



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

Notice of Decision

Decision Date: January 22, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001057

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

Dear [REDACTED],

On November 10, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 16, 2014 eligibility determination.

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 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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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that you are eligible for
Emergency Medicaid as of August 15, 2014?

Did the Marketplace properly determine that you are not eligible for full
Medicaid through the Marketplace as of August 15, 2014?

Procedural History

On August 15, 2014, the Marketplace received your application for health insurance and made a preliminary determination that you were eligible for Emergency Medicaid.

On August 16, 2014, the Marketplace issued a notice of eligibility determination stating that you are eligible for Medicaid coverage only for emergency medical care and services because you are not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL).

The Marketplace received a letter from you, dated October 1, 2014 and date-stamped October 6, 2014, in which you requested an appeal of the eligibility determination.

On November 10, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. A Spanish interpreter [REDACTED] assisted.

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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) You testified that you and your husband came to Massachusetts from Ecuador during April 2006.
- 2) You testified that you are 47 years old and do not have any immigration documents. You further testified that you are trying to get a visa and are working with an attorney in Massachusetts to apply for one.
- 3) You testified that you are married but have been separated from your husband since 2006.
- 4) You testified that, in 2006, you were a victim of domestic violence and your husband was ordered to stay away from you by a Massachusetts court's order of protection.
- 5) You testified that you moved to Albany County, New York, in 2010 or 2011 and plan to stay there.
- 6) According to your Marketplace application, your expected 2014 income is \$0.00 and you will not file an income tax return for 2014.
- 7) You testified that for the past three years, you were paid \$30.00 a week to make food for a couple of men and that sometimes you babysat to support yourself. You also testified that you do not get any other help or assistance from anyone.
- 8) You testified that your husband may live in Pennsylvania, based on what he has told you.
- 9) You testified that a nurse at [REDACTED] told you that your PAP smear, which is a screening test for cervical cancer, showed you have a "high cell count." You further testified that the nurse told you to see a gynecologist-oncologist to get an ultrasound.
- 10) You testified that you went to [REDACTED] because you were told your Emergency Medicaid would cover the cost of this test.

- 11) You testified that you were told at [REDACTED] that you could not have the test because your health coverage would not pay for its cost and you could not pay for it yourself.
- 12) You testified that you are scared that you may have cervical cancer and need more tests to find out but cannot afford to pay for any tests on your own.

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

Applicable Law and Regulations

Medicaid, Generally

Medicaid can be provided through the Marketplace 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 that is at or below 138% of the federal poverty for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

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 by the US Department of Health and Human Services, March 19, 2014).


Immigration Status and Medicaid Eligibility

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 non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. A person is eligible for Medicaid when his or her immigration status is satisfactory and he or she meets all other requirements for Medicaid.

Generally, no person, except a United States citizen, naturalized citizen, qualified alien, and persons permanently residing in the United States under color of law (PRUCOL), is eligible for medical assistance from the state (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

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

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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 filed official applications on federal immigration agency forms for one of the many types of immigration statuses or relief to be PRUCOL during the period of time the federal agency is determining whether to approve the application (08 OHIP/INF-4, dated August 4, 2008). 

Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment of bodily functions; or
- (c) Serious dysfunction of any bodily organ or part


(42 CFR § 435.930(c)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

Treatment for Breast and/or Cervical Cancer

People who cannot get Medicaid through the Marketplace can still apply for Medicaid through New York State’s Medicaid Cancer Treatment Program while they require treatment for breast and/or cervical cancer (see 42 US § 1396a(a)(10)(A)(ii)(XVIII); NY Soc. Serv. Law §§ 366(1)(c)(7), 366(4)(d)).

People may qualify for this program if they:

- 1) are under 65 years of age,
- 2) have been screened for breast and/or cervical cancer under the  breast and cervical cancer early detection program

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- 3) need treatment for breast or cervical cancer, and
- 4) are not otherwise covered under creditable coverage as defined in the federal public health service act

(NY Soc Serv Law § 366.4(d); see also 42 USC § 1396a(aa)).

In this context, “creditable coverage” includes coverage such as that provided by group health plans; public health plans; health insurance plans; Medicaid provided on another basis; Medicare; programs for members of the military, military dependents, and members of the Peace Corps; and programs of the Indian Health Service or tribal organizations (see 42 USC §§ 1396a(aa), 300gg(c)).

Applications for New York State’s Medicaid Treatment Cancer Program can be submitted through the Cancer Services Program (the Marketplace and your local Department of Social Services cannot take this application).

If you think the Cancer Services Program can help you or someone you know,

- 1) Check the Department of Health website at:
<http://www.health.ny.gov/diseases/cancer/>, or
- 2) Check the Public Health Program List, or
- 3) Call the Cancer Services Program at 1-866-442-2262.

Legal Analysis

To be eligible for full Medicaid through the Marketplace, you must have documents to prove your citizenship or immigration status. Since you credibly testified that you do not have any immigration documents, you are not eligible for full Medicaid through the Marketplace.

Since you are an undocumented alien residing in the state of New York with an income of \$0.00 on your Marketplace application, you are an otherwise eligible undocumented alien. Therefore, you qualify for Emergency Medicaid, and the Marketplace’s August 16, 2014 notice is correct.

You testified at your hearing that you earn about \$120.00 per month, but this does not change the result. You still qualify for Emergency Medicaid through the Marketplace.

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You credibly testified that you had an abnormal PAP smear and need more tests, but the Marketplace cannot take applications for the Medicaid Cancer Treatment Program.

Decision

The August 16, 2014 notice of eligibility determination is AFFIRMED.

Effective Date of this Decision: January 22, 2015

How this Decision Affects Your Eligibility

You remain eligible for Emergency Medicaid. You are not eligible for full Medicaid through the Marketplace.

If you think the Cancer Services Program can help you or someone you know,

- 1) Check the Department of Health website at:
<http://www.health.ny.gov/diseases/cancer/>, or
- 2) Check the Public Health Program List, or
- 3) Call the Cancer Services Program at 1-866-442-2262.

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.

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 after the date 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 U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

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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:
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- By fax: 1-855-900-5557

Summary

The Marketplace's August 16, 2014 eligibility determination, as made on August 15, 2014, is AFFIRMED.

You remain eligible for Emergency Medicaid.

You remain ineligible for Medicaid.

If you have officially applied to a federal agency for some form of immigration status or other relief, your eligibility for Medicaid may have changed. You may reapply to the Marketplace with updated immigration information and/or contact the Cancer Services Program if you are interested in the Medicaid Cancer Treatment Program, discussed above.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]