



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

Notice of Decision

Decision Date: August 17, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007118

[REDACTED]

Dear [REDACTED]

On July 21, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 5, 2016 eligibility determination and disenrollment notices.

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.

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Issues

The issues 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 coverage through NYSOH, effective February 29, 2016?

Procedural History

On December 29, 2015, NYSOH received your updated application for financial assistance.

On December 30, 2015, NYSOH issued an eligibility determination based on the December 29, 2015 application, stating that you were eligible to enroll in the Essential Plan for a limited time. You were requested to provide proof of your immigration status before March 28, 2016 in order to confirm your eligibility. This eligibility determination was effective February 1, 2016.

Also on December 30, 2015, NYSOH issued a notice of enrollment confirming your selection of an Essential Plan as of December 29, 2015. Your coverage under this Essential Plan was effective February 1, 2016.

On January 10, 2016, NYSOH received a revised application for financial assistance.

On January 11, 2016, NYSOH issued an eligibility redetermination notice based on the January 10, 2016 application, stating that you are eligible to enroll in the Essential Plan for a limited time. You were requested to provide proof of your

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immigration status before April 9, 2016 in order to confirm your eligibility. This eligibility determination was effective February 1, 2016.

On January 26, 2016, NYSOH received a copy of a valid I-766 employment authorization card reflecting a category code of "C33." This document was validated by NYSOH as acceptable proof of your immigration status on February 4, 2016.

On February 5, 2016, NYSOH issued an eligibility redetermination notice based on the information in your account as of February 4, 2016. The notice stated that you were not eligible for Medicaid, Child Health Plus, Essential plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. The notice also stated that you were not eligible to enroll in a qualified health plan at full cost. This was because your "[v]erification documents show not lawfully present."

Also on February 5, 2016, NYSOH issue a disenrollment notice confirming that your Essential Plan coverage would end effective February 29, 2016.

Also on February 16, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were not eligible for coverage under the Essential Plan.

On July 21, 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 immigrated to the U.S. with your parents when you were approximately one year old.
- 2) You testified, and your application indicates, that you expect to file a tax return for 2016 with a filing status of single, and will not claim any dependents.
- 3) The applications that were submitted on December 29, 2015 and January 10, 2016 each list an annual household income of \$22,880.00, consisting solely of income you received from [REDACTED]. Your projected income was based on an hourly rate of \$11.00 per hour over a 40 hour work week. You testified that this amount was correct, and there has been no significant fluctuation in your income on a week to week basis.

- 4) You testified, and the record reflects, that you are an immigrant non-citizen present in the U.S. by means of an I-766 Employment Authorization Card (EAC).
- 5) You were initially enrolled in Essential Plan coverage, effective February 1, 2016, pending receipt of documentation to confirm your immigration status.
- 6) On January 26, 2016, you provided to NYSOH a copy of your I-766 EAC, issued to you as of February 26, 2015. This document reflected a category code of "C33."
- 7) You testified that you believed that since you were residing in the U.S. legally, you were entitled to continue your enrollment in the Essential Plan based on your immigration status. You also stated that you were unclear why you were found to be ineligible for coverage now since you were enrolled in Medicaid for the entirety of 2015.

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).

Medicaid

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.

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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 applications, that was the 2015 FPL, which is \$11,770.00 for a one-person household (80 Federal Register 3236, 3237).

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).

Qualified Health Plan

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)).

Immigration Status

Generally, no person except a United States citizen, a naturalized citizen, a qualified alien, and persons permanently residing in the United States under color of law (PRUCOL), is eligible for medical assistance from the state (NY Social Services 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

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who has category code of “(c)(33)” has PRUCOL status for Medicaid and Child Health Plus only (*id.*).

Legal Analysis

The only issue under review is whether NYSOH properly determined that you were not eligible to enroll in coverage through NYSOH, effective February 29, 2016.

The applications that were submitted on December 29, 2015 and January 10, 2016 each listed an annual household income of \$22,880.00, and reflected that you were an immigrant non-citizen present in the U.S. by means of an I-766 Employment Authorization Card. The eligibility determination relied upon that information.

Based on the information contained in each application, you were found eligible to enroll in the Essential Plan for a limited time, effective February 1, 2016, pending receipt of documentation confirming your immigration status.

The Essential Plan is provided through NYSOH to lawfully present immigrant non-citizens who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 0% and 200% of the FPL for the applicable family size.

The credible evidence of record reflects that on January 26, 2016, you provided to NYSOH a copy of your I-766 EAC, issued to you on February 26, 2015. This card confirmed that your category code was “C33.” Since code “C33” does not confer PRUCOL status for purposes of Essential Plan eligibility, NYSOH was correct in finding you not eligible for coverage under the Essential Plan.

Since code “C33” does confer PRUCOL status for individuals seeking Medicaid eligibility, we may review whether you met the financial criteria for Medicaid.

You are in a one-person household. You expect to file your 2016 income taxes as single and will claim no dependents on that tax return.

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. On the date of your applications, the relevant FPL was \$11,770.00 for a one-person household. Since \$22,800.00 is 194.39% of the 2015 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

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However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

You credibly testified, and your application reflects, that you receive approximately \$440.00 per week based on your hourly rate of \$11.00 over a 40 hour work week. Accordingly, the record reasonably reflects that you received \$1,760.00 during the months of December 2015 and January 2016.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,354.00 per month. Since the record reflects that you earned \$1,760.00 during December 2015 and January 2016, you do not qualify for Medicaid on the basis of monthly income as of the date of your application.

Finally, federal regulations require that a person seeking enrollment in a QHP through the Marketplace have United States citizenship or satisfactory or immigration status. Since code "C33" does not confer PRUCOL status for individuals seeking enrollment in a QHP through NYSOH, NYSOH was correct in finding you not eligible to enroll in a QHP.

Accordingly, the February 5, 2016 eligibility redetermination notice properly found you to be ineligible for the Essential Plan or QHP based on you not being legally present. However, your ineligibility for Medicaid is properly based on your annual household income being over the limit for that program, not your legal presence.

Therefore, the February 5, 2016 eligibility redetermination and disenrollment notices are AFFIRMED.

Decision

The February 5, 2016 eligibility redetermination notice is AFFIRMED.

The February 5, 2016 disenrollment notice is AFFIRMED.

Effective Date of this Decision: August 17, 2016

How this Decision Affects Your Eligibility

You are not eligible for the Essential Plan or enrollment in a QHP.

You are not eligible for Medicaid at this time.

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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 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 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 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 February 5, 2016 eligibility redetermination notice is **AFFIRMED**.

The February 5, 2016 disenrollment notice is **AFFIRMED**.

You are not eligible for the Essential Plan or enrollment in a QHP.

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You are not eligible for Medicaid at this time.

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A Copy of this Decision Has Been Provided To:

