



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

## Notice of Decision

Decision Date: October 28, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000727

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On July 28, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 1, 2014 eligibility determination as well as all other subsequent eligibility determinations.

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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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000727

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issue

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

Did the Marketplace properly determine that you are ineligible for full Medicaid benefits?

## Procedural History

On April 17, 2014, the Marketplace received your application for health insurance.

On May 1, 2014, the Marketplace issued a notice of eligibility determination that, with a household income of \$0.00, you were eligible for Medicaid coverage only for emergency medical care and services because you were not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

Additional eligibility determination notices were issued on May 6, 2014; May 14, 2014; May 15, 2014; May 23, 2014; May 24, 2014; June 3, 2014; June 17, 2014; June 24, 2014; June 27, 2014; and July 8, 2014. Each notice, like the one issued on May 1, 2014, stated that you were eligible for Medicaid coverage only for emergency medical care and services.

On June 25, 2014, you spoke with the Marketplace Customer Service unit and appealed all of your eligibility determinations.

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On July 22, 2014, you were scheduled to appear for a telephone hearing. A Hearing Officer from the Marketplace's Appeals Unit called you and adjourned the hearing because you stated that you had not received proper notice of the hearing date and time.

On July 28, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. During the hearing, you waived your right to formal notice on the record. The record was developed and it was held open for 15 days for you to submit additional evidence of your immigration status. The next day, you faxed a copy of your Visa, your I-94 form, and a copy of your Certificate of Eligibility for Nonimmigrant Student Status. The same evidence was also uploaded to your account on August 3, 2014. The record is now closed.

## **Findings of Fact**

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

- 1) You testified that you live with your wife and minor child.
- 2) You testified that you do not plan on filing taxes for the 2014 tax year.
- 3) You testified that your current monthly and current annual income is \$0.00.
- 4) Your application stated that you are currently an Immigrant non-citizen. You testified and provided evidence that you were and are an F-1 student visa holder.
- 5) You testified that you have been in the United States on an F-1 student visa since January 7, 2012. You further testified that your current F-1 visa does not expire until May 30, 2018 and that you intend to reside in New York until that time.
- 6) You testified that you do not plan on renewing your Visa after it expires, because by that time you will have completed your education.
- 7) On August 3, 2014, you uploaded your Immigration and Naturalization Service Certificate of Eligibility for Nonimmigrant (F-1) Student Status (Form I-20 A-B) to your Marketplace account.
- 8) Your F-1 Certificate indicates that you have been accepted to study at the [REDACTED]

- 9) According to the F-1 Certificate, "This school has information showing the following as the student's means of support, estimated for an academic term of 10 months" (a) Student's personal funds \$1,000.00, (b) Scholarship funds from this school \$12,860.00, (c) Funds from another source \$0.00, (d) On-campus employment \$0.00.
- 10) According to the F-1 Certificate, "This school estimates the student's average costs for an academic term of 10 months to be" (a) Tuition and fees \$12,860.00, (b) Living expenses \$0.00, (c) Expenses of dependents (1) \$1,000.00, (d) Other \$0.00.

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.

"Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income" (42 CFR § 435.603(e)(2)).

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)).

Whether a Marketplace applicant plans to take any steps to permanently remain in the United States after his visa expires is a higher standard than the ACA requires for him 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**

You hold an F-1 visa and are lawfully present in the United States as an immigrant non-citizen. You testified and provided evidence that you plan to remain lawfully present in the United States and reside in New York State for the immediate future but not after May 2018.

According to the information on your F-1 Certificate, your living expenses are \$0.00. You receive scholarship funds of \$12,860.00 per year but the entire sum is expended on tuition and fees. You testified that you have an annual household income of \$0.00 and a monthly household income is \$0.00.

Since, in denying Medicaid to you based on your immigration status, the May 1, 2014 and all subsequent eligibility determinations hold you to a higher standard than that required under the ACA and its associated regulations, those determinations are RESCINDED.

The case is REMANDED to the Marketplace for redetermination of your household’s eligibility. The Marketplace will determine the eligibility for all members of your three-person household with a household income of \$0.00 and issue a new notice of determination.

## **Decision**

The May 1, 2014 eligibility determination and all subsequent eligibility determinations are RESCINDED.

The case is REMANDED to the Marketplace for redetermination of your household's eligibility. The Marketplace will determine the eligibility for all members of your three-person household with a household income of \$0.00 and issue a new notice of determination.

**Effective Date of this Decision:** October 28, 2014

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

This decision rescinds the May 1, 2014 and all subsequent eligibility determinations but does not make a new determination on your eligibility for enrollment or financial support.

The Marketplace will redetermine your eligibility and issue 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

- 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

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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:  
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### **Summary**

The May 1, 2014 and all other subsequent eligibility determinations are RESCINDED.

The case is REMANDED to the Marketplace for redetermination of your household's eligibility. The Marketplace will determine the eligibility for all members of your three-person household with a household income of \$0.00 and issue a new notice of 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]