



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

Notice of Decision

Decision Date: October 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008131

[REDACTED]

Dear [REDACTED]

On September 21, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 22, 2016 eligibility redetermination notice.

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 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 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008131

[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 and your spouse are eligible for Emergency Medicaid and not the Essential Plan effective March 1, 2016?

Procedural History

On March 10, 2016, NYSOH issued a renewal notice stating it was time to renew your NYSOH coverage. The notice stated based on the information from federal and state data sources, a decision could not be made about whether or not you qualify for financial assistance paying for your health coverage. You were asked to update the information in your account by April 15, 2016. If you missed this deadline, the financial assistance you were currently receiving could end.

On March 21, 2016, NYSOH received your updated application for financial assistance. This application added your spouse to your household.

That same day a preliminary eligibility determination was made finding you and your spouse eligible for Medicaid for the treatment of Emergency Medical Conditions only effective March 1, 2016. The notice stated you were eligible for Medicaid because your household income of \$20,800.00 was below the allowable income limit of \$39,206.00. The notice further explained you are only eligible 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).

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That same day you contacted NYSOH's Account Review Unit and requested an appeal to address that if you pay taxes, you and your spouse should be eligible to receive coverage through the Essential Plan.

On March 22, 2016, an eligibility determination notice was issued confirming the preliminary determination made on March 11, 2016.

That same day an enrollment confirmation notice was issued confirming you and your spouse's enrollment in Emergency Medicaid. The notice stated no action was required on your part to enroll in a health plan.

On September 21, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit with the aid of Spanish Interpreter # [REDACTED]. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You testified you are appealing both yourself and your spouse's eligibility determination.
- 2) You testified you reside with your spouse, and three children.
- 3) Your application states you will be filing your 2015 taxes as married filing jointly. You will claim your three children as dependents on that tax return.
- 4) You testified your attested annual household income of \$20,800.00 is accurate.
- 5) You are seeking to be found eligible for the Essential Plan instead of Emergency Medicaid.
- 6) Your application was submitted for financial assistance on March 21, 2016.
- 7) You were found eligible for emergency Medicaid effective March 1, 2016.
- 8) Your application states that you are not a citizen of the United States, and you are not eligible for a Social Security number due to your immigration status.

- 9) Your application states your citizenship status is “other.”
- 10) You testified you do not have an Employment Authorization Card, NYS driver’s license, or other documentation showing your immigration status in the United States.
- 11) You testified that you only have documentation in the form of your passport from Mexico.
- 12) You testified you entered the United States approximately ten years ago in 2006.
- 13) You testified you do not have a current application before the Department of Homeland Security, or U.S. Customs and Immigration Services.
- 14) The record reflects you reside in Orange County. You confirmed your address during your telephone hearing.

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 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 level for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

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. 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).

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 \$28, 410.00 for a five-person household (80 Fed. Reg. 3236, 3237).

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

(18 NYCRR § 360-3.2 (iii)(a)-(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)).

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).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as

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approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

Lawfully Present for purposes of participation in the Essential Plan and the Exchange, means; (1) a qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA); (2) an alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission; (3) an alien who has been paroled in the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act, for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings; (4) an alien who belongs to the following classes: (i) aliens in temporary resident status pursuant to section 210 or 245A of the INA, (ii) aliens currently under Temporary Protected Status, (iii) Aliens who have been granted employment authorization, (iv) Family Unity Beneficiaries, (v) aliens currently under Deferred Enforced Departure pursuant to a decision made by the President, (vi) Aliens currently in deferred action status, (vii) aliens whose visa petitions have been approved and who have a pending application for adjustment of status; (5) a pending applicant for asylum; (6) an alien granted withholding of removal under the Convention Against Torture; or (7) a child who has a pending application for Special Immigrant Juvenile status (42 CFR § 600.5, 45 CFR §152.2 (1)-(7)).

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) , 42 CFR § 600.305, 42 CFR §435.406).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, the Essential Plan, and Federal Medicaid, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a),(c), 42 CFR § 600.305, 42 CFR §435.406).

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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you and your spouse were eligible for Emergency Medicaid and not the Essential Plan effective March 1, 2016.

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NYSOH issued an eligibility determination notice on March 22, 2016, finding you and your spouse eligible for Medicaid for the treatment of Emergency Medical Conditions only effective March 1, 2016. The notice stated you were both on a financial basis eligible for Medicaid because your household income of \$20,800.00 was below the allowable income limit of \$39,206.00. You testified that the income amount in your application was correct.

The financial criteria for 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 federal poverty level (FPL) for the applicable family size. You testified you reside with your spouse and your three dependent children. Your application states you will be filing your 2016 taxes as married filing jointly, and will claim all three dependents on that return. You testified that this was true. Therefore, you reside in a five-person household purposes of NYSOH.

On the date of your application, the relevant FPL was \$28,410.00 for a five-person household. Since \$20,800.00 is 73.21% of the 2016 FPL, NYSOH properly found you eligible for Medicaid on a financial basis.

The March 22, 2016, notice further explained you and your spouse were both eligible for Emergency Medicaid for medical care and services because both you and your spouse were not citizens, qualified aliens, or permanently residing in the United States under color of law (PRUCOL). 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.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm citizenship, status as a national, or lawful presence.

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. This further includes the Essential Plan as a public benefit subject to this requirement.

You testified you entered the country ten years ago, around 2006. The record reflects your immigration status on your March 21, 2016 application was selected as "other." Furthermore, you testified that you do not have an employment authorization card, or documentation showing you are a lawful permanent resident, or have qualified alien status. You testified that you do have a passport from your country of origin, Mexico.

To be eligible for full Medicaid and Essential Plan participation through NYSOH, you must have documents to prove your citizenship or immigration status. Since you credibly testified that you and your spouse not have immigration documents proving your lawful presence in the United States, and you are not a PRUCOL individuals, you are both not eligible for Medicaid or the Essential Plan through NYSOH.

However, based on your testimony and the record, you meet the criteria provided by statute for Medicaid for the treatment of Emergency Medical conditions.

Since you and your spouse are undocumented aliens residing in the state of New York with an expected annual household income below the threshold for Medicaid participation, and are otherwise ineligible or excluded from participation for federally means tested public benefits such as the Essential Plan, NYSOH's March 22, 2016, eligibility determination is AFFIRMED.

Decision

The March 22, 2016, eligibility determination is AFFIRMED.

Effective Date of this Decision: October 4, 2016

How this Decision Affects Your Eligibility

You and your spouse are eligible for Emergency Medicaid effective March 1, 2016.

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

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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)).

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 March 22, 2016, eligibility determination is AFFIRMED.

You and your spouse are eligible for Emergency Medicaid effective March 1, 2016.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

