



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: AP000000026426

[REDACTED]

Dear [REDACTED],

On February 20, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's August 17, 2017 discontinuance notice, and December 29, 2017 eligibility redetermination 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.

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## Decision

Decision Date: March 9, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000026426

[REDACTED]

## Issues

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

Was your appeal of NY State of Health's August 17, 2017 discontinuance notice timely?

Did NY State of Health properly determine that your daughter's eligibility for and enrollment in a Child Health Plus plan was effective February 1, 2018?

## Procedural History

On October 12, 2016, you submitted an updated application for financial assistance to NY State of Health (NYSOH).

On October 13, 2016, NYSOH issued an eligibility redetermination notice, based on the October 12, 2016 application, stating that your daughter was eligible for Medicaid, effective August 1, 2016. The notice also stated that she was eligible for Medicaid until the end of the month of her first birthday because you had Medicaid when she was born (or within the three months prior).

Also on October 13, 2016, NYSOH issued an enrollment confirmation notice stating that your daughter was enrolled in a Medicaid Managed Care plan, effective August 1, 2016.

On July 2, 2017, NYSOH issued a notice that it was time to renew your daughter's health insurance. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether

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your daughter would qualify for financial help paying for her health coverage, and that you needed to update your account by August 15, 2017 or the financial assistance your daughter was currently getting may end.

No updates were made to your account by August 15, 2017.

On August 17, 2017, NYSOH issued a discontinuance notice, stating that your daughter no longer qualified for health insurance through NYSOH, effective September 1, 2017, because you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

On August 18, 2017, NYSOH issued a disenrollment notice, stating that your daughter's coverage with her Medicaid Managed Care plan would end August 31, 2017.

On December 28, 2017, you submitted an updated application for financial assistance to NYSOH, which also indicated that your daughter wanted assistance with paying for medical bills for the past three months. That day, a preliminary eligibility determination was prepared with regard to that application, stating that your daughter was eligible to enroll in a Child Health Plus plan, effective February 1, 2018.

Also on December 28, 2017, you contacted NYSOH's Account Review Unit and requested an appeal insofar as your daughter did not have insurance coverage, particularly Medicaid, as of September 1, 2017.

On December 29, 2017, NYSOH issued an eligibility redetermination notice, based on the December 28, 2017 updated application, stating that your daughter was eligible to enroll in a Child Health Plus plan, with a \$30.00 monthly premium, effective February 1, 2018.

Also on December 29, 2017, NYSOH issued an enrollment confirmation notice, based on a plan selection made December 28, 2017, stating that your daughter was enrolled in a Child Health Plus plan, with a \$30.00 monthly premium, effective February 1, 2018.

Finally, on December 29, 2017, NYSOH issued a retroactive Medicaid notice, stating that NYSOH denied your daughter's request for help with paying medical bills for September 1, 2017 through November 30, 2017 because the program she was eligible for cannot pay for any care she received in the past.

On February 20, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## Findings of Fact

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

- 1) You testified, and your NYSOH account reflects, that you elected to receive electronic communication from NYSOH and alerts via e-mail rather than through regular mail. You further testified that you did not change this preference to regular mail communication.
- 2) You testified that you did not have access to the [REDACTED] e-mail account previously on record in your NYSOH account in July of 2017. You further testified that you changed to [REDACTED] e-mail account but this information was not submitted to and/or verified on your NYSOH account.
- 3) You testified that you did not receive the July 2, 2017 renewal notice.
- 4) You testified that you did not receive the August 17, 2017 discontinuance notice.
- 5) You testified that you first became aware that your daughter was disenrolled from her plan [REDACTED] or [REDACTED] 2017.
- 6) You testified that, following your daughter's disenrollment, you only contacted NYSOH to request the appeal on December 28, 2017.
- 7) You testified that you did not update your account until December 28, 2017.
- 8) You testified that you selected a Child Health Plus plan for your daughter to enroll in on December 28, 2017.
- 9) You testified that had you applied prior to the end of the renewal period, your daughter would have qualified for Medicaid since your expected income was considerably less in August, but now your expected income made your daughter eligible for a Child Health Plus plan.

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

## Applicable Law and Regulations

### Valid Appeal Requests

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An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

### Electronic Notices

If the individual elects electronic communications, NYSOH must send an e-mail or other electronic communication alerting the individual that a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

### Requirement for Individuals to Report Changes

NYSOH must require an applicant to report any change which may affect eligibility, such as citizenship status, incarceration, residency, household size, and income within 30 days of such change (45 CFR §155.330(b), 45 CFR §155.305, 42 CFR §435.403, 42 CFR §435.406, 42 CFR §425.603).

### 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 Child Health Plus 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)).

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“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).

## **Legal Analysis**

The first issue under review is whether your appeal of NY State of Health’s August 17, 2017 discontinuance notice was timely.

The record reflects that you filed an appeal with NYSOH regarding the discontinuance notice on December 28, 2017.

Individual applicants and enrollees must request a hearing within sixty (60) days of the due date of their notice of eligibility determination by NYSOH. For an appeal to have been valid on the issue of your child’s discontinuance of eligibility for health insurance through NYSOH, as indicated in the August 17, 2017 notice, an appeal should have been filed by October 16, 2017. The record reflects that you filed a formal appeal on December 28, 2017, which is well outside the 60-day deadline for an appeal to be timely. However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances.

You testified that you did not receive the July 2, 2017 renewal notice or the August 17, 2017 discontinuance notice. The record reflects that you elected to receive alerts regarding notices from NYSOH electronically. However, you testified that the information NYSOH had in your account was not accurate, specifically the e-mail address in your NYSOH account was not accurate as of July 2017.

NYSOH requires that an applicant to report any change which may affect eligibility, such as citizenship status, incarceration, residency, household size,

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and income within 30 days of such change. Since the information in your account had not been updated, an electronic alert would have been sent to the e-mail address on file at that time, if it failed it would have been sent via regular U.S. mail to your address on file.

Since your e-mail address had not been updated before the discontinuance notice was issued on August 17, 2017, NYSOH had completed its obligation in notifying you via your chosen method of contact and address as stated in your application. If the information had changed, you were required to make those changes in your account within 30 days of such change. The fact that you did not receive the August 17, 2017 discontinuance notice because you failed to make the required changes to your account is not an exceptional circumstance explaining the failure to timely submit the appeal.

Furthermore, you testified that you first became aware that your daughter was disenrolled from her health insurance in September or October of 2017. Although you knew that your daughter did not have health insurance coverage through NYSOH, you testified that you did not contact NYSOH or update your account until December 28, 2017. The record does not contain any evidence of exceptional circumstances explaining the delay between you learning that your daughter did not have health insurance through NYSOH and the filing of the formal appeal.

Therefore, as there has been no timely appeal of the August 17, 2017 discontinuance notice, and there is no evidence that the failure to timely submit the appeal was due to exceptional circumstances, your appeal of the August 17, 2017 discontinuance notice is **DISMISSED**.

The second issue is whether NYSOH properly determined that your daughter's eligibility and enrollment in her Child Health Plus plan was effective February 1, 2018.

You testified that you submitted an updated application to NYSOH on December 28, 2017. That day, a preliminary eligibility determination was prepared with regard to that application, stating that your daughter was eligible to enroll in a Child Health Plus plan, effective February 1, 2018. You testified that you enrolled your daughter in a Child Health Plus plan on December 28, 2017.

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 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 updated your application and selected a plan for your daughter on December 28, 2017, that plan would properly begin on the first day of the second following month after December; that is on February 1, 2018.

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Therefore, the December 29, 2017 eligibility redetermination and enrollment confirmation notices stating that your daughter was eligible for and enrolled in her Child Health Plus plan effective February 1, 2018 are correct and must be AFFIRMED.

## **Decision**

Your appeal of the August 17, 2017 discontinuance notice is DISMISSED.

The December 29, 2017 eligibility redetermination notice is AFFIRMED.

The December 29, 2017 enrollment confirmation notice is AFFIRMED.

**Effective Date of this Decision:** March 9, 2018

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

Your daughter's eligibility and enrollment in her Child Health Plus plan was effective February 1, 2018.

## **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services 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 U.S. Department of Health and Human Services. 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 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  
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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

Your appeal of the August 17, 2017 discontinuance notice is **DISMISSED**.

The December 29, 2017 eligibility redetermination notice is **AFFIRMED**.

The December 29, 2017 enrollment confirmation notice is **AFFIRMED**.

Your daughter's eligibility and enrollment in her Child Health Plus plan was effective February 1, 2018.

## **Legal Authority**

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

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

