



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

## Notice of Decision

Decision Date: March 28, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027827

[REDACTED]

Dear [REDACTED],

On March 23, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 17, 2018 eligibility determination notice.

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 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: March 28, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027827

[REDACTED]

## 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 you were not eligible to enroll in health insurance coverage through NYSOH?

## Procedural History

On January 16, 2018, you submitted an application for financial assistance through NYSOH.

On January 17, 2018, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid because your household income exceeded the income threshold. Further, you were not eligible for the Essential Plan, tax credits, or to enroll in a qualified health plan because verification documents showed that you were not lawfully present.

On January 25, 2018, you contacted NYSOH's Account Review Unit and requested an appeal insofar as you were determined not eligible for financial assistance or to purchase health insurance through NYSOH.

On February 12, 2018, your account was systemically updated.

On February 13, 2018, NYSOH issued a notice stating that you were eligible for Medicaid for a limited time, effective February 1, 2018. You had been granted Aid to Continue until a decision had been made on your appeal.

On February 14, 2018, NYSOH issued an enrollment notice confirming that as of February 13, 2018, you were enrolled in a Medicaid Managed Care (MMC) plan, with an enrollment start date of February 1, 2018.

On March 23, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Testimony was taken and the record was fully developed at the hearing. The record was closed at the end of the hearing.

## Findings of Fact

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

- 1) You testified that you want to be determined eligible to enroll in health insurance through NYSOH.
- 2) According to your January 16, 2018 application and testimony, you expect to file a 2018 federal income tax return with the tax status of single and do not expect to claim any dependents on that return.
- 3) You testified that you are employed at [REDACTED] and that is your only source of income.
- 4) On January 15, 2018, you uploaded your Earnings Statements from [REDACTED]. On January 5, 2018, you were issued \$921.73 in federal taxable wages (see Document [REDACTED]).
- 5) You testified that on January 19, 2018, you were issued \$691.40 in federal taxable wages.
- 6) According to your January 16, 2018 application and testimony, you did not expect to claim any deductions on your federal income tax return.
- 7) According to your NYSOH account, you are an immigrant non-citizen.
- 8) According to your U.S. Employment Authorization card, your category code is C33 with an expiration date of [REDACTED] (see Document [REDACTED]; uploaded 01/17/2018).
- 9) The status of C-33, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as Deferred Action on Childhood Arrivals.
- 10) You testified that your immigration status has not changed.

11) According to your account, you reside in [REDACTED], New York.

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

## **Applicable Law and Regulations**

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

### Qualified Health Plan/Essential Plan – Citizenship and Immigration Status

To enroll in a qualified health plan (QHP) through the Marketplace, an applicant must be a citizen or national of the United States or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1); 45 CFR § 155.20; 42 CFR § 600.305; 42 CFR § 600.5).

The federal regulations state that the following non-citizens are lawfully present:

- (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. 1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:

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- (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. 1160 or 1255a, respectively);
  - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. 1254a), and pending applicants for TPS who have been granted employment authorization;
  - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
  - (iv) Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended;
  - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
  - (vi) Aliens currently in deferred action status;
  - (vii) Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;
- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture; or
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J));
- (8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.

(45 CFR § 152.2).

### Medicaid – Citizenship/Immigration Status

Medicaid must be provided to a United States citizen, a naturalized citizen, a qualified alien, and persons permanently residing in the United States under

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permanently residing under color of law (PRUCOL), is eligible for medical assistance from the state (42 CFR § 435.406; NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2(j)).

A PRUCOL alien is a person who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the United States such agency does not contemplate enforcing (18 NYCRR §360-3.2(j)). The New York Department of Health regards aliens who have been issued an Employment Authorization Document (I-688B or I-766), and have the requisite category code, to be PRUCOL (08 OHIP/INF-4, dated August 4, 2008)).

The guide, “Key to I-766/I-688B, Employment Authorization Documents (EADs)”, defines certain codes on the USCIS Employment Authorization Documents” (08 MA/033, dated December 1, 2008, and as amended). It confirms that a person who has category code of “(c)(33)” has PRUCOL status for Medicaid and Child Health Plus only (*id.*).

### Medicaid – Financial Eligibility

Medicaid can be provided through NYSOH to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

On the date of your application, that was the 2018 FPL, which is \$12,140.00 for a one-person household (83 Federal Register 2642).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you were not eligible to enroll in health insurance coverage through NYSOH.

On January 17, 2018, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid because your household income exceeded the income threshold. Further, you were not eligible for the Essential

Plan, tax credits, or to enroll in a qualified health plan because verification documents showed that you were not lawfully present.

Federal regulations require that a person seeking enrollment in the Essential Plan or a qualified health plan must be a citizen of the United States or have a satisfactory immigration status.

The record reflects that you attested that you are an immigrant non-citizen and submitted your employment authorization card as proof of your immigration status. Your employment authorization card reflects that your current category code is C33, and you testified that your status has not changed.

Your employment authorization documentation states you are an immigrant non-citizen with a C-33 status. The status of C-33, according to the USCIS and SSA is in reference to a status classified as Deferred Action on Childhood Arrivals. Individuals who have obtained an Employment Authorization card with the status of C-33 category are persons considered not “lawfully present” for purposes of the federal definition, and are therefore not recognized as eligible to receive federal funding under those programs.

In addition, individuals who have been determined to be qualified aliens and were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016. This is not the case for persons who received Deferred Action status.

Therefore, NYSOH was correct in finding you not eligible for coverage under the Essential Plan.

Additionally, federal regulations require that a person seeking enrollment in a qualified health plan through NYSOH have United States citizenship or satisfactory or immigration status. Under the federal regulations, individuals with Deferred Action for Childhood arrivals status are not considered to be lawfully present for the purposes of obtaining coverage in a qualified health plan through NYSOH. Therefore, NYSOH properly found you ineligible to enroll in a qualified health plan.

However, NY State has recognized persons with Deferred Action status within the accepted meaning of “*PRUCOL alien*,” even though the federal government has not. The New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 NY 2d 418 [2001]), that New York must provide state-funded Medicaid to the lawfully residing immigrants who had been excluded from access to the federal Medicaid program. Since your current Deferred Action status does confer PRUCOL status for individuals seeking Medicaid eligibility, your eligibility is contingent on whether they meet the financial criteria for Medicaid.

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The record reflects that you expect to file your 2018 federal income tax return with the tax status of single and do not expect to claim any dependents on that tax return. Therefore, you are in a one-person household for purposes of this analysis.

Adults are eligible for Medicaid if they meet the non-financial criteria and have a household modified adjusted gross income that falls at or below 138% of the FPL for the applicable family size. The relevant FPL was \$12,140.00 for a one-person household.

Financial eligibility for Medicaid applicants who are not currently receiving Medicaid benefits may be based on current monthly household income and family size. For an adult to be eligible for Medicaid in a household of one, their monthly must not exceed \$1,397.00.

The record reflects that you are employed at [REDACTED] and that is your only source of income. On January 5, 2018, you were issued \$921.73, and on January 19, 2018, you were issued \$691.40 in federal taxable wages. Based on the available record, your monthly income of (\$921.73 + \$691.73) \$1,613.46, exceeded the allowable income threshold to qualify for Medicaid.

Accordingly, the January 17, 2018 eligibility determination notice properly found you to be ineligible to enroll in the Essential Plan or a QHP based on your immigration status, and ineligible for Medicaid based on your household's expected annual household income.

Therefore, the January 17, 2018, eligibility determination notice is AFFIRMED.

## **Decision**

The January 17, 2018, eligibility determination notice is AFFIRMED.

**Effective Date of this Decision: March 28, 2018**

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

You are not eligible to enroll in the Essential Plan or a QHP based on your immigration status.

You are not eligible for Medicaid because your monthly household income is over the maximum allowable income limit for that program.

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

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).

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  
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Albany, NY 12211

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- By fax: 1-855-900-5557

## **Summary**

The January 17, 2018, eligibility determination notice is AFFIRMED.

You are not eligible to enroll in the Essential Plan or a QHP based on your immigration status.

You are not eligible for Medicaid because your household income is over the maximum allowable income limit.

## **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)

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### 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&etumi ama wo obi a okyer& 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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