



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

Notice of Decision

Decision Date: September 5, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000490

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On April 22, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's February 1, 2014 eligibility determination.

The enclosed Decision, rendered after that hearing, by the Appeals Unit of the 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

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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Issue

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

Did the Marketplace properly determine that as of February 7, 2014 [REDACTED] [REDACTED] was ineligible for full Medicaid benefits?

Procedural History

On February 1, 2014, the Marketplace received an application for health insurance from the appellant’s spouse, who is the Marketplace account holder. In that application he reported a household income of \$31,600.00. On February 3, 2014, the Marketplace issued a notice of eligibility determination, based on the \$31,600.00 income, stating that you were eligible for APTC and cost sharing reductions (CSR).

On February 1, 2014, the gross income amount on your application was changed to \$10,500.00. On February 7, 2014, the Marketplace issued a notice of eligibility determination, based on the \$10,500.00 income, which stated: “Based on your household income of \$10,500.00, you are eligible for Medicaid coverage for emergency medical care and services only at or below the allowable income limit of \$21,404.00. This is because you are not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).”

On March 20, 2014, you spoke with the Marketplace Customer Service unit and appealed the February 7, 2014 determination.

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On April 22, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and it was closed at the end of the hearing.

Findings of Fact

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

- 1) You live with your husband.
- 2) You plan to file your taxes as married filing jointly for the 2014 tax year.
- 3) You attested that your household income in 2013 was \$10,500.00. You expect that your gross income will not change for the 2014 tax year.
- 4) You are currently a nonimmigrant visa holder. You are in the United States on an O-3 visa.
- 5) You have been in the United States on your current visa since December 8, 2013. Your O-3 visa expires on December 14, 2014.
- 6) You expect your new visa to be approved by October 2014. If approved, the new visa will allow you to reside in the United States for another three years.

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

Applicable Law and Regulations

A person who meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard is eligible for Medicaid benefits (45 CFR § 155.305(c)). One of the nonfinancial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance.

The term "PRUCOL" stands for Permanent Residence Under Color of Law, and 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)).

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Whether a Marketplace applicant plans to take any steps to permanently remain in the United States after her visa expires is a higher standard than the ACA requires for her to qualify for Insurance Affordability Programs. On March 23, 2012, an amendment was made to 42 CFR § 435.403, which relates to state residence for the purposes of determining eligibility for Medicaid. The regulation was amended to

strike the term “permanently and for an indefinite period” from the definition for adults in redesignated § 435.403(h)(1) and (h)(4), and replace the term “remain” with “reside.” An adult’s residency will be determined based upon where the individual is living and has intent to reside, including without a fixed address, or the State which the individual entered with a job commitment or seeking employment (whether or not currently employed). While proposing to remove the phrase “permanently or for an indefinite period” and use the term “reside,” we are maintaining existing policy that an individual must intend to remain living in the State in which he or she is seeking coverage.

(76 FR 51148, 51160, Aug. 17, 2011).

Under 42 CFR § 435.403 Medicaid must be provided to “eligible residents of the State, including residents who are absent from the State” (42 CFR § 435.403(a)). With regard to individuals age 21 and over, “the State of residence is the State where the individual is living and (i) Intends to reside, including without a fixed address; or (ii) Has entered the State with a job commitment or seeking employment (whether or not currently employed)” as long as the person is not residing in an institution or receiving a State supplementary payment (42 CFR § 435.403(h), (f)).

All that 42 CFR § 435.403 requires is a “present intent to reside in the State be claimed as the State of residence; a State would not be required to recognize an intent to reside at some future point in time” (76 FR 51148, 51160, Aug. 17, 2011).

Legal Analysis

The appellant holds an O-3 visa, which makes her status that of a temporary nonimmigrant visa holder. She testified that her household income for the 2013 tax year was \$10,500.00 and that she expects the same income for the 2014 tax year. She also testified that she plans to request renewal of her O-3 visa and that if it is renewed she expects to be lawfully present in the United States for another three and a half years.

Since, in denying Medicaid to the appellant based on her nonimmigrant status, the February 7, 2014 eligibility determination holds the Appellant to a higher

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standard than that required under the ACA and its associated regulations, that determination is RESCINDED.

The case is REMANDED to the Marketplace for redetermination of the appellant's eligibility as a member of a two-person household with a 2013 income of \$10,500.00 and an anticipated 2014 income of \$10,500.00.

Decision

The February 7, 2014 eligibility determination is RESCINDED.

The case is REMANDED to the Marketplace for redetermination of the appellant's eligibility as a member of a two-person household with a 2013 income of \$10,500.00 and an anticipated 2014 income of \$10,500.00.

Effective Date of this Decision: September 5, 2014

How this Decision Affects Your Eligibility

This decision rescinds the February 7, 2014 decision but does not make a new determination on your eligibility for enrollment or financial support.

The Marketplace will redetermine your eligibility and send you a new notice of eligibility determination.

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.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Make an appeal request to the U.S. Department of Health and Human Services appeals entity within 30 days of the date of the Decision Date, which is stated on the first page of this Decision (45 CFR § 155.520 (c))

AND/OR

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- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which is stated on the first page of this decision.

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 for assistance.

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 February 7, 2014 eligibility determination is RESCINDED.

The case is REMANED to the Marketplace. The Marketplace will redetermine your eligibility and send you a new notice of eligibility determination.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]