



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

Notice of Decision

Decision Date: September 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007617

[REDACTED]

Dear [REDACTED],

On August 15, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 23, 2016 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 and 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: September 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007617

[REDACTED]

Issue

The issue 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 a qualified health plan?

Procedural History

On February 8, 2016, you submitted a Non-Financial Assistance application through NYSOH.

On February 8, 2016, you uploaded immigration status documentation to your NYSOH account [REDACTED].

On February 9, 2016, NYSOH issued an eligibility determination notice stating, that based on your February 8, 2016 application, you are conditionally eligible to purchase a qualified health plan at full cost through NYSOH, effective March 1, 2016. The notice directed you to provide additional documentation to confirm your immigration status by May 8, 2016.

On February 23, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible to enroll in a qualified health plan at full cost through NYSOH because verification documents show that you are not lawfully present.

On March 2, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as your eligibility to enroll in a qualified health plan through NYSOH.

On August 15, 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 proceeding.

Findings of Fact

A review of the record support the following findings of fact:

- 1) You testified that you are applying for health insurance coverage through NYSOH for yourself.
- 2) You testified that you are seeking to be found eligible to enroll in a qualified health plan through NYSOH.
- 3) According to your NYSOH account, your initial health insurance application was submitted on February 8, 2016.
- 4) On February 8, 2016, you uploaded a copy of your employment authorization card (EAC). The EAC card [REDACTED] states that your category was (C33) with a card expiration date of [REDACTED], [REDACTED].
- 5) You testified that your EAC card has been renewed. Your current category is (C33), with a card expiration date of [REDACTED].

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan 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 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 for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant 90 days, from the date the notice of inconsistency is received by the applicant, to provide satisfactory documentary evidence. Notice is considered to have been

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received five days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the five-day period (45 CFR § 155.315(c)(3)).

Exception for Deferred Action for Childhood Arrivals

An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present (45 CFR §152.2(8); <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>).

Legal Analysis

The issue under review is whether NYSOH properly determined you not to be eligible to enroll in a qualified health plan at full cost.

On February 9, 2016, NYSOH issued an eligibility determination notice stating, that based on your February 8, 2016 application, you are conditionally eligible to purchase a qualified health plan at full cost through NYSOH, effective March 1, 2016. The notice directed you to provide additional documentation to confirm your immigration status by May 8, 2016.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship or immigration status is satisfactory.

If NYSOH cannot verify an individual's citizenship or immigration status, it must provide the individual a period of 90 days, from the date notice is received, to resolve the inconsistency. For purposes of verifying citizenship or immigration status, notice is considered received five days after the date on the notice. If NYSOH remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant's eligibility based on the information available from data sources.

The documentation you submitted for review on February 8, 2016, consists of a copy of your employment authorization card (EAC), which states that your category was (C33) with a card expiration date of [REDACTED] ([REDACTED]). Furthermore, you testified that your EAC card has been renewed, and your category has remained the same.

To be eligible to enroll in a qualified health plan 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 reasonably expecting to become a citizen or remain a *lawfully present* noncitizen for the entire period for which enrollment is being sought.

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An individual eligible for deferred action under the Department of Homeland Security's deferred action for childhood arrivals process shall not be considered to be lawfully present and not eligible to enroll in a qualified health plan through NYSOH.

Therefore, the February 23, 2016, eligibility determination stating you are not lawfully present and therefore not qualified to enroll in qualified health plan through NYSOH is AFFIRMED.

Decision

The February 23, 2016, eligibility determination notice is AFFIRMED.

Effective Date of this Decision: September 8, 2016

How this Decision Affects Your Eligibility

You are not eligible to enroll in a qualified health plan through NYSOH at this time.

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.

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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 February 23, 2016, eligibility determination notice is AFFIRMED.

You are not eligible to enroll in a qualified health plan through NYSOH at this time.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

