



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

## Notice of Decision

Decision Date: May 16, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000029823



Dear [REDACTED],

On May 8, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's March 7, 2018 eligibility determination and plan enrollment 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

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).

We are sending you this notice in accordance with 45 Code of Federal Regulations § 155.545.

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## Decision

Decision Date: May 16, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000029823



## Issue

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

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

## Procedural History

On February 1, 2017, NY State of Health (NYSOH) issued an eligibility determination notice, based on your January 31, 2017 application, stating that your two youngest children (children) were eligible for Child Health Plus (CHP), effective March 1, 2017. They were subsequently enrolled in a CHP plan.

On January 2, 2018, NYSOH issued a notice stating that it was time to renew your two youngest children's health insurance for 2018. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether your children would qualify for financial help paying for her health coverage, and that you needed to update your children's account between January 16, 2018 and February 15, 2018, or they might lose the financial assistance she was currently receiving.

No updates were made to your children's account by February 15, 2018.

On February 17, 2018, NYSOH issued an eligibility determination notice stating that your children did not qualify for health coverage through NYSOH because you had not responded to the renewal notice and had not completed the renewal

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within the required time frame. Your children's eligibility ended effective March 1, 2018.

Also on February 17, 2018, a disenrollment notice was issued stating that your children's CHP plan would end on February 28, 2018.

On March 6, 2018, you updated your two youngest children's application for health insurance. That day, NYSOH issued a preliminary eligibility determination stating that your children were eligible for and enrolled in a CHP plan with a \$45.00 monthly premium, effective April 1, 2018.

Also on March 6, 2018, you spoke to NYSOH's Account Review Unit and appealed the start date of your two youngest children's CHP plan insofar as it did not begin March 1, 2018.

On March 7, 2018, NYSOH issued an eligibility determination notice, consistent with its preliminary eligibility determination, stating that your two youngest children were eligible to enroll in CHP for a limited time with a \$45.00 monthly premium, effective April 1, 2018.

Also on March 7, 2018, a plan enrollment notice was issued confirming your children's enrollment in a CHP plan with coverage as of April 1, 2018.

On May 8, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your request to amend the appeal to only include your middle child (child) in the appeal was granted and testimony was received. 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) According to your NYSOH account, at all times relevant you received all your notices from NYSOH by electronic mail.
- 2) You testified that you did not receive any electronic alerts regarding any notice in your NYSOH account telling you that you needed to update your children's application to renew her coverage.
- 3) You testified that you did not know that you needed to update your children's account until you were called by your middle child's [REDACTED] who advised you that she no longer had insurance.

- 4) According to your NYSOH account and testimony, NYSOH received your children's updated application for health insurance on March 6, 2017.
- 5) You testified that you changed your notification preferences and requested that NYSOH begin sending notices via regular mail that day.
- 6) You testified that you are seeking to have your middle child re-enrolled in her CHP plan as of March 1, 2018, because you have medical bills for [REDACTED] received that month.
- 7) 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".
- 8) NYSOH has submitted no evidence that an electronic alert was sent to you regarding the January 2, 2018 renewal notice.

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

## **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, when NYSOH conducts annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 Code of Federal Regulations (CFR) § 155.335(a), (b)).

NYSOH must send an annual renewal notice that contains the individual's projected eligibility for the upcoming year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information and projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the

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coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)).

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

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant’s account (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4)).

## **Legal Analysis**

Initially, while your request to amend the appeal to pertain to only one child was granted, that would constitute adverse selection and be contrary to law.

Therefore, the issue under review is whether NYSOH properly determined that your two youngest children's enrollment in their CHP plan was effective April 1, 2018.

Your children were originally found eligible for CHP effective March 1, 2017.

Generally, NYSOH must redetermine qualified children's eligibility for financial assistance once every 12 months without requiring information from the individual, if it is able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's January 2, 2018 renewal notice stated that there was not enough information to determine whether your children were eligible to continue to receive financial assistance for health insurance, and that you needed to supply additional information by February 15, 2018, or any such financial assistance might end.

Because there was no timely response to this notice, your children were terminated from their CHP plan, effective February 28, 2018.

However, you testified and the record reflects that at all times relevant you elected to receive alerts regarding notices from NYSOH electronically. Although NYSOH contends that it complied with federal mandates regarding electronic notices, there is no evidence in the file that NYSOH sent you an electronic alert notifying you of a new notice available in your account on January 2, 2018. You credibly testified that you did not receive an electronic alert regarding the renewal notice, which directed you to update your children's account because there was not enough information to renew their coverage for the upcoming year. 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 them 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 update your NYSOH account for your child to continue to receive financial assistance and health insurance through NYSOH.

You first renewed your children's eligibility for financial assistance through NYSOH for the new coverage year on March 6, 2018. Therefore, we must assume that this is the information that would have been used had you been timely informed of the need to update your account, as stated in the renewal notice.

Therefore, the March 6, 2018 eligibility determination notice is MODIFIED to state that, effective March 1, 2018, your children are eligible to enroll in CHP for

a limited time with a \$45.00 premium per month; and the March 6, 2018 plan enrollment notice is MODIFIED to state that your children's enrollment in their CHP plan is effective March 1, 2018.

## **Decision**

The March 6, 2018 eligibility redetermination notice is MODIFIED to state that, effective March 1, 2018, your children are eligible to enroll in CHP for a limited time with a \$45.00 premium per month.

The March 6, 2018 plan enrollment notice is MODIFIED to state that your children's enrollment in their CHP plan is effective March 1, 2018.

Your case is RETURNED to NYSOH to reinstate your children into CHP plan effective March 1, 2018.

You will be responsible for the premium payments for any months in which your children have coverage.

**Effective Date of this Decision:** May 16, 2018

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

Your children's eligibility for and enrollment in her CHP plan should have been effective as of March 1, 2018.

Your case is being sent back to NYSOH to reinstate your children into their CHP plan as of March 1, 2018.

## **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.

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).



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 March 6, 2018 eligibility redetermination notice is MODIFIED to state that, effective March 1, 2018, your children are eligible to enroll in CHP for a limited time with a \$45.00 premium per month.

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).

The March 6, 2018 plan enrollment notice is MODIFIED to state that your children's enrollment in their CHP plan is effective March 1, 2018.

Your case is RETURNED to NYSOH to reinstate your children into CHP plan effective March 1, 2018.

Your children's eligibility for and enrollment in her CHP plan should have been effective as of March 1, 2018.

Your case is being sent back to NYSOH to reinstate your children into their CHP plan as of March 1, 2018.

You will be responsible for the premium payments for any months in which your child has coverage.

## **Legal Authority**

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

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



## Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

### **Español (Spanish)**

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

### **中文 (Traditional Chinese)**

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

### **Kreyòl Ayisyen (Haitian Creole)**

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

### **中文 (Simplified Chinese)**

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

### **Italiano (Italian)**

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

### **한국어 (Korean)**

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

### **Русский (Russian)**

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

### **العربية (Arabic)**

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

### **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 मदद चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

### **Polski (Polish)**

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

### **Twi (Twi)**

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

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