



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

Notice of Decision

Decision Date: March 9, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000026127

[REDACTED]

Dear [REDACTED],

On March 2, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 21, 2017 eligibility determination and enrollment confirmation 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 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.

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: March 9, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000026127



Issues

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 eligibility for advance payments of the premium tax credit (APTC), and your enrollment in a qualified health plan (QHP), began on February 1, 2018?

Did NYSOH properly determine that your children's eligibility for, and enrollment in, their Child Health Plus (CHP) plan was effective February 1, 2018?

Procedural History

On October 24, 2017, NYSOH issued a renewal notice stating that it was time to renew you and your children's application for health insurance for 2018. The notice stated that, if you did not renew your application by December 15, 2017, you could lose your health insurance coverage, as well as any financial assistance you were receiving.

On November 21, 2017, you updated your NYSOH application.

On November 22, 2017, NYSOH issued a notice of eligibility determination stating that you and your children were conditionally eligible for Medicaid, effective January 1, 2018. The notice also directed you to submit documentation of your current household income by December 6, 2017.

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Also on November 22, 2017, NYSOH issued a notice of enrollment confirmation, confirming you and your children's enrollment in a Medicaid Managed Care plan, which began on March 1, 2017.

On December 17, 2017, NYSOH redetermined your eligibility.

On December 18, 2017, NYSOH issued a discontinuance notice stating that you and your children were no longer eligible to remain enrolled in coverage through NYSOH, effective January 1, 2018. This was because NYSOH did not receive documentation to confirm your current household income by the date specified.

Also on December 18, 2017, NYSOH issued a disenrollment notice, stating that you and your children were disenrolled from your Medicaid Managed Care plan, effective December 31, 2017. This was because you were no longer eligible to enroll in health insurance through NYSOH.

On December 20, 2017, you updated your NYSOH application, and uploaded documentation to your NYSOH account. That day, NYSOH prepared a preliminary eligibility determination stating that you were eligible to receive up to \$176.00 per month in APTC, and your children were eligible to enroll in CHP with a \$30.00 monthly premium each, effective February 1, 2018.

Also on December 20, 2017, your broker, [REDACTED], spoke with NYSOH's Account Review Unit and appealed the start date of you and your children's eligibility and enrollment, insofar as your eligibility for financial assistance and enrollment in your coverage did not begin on January 1, 2018.

On December 21, 2017, NYSOH issued a notice stating that you were eligible to receive up to \$176.00 per month in APTC, and your children were eligible to enroll in CHP with a \$30.00 monthly premium each, effective February 1, 2018.

Also on December 21, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a bronze level QHP with the application of your APTC to the monthly premium, beginning February 1, 2018. The notice also confirmed that your children were enrolled in a CHP plan beginning February 1, 2018.

On March 2, 2018, you appeared at a telephone hearing, along with your Authorized Representative (AR), [REDACTED], who acts as your broker, 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) Your AR testified that you came to his office on [REDACTED] to renew your application for health insurance for 2018 on behalf of yourself and your children, and your NYSOH account confirms that your application was updated on that day.
- 2) Your AR testified that he completed the application update online and, when he finished, the system said that there was no further action that he needed to take, and that you and your children were approved for Medicaid coverage for 2018.
- 3) Your AR testified that you called him the next day to double check as to whether you needed to do anything further, and that he logged into your account and again saw that there was nothing further that you needed to do.
- 4) You confirmed that you called your broker just to make sure that you were all set, and that you didn't need to submit anything to him.
- 5) You testified, and your NYSOH account confirms, that you receive email alerts from NYSOH regarding notices issued in your NYSOH account.
- 6) You testified that you regularly check the email account that is on file with NYSOH.
- 7) You testified that, when you receive an email from NYSOH, you log into your NYSOH account to review the notice that is issued. You testified that the notices are usually confusing, so you generally call your broker after that.
- 8) You testified that you did not receive any email alert in November 2017 regarding the November 22, 2017 eligibility determination notice, and that you also did not receive anything in the mail.
- 9) 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."

- 10) You testified that you received an email on December 20, 2017 regarding the December 18, 2017 discontinuance notice.
- 11) You testified that you immediately went to your broker (your AR) when you realized that you and your children were losing your coverage.
- 12) Your AR testified that he called NYSOH while you were present in his office, and NYSOH stated that they sent you an email regarding the notice requesting income documentation.
- 13) Your AR testified that you stated that you never received an email.
- 14) Your AR testified that he told the NYSOH representative he spoke with that he would immediately submit any documentation needed, but that you needed your coverage to start on January 1, 2018.
- 15) Your AR testified that the NYSOH representative told him that, since it was after December 15, 2017, you and your children would not have coverage until February 1, 2018.
- 16) Your AR testified that he asked why NYSOH did not send an email earlier in the month, if the documentation was due in early December 2017, and that NYSOH did not respond.
- 17) Your AR testified that he uploaded a copy of the application page stating that no further action was necessary, and that the NYSOH representative said that it was just “how the website does it.”
- 18) Your NYSOH account reflects that a screen shot of two pages from your NYSOH application was uploaded to your NYSOH account on December 20, 2017. The screenshot states, under “Status of Your Renewal,” “Congratulations! We’ve enrolled everyone in their health plan for another year and you don’t have to do anything more” (Document [REDACTED]).
- 19) Your NYSOH account reflects that, on December 21, 2017, a note was entered in the “Notes” section of your account stating, “Backdating QHP effective 1/1/18 for [REDACTED] Program change.”
- 20) You testified that, even though you were told that your QHP coverage was backdated to January 2018, you are still having problems with your coverage from that month.
- 21) You testified that your children may have medical bills that were not covered from the month of January 2018.

22) Your NYSOH account reflects that, after you filed your appeal, your APTC was reduced to \$67.00 per month for February 2018 (and the backdated coverage for January 2018), and then \$0.00 per month, effective March 1, 2018.

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 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 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 for 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 e.g. State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Redetermination During a Benefit Year

When a redetermination is issued because of a change in an applicant’s information, NYSOH must generally make that redetermination effective on the first day of the month following the date NYSOH is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may determine that its policy will be that any change made after the 15th of any month will not be effective until the first of the second following month (45 CFR § 155.330(f)(2)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a QHP is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by 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 (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your eligibility for APTC, and your enrollment in a QHP, properly began on February 1, 2018.

On November 21, 2017, you updated your application for financial assistance with your broker for the 2018 coverage year. On November 22, 2017, NYSOH issued a notice of eligibility determination stating that you and your children were conditionally eligible for Medicaid, effective January 1, 2018, and that you needed to submit documentation of your household income by December 6, 2017.

Because no income documentation was received, NYSOH redetermined your eligibility on December 17, 2017. On December 18, 2017, NYSOH issued a discontinuance and disenrollment notice stating that you were no longer eligible to enroll in coverage through NYSOH, and that you were disenrolled from your coverage effective December 31, 2017.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. Although NYSOH contends that it

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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 November 22, 2017. You credibly testified that you did not receive an electronic alert regarding the notice, which directed you to provide documentation of your income to confirm the information in your November 21, 2017 application. 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 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 you needed to provide documentation of your income by December 6, 2017.

Additionally, your broker appeared at the hearing as your AR and provided credible testimony that, when he updated your application on November 21, 2017, the final screen of the application indicated that no further action was necessary, and that you and your children were eligible for Medicaid. He also supplied a screenshot of your application which confirms that your NYSOH account displayed a message under the heading, "Status of Your Renewal," which stated, "Congratulations! We've enrolled everyone in their health plan for another year and you don't have to do anything more." As this message indicates that no further action is needed, it was reasonable for you and your broker to believe that no further action was required on your part, and that your eligibility was finalized.

You testified that you discovered that you were being disenrolled from your coverage when you received an email on December 20, 2017 regarding the December 18, 2017 discontinuance notice. You updated your application for financial assistance on December 20, 2017, and therefore we must assume that this is the information you would have provided if you had been able to update your application prior to December 15, 2017, in time for a January 1, 2018 start date for your eligibility and enrollment. Therefore, you should have been eligible for your APTC and enrollment in a QHP as of January 1, 2018.

The second issue under review is whether NYSOH properly determined that your children's eligibility for, and enrollment in, their CHP coverage was effective February 1, 2018.

Your children were found conditionally eligible for Medicaid, effective January 1, 2018. As described above, your children's Medicaid coverage ended after NYSOH did not receive documentation to confirm your income by December 6, 2017.

However, as outlined within, NYSOH failed to provide you with proper notice that you needed to supply income documentation and, moreover, it was reasonable of you and your broker to believe that no further action was necessary, based on the information relayed to you when you updated your NYSOH account on November 21, 2017.

You updated your application on December 20, 2017, and therefore we must again assume that this is the information you would have provided if you had been able to update your application prior to December 15, 2017, in time for a January 1, 2018 start date for your eligibility and enrollment. As such, your children's eligibility and enrollment in their CHP coverage should have started on January 1, 2018.

Therefore, the December 21, 2017 eligibility determination notice is MODIFIED to state that you were eligible to receive up to \$67.00 in APTC per month, and your children were eligible to enroll in CHP with a \$30.00 monthly premium each, effective January 1, 2018.

Likewise, the December 21, 2017 enrollment confirmation notice is MODIFIED to state that your enrollment in your QHP, with the application of your APTC, and your children's enrollment in their CHP, was effective January 1, 2018.

Your case is RETURNED to NYSOH to ensure that you and your children's coverage is backdated to January 1, 2018.

Decision

The December 21, 2017 eligibility determination is MODIFIED to state that you were eligible to receive up to \$67.00 per month in APTC, and your children were eligible to enroll in CHP with a \$30.00 monthly premium each, effective January 1, 2018.

The December 21, 2017 enrollment confirmation notice is MODIFIED to state that your enrollment in your QHP, with the application of your APTC, and your children's enrollment in their CHP coverage, is effective January 1, 2018.

Your case is RETURNED to NYSOH to backdate you and your children's eligibility and enrollment to January 1, 2018.

Effective Date of this Decision: March 9, 2018

How this Decision Affects Your Eligibility

NYSOH failed to provide you with proper notice that you needed to submit income documentation.

Your eligibility for APTC, and your children's eligibility for CHP premium assistance, should have been effective January 1, 2018.

Your enrollment in your QHP, and your children's enrollment in their CHP coverage, should have started as of January 1, 2018.

Your case is being sent back to NYSOH to backdate you and your children's coverage to January 1, 2018.

You will be responsible for any premiums that result from you and your children's coverage being backdated.

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

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).

- 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 December 21, 2017 eligibility determination is MODIFIED to state that you were eligible to receive up to \$67.00 per month in APTC, and your children were eligible to enroll in CHP with a \$30.00 monthly premium each, effective January 1, 2018.

The December 21, 2017 enrollment confirmation notice is MODIFIED to state that your enrollment in your QHP, with the application of your APTC, and your children's enrollment in their CHP coverage is effective January 1, 2018.

Your case is RETURNED to NYSOH to backdate you and your children's eligibility and enrollment to January 1, 2018.

NYSOH failed to provide you with proper notice that you needed to submit income documentation.

Your eligibility for APTC, and your children's eligibility for CHP premium assistance, should have been effective January 1, 2018.

Your enrollment in your QHP, and your children's enrollment in their CHP coverage, should have started as of January 1, 2018.

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).

Your case is being sent back to NYSOH to backdate you and your children's coverage to January 1, 2018.

You will be responsible for any premiums that result from you and your children's coverage being backdated.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]

[REDACTED]

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 srε wo, frε 1-855-355-5777. ye&εtumi 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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