



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

## Notice of Decision

Decision Date: October 3, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007860

[REDACTED]

Dear [REDACTED]

On August 30, 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.

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: October 3, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007860

[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 on March 4, 2016, that you were not eligible to enroll in health insurance coverage through NYSOH?

## Procedural History

On January 28, 2016, NYSOH received your updated application for financial assistance.

On January 29, 2016, NYSOH issued an eligibility redetermination notice that stated you were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. The notice instructed you to provide proof of your immigration status before April 27, 2016 in order to confirm your eligibility.

Also on January 29, 2016, NYSOH issued an enrollment notice confirming your selection of an Essential Plan as of January 28, 2016, with an effective start date of March 1, 2016.

On February 6, 2016, NYSOH issued another eligibility redetermination notice that stated you did not qualify to enroll through NYSOH because verification documents showed you were not lawfully present. The notice further stated that your eligibility for the Essential Plan would end effective February 29, 2016.

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Also on February 6, 2016, NYSOH issued a cancellation notice that stated your coverage in the Essential Plan would end effective March 1, 2016, because you were no longer eligible to enroll in health insurance through NYSOH.

On February 24, 2016, March 2, 2016, and March 4, 2016, NYSOH issued addition eligibility redetermination notices with findings similar to those stated in the February 6, 2016 notice in that you did not qualify to enroll through NYSOH because verification documents showed you were not lawfully present.

On March 11, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as you were not eligible for coverage under the Essential Plan because you were not lawfully present.

On March 22, 2016, NYSOH issued another eligibility redetermination notice that stated you did not qualify to enroll through NYSOH because verification documents showed you were not lawfully present.

On August 30, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to September 22, 2016, to allow you to submit supporting documents.

As of September 23, 2016, the Appeals Unit did not receive any documents from you and none were viewable in your NYSOH account. Therefore, the record was closed that same day and this decision is based on the record as developed at the time 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 in 2001, when you were seven years of age and have lived here ever since.
- 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 on that tax return.
- 3) All applications you submitted for coverage in 2016 listed an annual household income of \$20,800.00, consisting solely of income you received from your employment. You testified that this amount was correct.
- 4) According to immigration documents you uploaded to your NYSOH on December 9, 2015 and January 16, 2016, you are a temporary visitor per your NYS Driver's License, and an immigrant non-citizen present in the

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U.S. by means of an I-766 Employment Authorization Card (EAC)(see Document [REDACTED]).

- 5) Your I-766 EAC shows it was valid as of October 24, 2014. This document reflected a category code of "C33."
- 6) According to your NYSOH account, you were initially enrolled in Essential Plan coverage, effective March 1, 2016, pending receipt of documentation to confirm your immigration status.
- 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.

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.

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

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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 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

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).

### 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 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)).

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)).

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 USC § 1613(a)).

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

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 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)). This category includes (i) aliens granted deferred action status, and (l) 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(j)(1)(i)(m)(ii)).

### Lawful Presence

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); Center for Medicaid and CHIP Services Memorandum SHO#12-002 "Re: Individuals with Deferred Action for Childhood Arrivals," issued August 28 2012).

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

### Qualified Immigrants Transitioned to the Essential Plan

In New York 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-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).

### 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)).

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## Legal Analysis

The only issue under review is whether NYSOH properly determined that you were not eligible for financial assistance as of March 1, 2016, because you were not lawfully present.

The application that was submitted on January 28, 2016, listed an annual household income of \$20,800.00, 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 that application, you were found eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016, pending receipt of documentation confirming your immigration status, as stated in the January 29, 2016 eligibility redetermination notice. In addition, the January 29, 2016 enrollment notice confirmed that your start date in the Essential Plan you selected would be March 1, 2016.

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 you provided to NYSOH a copy of your I-766 EAC, issued to you on October 24, 2014. This card confirmed that your category code was "C33." Code "C33" does not confer PRUCOL status for purposes of Essential Plan eligibility.

After your immigration documents were verified following your limited eligibility for and enrollment in an Essential Plan, on February 6, 2016, NYSOH issued an eligibility determination notice stating that you were not qualified to enroll in coverage through NYSOH, effective March 1, 2016, because you were not lawfully present.

In particular, your employment authorization document, I-766 EAC, shows 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.

In addition, while individuals who have been determined to be qualified aliens and 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.

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.

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

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

Your application of January 28, 2016, listed an annual household income of \$20,800.00, and the preliminary eligibility determination made that date was based on that amount. In determining an individual’s eligibility for Medicaid, the determination is based on the FPL for the applicable budget period used to determine an individual's eligibility. On the date of your application, that was the 2016 FPL, which is \$11,880.00 for a one-person household. An income of \$20,800.00 is 175.04% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, which is \$16,395.00, you were not eligible for Medicaid at the time of the February 6, 2016 eligibility redetermination notice.

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 6, 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 maximum allowable income limit for that program, not your legal presence.

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Therefore, the February 6, 2016 eligibility redetermination and cancellation notices are AFFIRMED.

## **Decision**

The February 6, 2016 eligibility redetermination notice is AFFIRMED.

The February 6, 2016 cancellation notice is AFFIRMED.

**Effective Date of this Decision:** October 3, 2016

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

You are not eligible for the Essential Plan or enrollment in a QHP because you are not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you are not eligible for Medicaid at this time because your household income is over the maximum allowable income limit.

## **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):**

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## **Summary**

The February 6, 2016 eligibility redetermination notice is AFFIRMED.

The February 6, 2016 cancellation notice is AFFIRMED.

You are not eligible for the Essential Plan or enrollment in a QHP because you are not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you are not eligible for Medicaid at this time because your household income is over the maximum allowable income limit.

## **Legal Authority**

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

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

