



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

## Notice of Decision

Decision Date: August 16, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006739

[REDACTED]

Dear [REDACTED]

On July 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 25, 2015, January 27, 2016, February 3, 2016, and February 13, 2016 eligibility determinations.

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 NY State of Health 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.

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

Decision Date: August 16, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006739



## Issues

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

Did NY State of Health properly determine that you were not eligible for Medicaid as of January 1, 2016?

Did NY State of Health properly determine that you were not eligible for financial assistance as of February 29, 2016 because you were not lawfully present?

## Procedural History

On February 10, 2015, NY State of Health (NYSOH) issued an eligibility determination notice stating that you remained eligible for Medicaid, effective March 1, 2015. You were subsequently enrolled into a Medicaid Managed Care plan.

On December 25, 2015, NYSOH issued an eligibility determination notice stating that you were newly conditionally eligible to receive advance premium tax credits (APTC) of up to \$349.00 per month and cost-sharing reductions, effective January 1, 2016. This was because your household income of \$20,930.00 was within the allowable income limit.

Also on December 25, 2015, NYSOH issued a disenrollment notice stating that your coverage through your Medicaid Managed Care plan was terminated effective December 31, 2015.

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On January 27, 2016, NYSOH issued an eligibility determination stating that you were conditionally eligible to receive an APTC of up to \$349.00 per month, as well as cost sharing reductions effective March 1, 2016. The determination was further based on your household income of \$20,930.00.

On February 2, 2016, NYSOH received your updated application for financial assistance. That day, a preliminary eligibility determination was prepared stating that you were eligible to receive an APTC of up to \$349.00 per month, as well as cost sharing reductions.

Also on February 2, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not eligible for Medicaid. At this time you also requested Aid to Continue pending the outcome of your appeal.

On February 3, 2016, NYSOH issued an eligibility determination notice finding you conditionally eligible to receive APTC of up to \$349.00 per month as well as cost sharing reductions effective March 1, 2016. The determination was based on your attested household income of \$20,930.00, and your spouse's household income of \$0.00.

On February 13, 2016, NYSOH issued an eligibility redetermination notice finding you no longer qualified to enroll in Medicaid, Child Health Plus, Essential Plan, or to receive tax credits or cost sharing reductions, or to enroll in a qualified health plan at full cost as you were determined that your verification documents show that you were not lawfully present. Your eligibility would therefore end February 29, 2016.

On February 22, 2016, Aid to Continue was granted for the length of your appeal.

On February 23, 2016 NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid, effective February 1, 2016. You were subsequently enrolled back into your Medicaid Managed Care plan pending the outcome of your appeal.

A Notice of Telephone Hearing was issued on May 5, 2016, for a scheduled hearing on June 21, 2016, at 10:00 a.m.

On June 21, 2016 at 10:00 a.m. a Hearing Officer contacted you at that time, and you testified that you were unable to go forward with a hearing as you were not prepared, and were on your way to work. You further asked that your representative Application Counselor be available to assist you during the hearing. The Hearing Officer granted your adjournment.

A Notice of Telephone Hearing was issued on June 21, 2016, for a scheduled hearing on July 27, 2016, at 11:00 a.m.

On July 27, 2016, a Hearing Officer contacted you, and you stated you could not proceed as you were at work. The Hearing Officer granted your adjournment to July 28, 2016.

On July 28, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. 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 expect to file your 2015 taxes with a tax filing status of married filing jointly.
- 2) You are seeking insurance for yourself.
- 3) You are seeking to be found eligible for Medicaid.
- 4) You were previously enrolled in a Medicaid Managed Care plan through NYSOH until December 31, 2015.
- 5) Your application states you are an immigrant non-citizen.
- 6) The February 13, 2016 eligibility redetermination notice found that the verification documentation you submitted to NYSOH showed you were not lawfully present, and therefore were not eligible for advance premium tax credits, cost sharing reductions, Medicaid, the Essential Plan, Child Health Plus, or purchase a qualified health plan at full cost.
- 7) You provided a copy of your Employment Authorization card with the status of C-33 which was verified on February 12, 2016 (See Document [REDACTED]).
- 8) 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. You testified that you were not sure.
- 9) You testified that you first entered the country in [REDACTED] and have been a resident of New York ever since.

10) The application that was submitted on January 26, 2016, and February 2, 2016, which requested financial assistance, listed annual household income of \$20,930.00, consisting of income you earn from your employment only. You testified that this amount was correct.

11) Your application states that you live in Orange County.

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

## **Applicable Law and Regulations**

### Medicaid

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)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2015 FPL, which is \$ 15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

People who receive or are eligible for Medicaid are not eligible for APTC since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan for 12 months, with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid Social Security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. Generally, no person except a United States citizen, naturalized citizen, qualified alien, or person permanently residing in the United States under color of law (PRUCOL) is eligible for full Medicaid benefits (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

### Citizenship and Immigration Status

To enroll through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the United States and

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reasonably expecting 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)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible to enroll, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

Under federal law, certain individuals who enter the United States on or after August 22, 1996, are not eligible for any Federal means-tested public benefit, including federal Medicaid (8 U.S. Code § 1613(a)).

However, the New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 N.Y. 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.

### PRUCOL

The term “*PRUCOL alien*” refers to an alien who is permanently residing in the United States with the “*knowledge and permission or acquiescence*” of the federal immigration agency and whose departure from the U.S. the agency does not contemplate enforcing. An alien is considered as one whose departure the federal immigration agency does not contemplate enforcing if it is the agency’s policy or practice not to enforce the departure of aliens in a particular category, and the alien falls within that category; or, based on all the facts and circumstances of the case, it appears that the federal immigration agency is permitting the alien to reside in the U.S. indefinitely. This category includes (i) aliens granted deferred action status, and (ii) any other alien living in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure such agency does not contemplate enforcing (18 NYCRR §360-3.2(i)-(l)(1)(ii)).

### Definition of Lawfully Present

An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process shall not be considered to be lawfully present for the purposes of obtaining coverage through NYSOH (45 CFR §152.2(8)).

### Qualified Immigrants

In NY State, qualified immigrants who 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 (New York’s Basic Health Plan Blueprint, p. 19, as approved January 2016; see <https://www.medicaid.gov/basic-health->

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program/basic-health-program.html). This category of qualified immigrants includes individuals lawfully admitted for permanent residence in the United States who are still in their first five years of permanent residency. (18 NYCRR § 349.3, 8 USC § 1613).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that you were not eligible for Medicaid as of January 1, 2016.

The record shows you were previously enrolled in a Medicaid Managed Care plan through NYSOH until December 31, 2015. During your telephone hearing you testified that you are seeking to remain eligible for Medicaid.

On December 25, 2015, January 27, 2016, and February 3, 2016 NYSOH issued eligibility determination notices stating that you were conditionally eligible to receive up to \$349.00 per month in APTC as well as cost-sharing reductions. These determinations did not explain why you were ineligible for Medicaid but did state you were eligible for APTC and cost-sharing reductions because of your income level.

On the date of your application, the relevant FPL was \$15,930.00 for a two-person household. Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. Since \$20,930.00 is 131.39% of the 2015 FPL, NYSOH should have found you conditionally eligible for Medicaid because you met the financial requirements.

Therefore, the December 25, 2015, January 27, 2016, and February 3, 2016 eligibility determination notices are RESCINDED.

The second issue under review is whether NYSOH properly determined that you were not eligible for financial assistance as of February 29, 2016 because you were not lawfully present.

In the eligibility determinations issued on December 25, 2015, January 27, 2016, and February 3, 2016 your eligibility was only conditional pending your submission of citizenship documentation.

One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. Under federal law, certain individuals who enter the United States on or after August 22, 1996, are not eligible for any Federal means-tested public benefit, including federal Medicaid.

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However, the New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 N.Y. 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.

You provided a copy of your Employment Authorization card with the status of C-33 which was verified on February 12, 2016 (See Document [REDACTED]).

In response to the verified documentation, NYSOH issued an eligibility redetermination notice on February 13, 2016. That notice found you no longer qualified to enroll in Medicaid because your verification documents show that you were not lawfully present. Your eligibility would therefore end February 29, 2016.

Your application states you are an immigrant non-citizen with a C-33 status. 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. 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.

While it is true that individuals who have been determined to be qualified aliens who 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, it is not the case for persons who received Deferred Action status.

NY State has consistently recognized persons with Deferred Action status within the accepted meaning of "*PRUCOL alien*". This category includes, aliens granted deferred action status, and, any other alien living in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure such agency does not contemplate enforcing. Such a finding would mean that New York Court of Appeals continues to recognize their eligibility for participation in the Medicaid program through the state, as long as they meet the other requirements for the program.

Based on the facts presented, financial, and non-financial criteria applicable to your current status as an immigrant non-citizen with a C-33 status, you are eligible for participation through the NY Medicaid program. Therefore the February 13, 2016, eligibility redetermination notice finding you no longer qualified to enroll in Medicaid as your verification documents show that you were not lawfully present, terminating your eligibility effective February 29, 2016, was improper and is RESCINDED.

Your case is RETURNED to the NYSOH to reinstate your eligibility in Medicaid effective January 1, 2016, and effectuate your enrollment in a Medicaid Managed Care plan effective February 1, 2016.

## **Decision**

The December 25, 2015, January 27, 2016, February 3, 2016, and February 13, 2016 eligibility determination notices are RESCINDED.

Your case is RETURNED to the NYSOH to reinstate your eligibility in Medicaid effective January 1, 2016, and effectuate your enrollment in a Medicaid Managed Care plan effective February 1, 2016.

**Effective Date of this Decision:** August 16, 2016

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

You are eligible for Medicaid effective January 1, 2016.

You are not eligible for advance payments of the premium tax credit, cost-sharing reductions, or the Essential Plan.

## **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 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 Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

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.

### **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 December 25, 2015, January 27, 2016, February 3, 2016, and February 13, 2016 eligibility determination notices are RESCINDED.

You are eligible for Medicaid effective January 1, 2016

Your case is RETURNED to the NYSOH to reinstate your eligibility in Medicaid effective January 1, 2016, and effectuate your enrollment in a Medicaid Managed Care plan effective February 1, 2016.

### **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545.

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

