



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
PO Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: May 31, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027506



Dear [REDACTED]

On April 4, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 14, 2018 and the January 20, 2018 eligibility determination 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  
PO 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(b).

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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: May 31, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027506



## Issue

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

Did NY State of Health (NYSOH) properly determine your two youngest children were not eligible for a Child Health Plus subsidy for the month of February 2018?

## Procedural History

On November 10, 2017, NYSOH issued an eligibility determination notice stating your two youngest children were eligible to enroll in a Child Health Plus (CHP) plan with a \$30.00 monthly premium, for a limited time, effective December 1, 2017. The notice directed you to provide proof of your household income by January 8, 2018 to confirm your children's eligibility or they might lose their insurance or receive less help paying for their coverage. That notice contained a "Documentation List" providing the types of documents accepted to prove various kinds of income. The notice stated "you must report all of the income for your household. This includes income for household members who are not applying for coverage."

Also on November 10, 2017, NYSOH issued an enrollment notice confirming your children were enrolled in a CHP plan with \$30.00 monthly premiums each, effective December 1, 2017.

On November 30, 2017 and December 15, 2017, NYSOH issued notices stating the income information received did not confirm the information in your application. The notice directed you to submit additional documentation by

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January 8, 2018 or your children might lose their insurance or receive less help paying for their coverage. The notices contained a "Documentation List."

On January 13, 2018, NYSOH systematically redetermined your children's eligibility for financial assistance with health insurance.

On January 14, 2018, NYSOH issued an eligibility determination notice stating your children were eligible to enroll in a full price CHP plan, effective February 1, 2018. The notice indicated your children were not eligible for a CHP subsidy, because state and federal data sources indicated your household income was over the allowable income limit for that program.

Also on January 14, 2018, NYSOH issued an enrollment notice confirming your children were enrolled in a full cost Child Health Plus plan with a \$236.68 monthly premium each, effective February 1, 2018.

On January 19, 2018, NYSOH received an updated application for financial assistance with health insurance submitted on behalf of your children. That day, a preliminary eligibility determination was prepared finding your children conditionally eligible for Child Health Plus.

Also on January 19, 2018, you spoke to NYSOH's Account Review Unit and appealed insofar as your children were not eligible for a CHP subsidy for the month of February 2018.

On January 20, 2018, NYSOH issued an eligibility determination notice, based on your January 19, 2018 updated application, stating your children were eligible for CHP with a \$45.00 monthly premium each, for a limited time, effective March 1, 2018. The notice directed you to submit proof of your household income to confirm your children's eligibility by March 20, 2018 or they might lose their insurance or receive less help paying for their coverage.

Also on January 20, 2018, NYSOH issued an enrollment notice confirming your children were enrolled in a CHP plan with \$45.00 monthly premiums each, effective March 1, 2018.

On April 4, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed thereafter.

## Findings of Fact

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

- 1) You are seeking insurance for your two youngest children only.
- 2) An updated application was submitted on behalf of your children on November 9, 2017 indicating you would file your 2017 tax return with a tax filing status of married filing jointly with your spouse and you would claim your three children as dependents.
- 3) Your application listed an annual household income of \$78,001.08 consisting of employment income received by your spouse and monthly Social Security benefits you received. The application also indicated your oldest child received employment income and your two youngest children received monthly Social Security benefits.
- 4) According to your account, NYSOH was unable to verify the income information listed in your application and your children were determined conditionally eligible for CHP with \$30.00 monthly premiums each, pending receipt of documentation to confirm your household income by January 8, 2018.
- 5) Your two youngest children were enrolled into a CHP plan with \$30.00 monthly premiums each, effective December 1, 2017.
- 6) You testified that your children were previously enrolled in CHP through your LDSS. You testified that you received a renewal packet in the mail in October 2017 and you called NYSOH at the number provided in the packet and you were advised that you were being assigned a caseworker from CDPHP to assist you with renewing your children's coverage through NYSOH.
- 7) You testified that you received the November 10, 2017 eligibility determination notice directing you to provide proof of your household income to confirm your children's eligibility.
- 8) You testified that you scanned and emailed paystubs for your spouse and your oldest child and Social Security benefit documents for yourself and your two youngest children and emailed them to your caseworker by the end of October 2017.
- 9) According to your account, the first income documentation received by NYSOH was on November 28, 2017 consisting of a Social Security benefit award letter for your middle child from 2015, a Social Security benefit award letter for you from 2017, and four illegible paystubs for your spouse.

- 10) According to your account, NYSOH invalidated the income documentation, because your spouse's paystubs were illegible and no documenting of your oldest child's income was received. Additional documentation of your household income was requested.
- 11) According to your account, on December 14, 2017 Social Security benefit award letters from 2017 for your two youngest children were uploaded to your NYSOH account.
- 12) According to your account, NYSOH invalidated your income documentation, because no legible copies of your spouse's paystubs had been received and no documentation of your oldest child's income had been received. Additional documentation of your household income was requested.
- 13) You testified that you received the November 30, 2017 and December 15, 2017 insufficient documentation notices requesting additional income documentation and that you contacted your caseworker each time.
- 14) You testified that because the insufficient documentation notices only identified your two youngest children by name, you thought that the issue was with their income documentation, not the other household members.
- 15) According to your account, on January 13, 2018, NYSOH systematically redetermined your children's eligibility, based on income information received from state and federal data sources, and found your two youngest children eligible for CHP at full price, effective February 1, 2018.
- 16) On January 19, 2018, another updated application was submitted on behalf of your two youngest children. They were again determined conditionally eligible for CHP with a \$45.00 monthly premium each, effective March 1, 2018.
- 17) Your children's CHP subsidy was revoked for the month of February 2018 and they were enrolled in a full price plan for that month.
- 18) You appealed insofar as your children were not eligible for a CHP subsidy for February 2018 and you testified you are seeking reimbursement of the full price premiums you paid for that month.
- 19) You testified that you spoke to your caseworker and NYSOH many times and no one could tell you what documentation was needed. You testified that you learned for the first time on January 19, 2018 that the paystubs previously submitted for your spouse were not legible.

- 20) According to your account, on January 26, 2018, updated copies of your spouse's paystubs were uploaded as well as paystubs for your oldest child.
- 21) According to your account, additional income documentation was submitted in February and March 2018 and subsequently verified by NYSOH on March 7, 2018.
- 22) You two youngest children were determined fully CHP eligible with \$45.00 monthly premiums each, effective April 1, 2018.

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

## **Applicable Law and Regulations**

### Verification Process

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income (45 CFR §155.320(c)(1)(i)). If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f)).

### Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code (45 CFR § 155.300(a), 42 CFR § 603(e), see 26 USC § 36B(d)(2)(B)). The term "modified adjusted gross income" means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

"Gross income" is defined as all income from whatever source it is derived from; however, notwithstanding the apparent overall inclusiveness of this definition, there are numerous items that are specifically excluded from gross income (26 USC § 61).

An individual's income from Social Security benefits is included in their gross income only to the extent that the sum of the person's IRS-defined "modified adjusted gross income" and one-half of their Social Security benefits is greater than \$25,000.00 (26 USC § 86(a)(1), (b)(1)), (c)(1)(A)).

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“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income (*id.*).

With regard to eligibility for financial assistance through NYSOH, a tax filer’s household income includes the MAGI of all the individuals in the taxpayer’s household who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1); 42 CFR § 435.603(d)(1)). The MAGI-based income of a child who is not required to file a tax return is not included in household income (42 CFR § 435.603(d)(2)).

A person is not required to file a tax return if their gross income is less than the sum of the exemption amount plus the basic standard deduction allowable for that person (26 USC § 6012(1)(A)). For the 2018 year, generally only a dependent who had yearly gross earned income greater than \$12,000.00 will be required to file a tax return (see IRS Rev. Proc. 2018–18).

### Child Health Plus - Eligibility

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

A child who meets the eligibility requirements for CHP may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (NY PHL § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY PHL § 2511(2)(b)).

### Child Health Plus – Effective Dates

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)).

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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 issue is whether NYSOH properly determined your two youngest children were not eligible for a CHP subsidy for the month of February 2018.

An updated application for financial assistance was submitted on behalf of your two youngest children on November 9, 2017. That application listed an annual household income of \$78,001.08 consisting of employment income received by your spouse and monthly Social Security benefits you received. The application also indicated your oldest child received employment income and your two youngest children were in receipt of monthly Social Security benefits. According to your account, NYSOH was unable to verify the income information listed in your application.

Pursuant to the regulations, for all individuals whose income is needed to calculate the household’s eligibility, NYSOH must request data that will allow NYSOH to verify the household’s income. If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence.

In the notice issued by NYSOH on November 10, 2017, you were advised that NYSOH could not verify the income information in your application and you were directed to submit proof of your household income by January 8, 2018 to confirm your children’s eligibility or they might lose their insurance or receive less help paying for their coverage. That notice contained a “Documentation List” providing the types of documents accepted to prove various kinds of income. The notice stated “you must report all of the income for your household. This includes

income for household members who are not applying for coverage.” You testified that you received that notice.

Although you testified that you emailed paystubs for your spouse and your oldest child and Social Security benefit documents for yourself and your two youngest children to your caseworker by the end of October 2017, based on the fact that the first notice issued by NYSOH requesting income documentation was not dated until November 10, 2017, this testimony is not credible. Notwithstanding, the record confirms that NYSOH did not receive income documentation for all members of your household, as attested to in your application, by the January 8, 2018 due date.

Since your application indicated that all members of your household, including you, your spouse, and your three children, were receiving income, you were required to submit sufficient documentation of that income. It is noted that the November 10, 2017 eligibility determination notice and the November 30, 2017 and December 15, 2017 insufficient documentation notices, all of which you testified to receiving, all contained a “Documentation List” specifying that the household income included income for all household members even those not applying for coverage. Since your account confirms that the first documentation of your oldest child’s income was not received until January 26, 2018, the evidence establishes that you failed to comply with the numerous documentation requests by failing to submit sufficient income documentation of all household members by January 8, 2018.

Although you testified that neither your caseworker nor NYSOH could tell you what documentation was needed, given the explicit written directives in the November 10, 2017, November 30, 2017, and December 15, 2017 notices, it is concluded that you were properly advised of the documentation needed to confirm your children’s eligibility and you failed to timely comply with said directives.

Since, as discussed above, you failed to timely submit sufficient income documentation for all members of your household, as attested to in your application, NYSOH properly systematically redetermined your children’s eligibility on January 13, 2018, based on income information received from state and federal data sources. That income information indicated that your household income exceeded the income limit to qualify your children for a CHP subsidy, your children were determined eligible for CHP at full cost, and their CHP subsidy was revoked, effective February 1, 2018.

Based on your failure to comply with the numerous documentation requests to confirm your children’s eligibility for financial assistance, the evidence is insufficient to overturn NYSOH’s determination that data sources indicated your household income exceeded the limit to qualify your children for financial assistance.

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Thus, the January 14, 2018 eligibility determination stating your children were eligible for a full cost CHP plan and ineligible for a subsidy, effective February 1, 2018, must be AFFIRMED.

Your account confirms that your application was updated on January 19, 2018 and your children were found conditionally eligible for CHP with \$45.00 monthly premiums, effective March 1, 2018. Your children's CHP subsidy was reinstated March 1, 2018; however, you testified that you are seeking reinstatement of the subsidy for the month of February 2018.

Pursuant to the regulations, 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 fifteenth of the month; applications received after the fifteenth day of the month will be processed for the first day of the second following month.

Since the evidence establishes that you did not update the application until January 19, 2018, after the fifteenth day of the month, the resulting eligibility could not become effective until the first day of the second following month; that is, on March 1, 2018.

Therefore, the January 20, 2018 eligibility determination notice, to the extent it states your children's CHP subsidy was effective March 1, 2018, is correct and is AFFIRMED.

## **Decision**

The January 14, 2018 eligibility determination notice is AFFIRMED.

The January 20, 2018 eligibility determination notice, to the extent it states your children's CHP subsidy was effective March 1, 2018, is correct and is AFFIRMED.

**Effective Date of this Decision:** May 31, 2018

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

This decision does not change your children's eligibility.

Your children's CHP subsidy was revoked for the month of February 2018 and not reinstated until March 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).

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

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your appeal was decided, the 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):**

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- By fax: 1-855-900-5557

## **Summary**

The January 14, 2018 eligibility determination notice is AFFIRMED.

The January 20, 2018 eligibility determination notice, to the extent it states your children's CHP subsidy was effective March 1, 2018, is correct and is AFFIRMED.

This decision does not change your children's eligibility.

Your children's CHP subsidy was revoked for the month of February 2018 and not reinstated until March 1, 2018.

## **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545.

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



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## **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.

### **한국어 (Korean)**

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

### **Русский (Russian)**

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

### **العربية (Arabic)**

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

### **বাংলা (Bengali)**

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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## **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

## **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

## **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

## **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

## **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

## **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&btumi ama wo obi a okyerE 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.