changes and notify you accordingly.

NYSOH's determination that your child is not eligible for retroactive Medicaid for September 2017, October 2017 or November 2017 is AFFIRMED.

Effective Date of this Decision: March 2, 2018

How this Decision Affects Your Eligibility

Your child's eligibility for and enrollment in their Child Health Plus plan should have been effective as of December 1, 2017.

Your case is being sent back to NYSOH to enroll your child's in his Child Health Plus plan effective December 1, 2017. NYSOH will notify you once this is done.

You will be responsible to pay the health plan directly the monthly premium due for that month.

Your child is not eligible for Medicaid in the months of September 2017, October 2017 or November 2017.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:

Health Insurance Marketplace Attn: Appeals 465 Industrial Blvd. 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 November 17, 2017 eligibility determination notice is MODIFIED to state that, effective December 1, 2017, your child is eligible to enroll in Child Health Plus with a \$9.00 monthly premium.

The November 17, 2017 enrollment notice is MODIFIED to state that your child's enrollment in his Child Health Plus plan is effective December 1, 2017.

Your case is RETURNED to NYSOH to effectuate these changes and notify you accordingly.

NYSOH's determination that your child is not eligible for retroactive Medicaid for September 2017, October 2017 or November 2017 is AFFIRMED.

Your child's eligibility for and enrollment in their Child Health Plus plan should have been effective as of December 1, 2017.

Your case is being sent back to NYSOH to enroll your child's in his Child Health Plus plan effective December 1, 2017. NYSOH will notify you once this is done.

You will be responsible to pay the health plan directly the monthly premium due for that month.

Your child is not eligible for Medicaid in the months of September 2017, October 2017 or November 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.

<u>한국어 (Korean)</u>

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.

(Arabic)العربية

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 5777-355-855-1. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নিখ। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কখা 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।

<u>日本語 (Japanese)</u>

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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:श्ल्क 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. yebetumi ama wo obi a okyere kasa a woka no ase ama wo kwa a wontua hwee.

اردو(Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم5777-355-485-1 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.