



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

Notice of Decision

Decision Date: November 7, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008330

[REDACTED]

Dear [REDACTED]

On September 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 24, 2016 eligibility determination and cancellation 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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Decision

Decision Date: November 7, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008330



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 24, 2016, that you were not eligible to enroll in health insurance coverage through NYSOH?

Procedural History

On March 11, 2015, NYSOH issued an eligibility determination that in part stated you were eligible for Medicaid effective March 1, 2015. You were subsequently enrolled into a Medicaid Managed Care plan.

On December 20, 2015, NYSOH issued an eligibility redetermination notice that in part stated you were newly eligible to purchase a qualified health plan at full cost, effective January 1, 2016. The notice further stated that you were not eligible to receive advance premium tax credits to help pay for the cost of your insurance because NYSOH was unable to verify your immigration status.

On December 21, 2015, NYSOH issued a disenrollment notice stating that your Medicaid Managed Care plan would end effective December 31, 2015.

Also on December 21, 2015, NYSOH issued an enrollment confirmation notice that stated your health coverage with Qualified Health Plan will not begin until you pick a plan.

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On January 16, 2016, NYSOH issued a notice that stated it was time to renew your health insurance for the upcoming coverage year. The notice further stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by February 15, 2016 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by February 15, 2016.

On February 18, 2016, NYSOH issued an eligibility redetermination notice finding you eligible to purchase a qualified health plan at full cost through NYSOH effective March 1, 2016. The notice further stated that you did not qualify for Medicaid, Child Health Plus, the Essential Plan or to receive advance premium tax credits to help pay for the cost of your insurance because you did not respond to the renewal notice and complete your renewal within the required timeframe.

On February 23 and 24, 2016, NYSOH received your updated applications for health insurance.

On February 24 and 25, 2016, NYSOH issued eligibility redetermination notices that in part stated, based on your updated application for financial assistance, you were eligible to enroll in the Essential Plan for a limited time, effective April 1, 2016. The February 24, 2016 notice further stated you needed to submit documentary proof to confirm your immigration status before May 24, 2016.

Also on February 24 and 25, 2016, NYSOH issued an enrollment notice confirming in relevant part, your February 23, 2016 plan selection and enrollment in an Essential Plan 2 Plus Vision and Dental with a premium of \$30.77 per month, with an April 1, 2016 plan enrollment start date.

On March 5, 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 March 31, 2016.

Also on March 5, 2016, NYSOH issued a cancellation notice that stated your coverage in the Essential Plan 2 Plus Vision and Dental would end effective April 1, 2016, because you were no longer eligible to enroll in health insurance through NYSOH.

On March 24, 2016, NYSOH issued another eligibility redetermination notice with findings similar to those stated in the March 5, 2016 notice in that you did not qualify to enroll through NYSOH because verification documents showed you were not lawfully present.

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On March 25, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the March 24, 2016 eligibility redetermination insofar as you were determined not eligible for coverage under the Essential Plan because you were not lawfully present.

On September 27, 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, and your application indicates, that you expect to file a tax return for 2016 with a tax filing status of Head of Household with qualifying individuals and will claim two dependents on that tax return.
- 2) Your March 23, 2016 application listed an annual household income of \$28,080.00, consisting solely of income you received from your employment.
- 3) According to immigration documents you uploaded to your NYSOH on February 24, 2016, you are an immigrant non-citizen present in the U.S. by means of an I-766 Employment Authorization Card (EAC) (see Document [REDACTED]). NYSOH verified this document on March 4, 2016.
- 4) Your I-766 EAC shows it was valid as of July 30, 2015 and expires on July 29, 2017. This document shows a category code of "C33."
- 5) You testified that you do not have a pending application for citizenship.
- 6) You testified you have a New York State ID card and a social security card.
- 7) You testified that you do not have health insurance presently and would like to be able to obtain health insurance.
- 8) You testified that you believed that since you were residing in the U.S. legally and had health insurance coverage through Medicaid in 2015, you were entitled to continue your enrollment in a health plan.

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 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 \$20,160.00 for a three-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 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).

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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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were not eligible for financial assistance as of March 24, 2016, because you were not lawfully present.

The application that was updated on February 23, 2016, listed an annual household income of \$28,080.00, and reflected that you were an immigrant non-citizen present in the U.S. by means of an I-766 Employment Authorization Card (EAC). 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 April 1, 2016, pending your submission of documentation regarding your immigration status by May 23, 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 on February 24, 2016, you provided to NYSOH a copy of your I-766 EAC. This card confirmed that your category code was "C33." Code "C33" does not confer PRUCOL status for purposes of Essential Plan eligibility.

Your immigration documents were verified following your limited eligibility for and enrollment in an Essential Plan, on March 4, 2016. On March 5, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid, Child Health Plus, the Essential Plan or to receive tax credits or cost sharing reductions to help pay for the cost of insurance. The notice further stated you were could not enroll in a qualified health plan at full cost through NYSOH because verification documents show you were not lawfully present and your eligibility to enroll in the Essential Plan would end effective March 31, 2016.

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, therefore, are not recognized as eligible to receive federal funding under those programs.

In addition, while individuals who were 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

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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 updated application of March 23, 2016, listed an annual household income of \$28,080.00, and the March 24, 2016 eligibility determination 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 \$20,160.00 for a three-person household. An income of \$28,080.00 is 139.28% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, which is \$27,820.00, you were not eligible for Medicaid at the time of the March 24, 2016 eligibility redetermination notice.

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

Your March 23, 2016 application listed an annual household income of \$28,080.00 and the system calculated average monthly income was \$2,340.00.

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 \$2,318.40 per month. Based on your March 23, 2016 application listed yearly income of \$28,080.00 and your system calculated average monthly income of \$2,340.00, 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 immigration status. Since code "C33" does not confer PRUCOL status for individuals seeking enrollment in a qualified health plan (QHP) through NYSOH, NYSOH was correct in finding you not eligible to enroll in a QHP.

Accordingly, the March 5, 2016 and the March 24, 2016 eligibility redetermination notices properly found you to be ineligible for the Essential Plan or to receive tax credits or cost sharing reductions and not eligible to enroll in a QHP at full cost through NYSOH based on your not being legally present. However, your ineligibility for Medicaid is properly based on both your annual and monthly household income being over the maximum allowable income limits for that program, not your legal presence.

Therefore, the March 5, 2016 and the March 24, 2016 eligibility redetermination notices and the March 5, 2016 cancellation notice are AFFIRMED.

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Decision

The March 5, 2016 and the March 24, 2016 eligibility redetermination notices are AFFIRMED.

The March 5, 2016 cancellation notice is AFFIRMED.

Effective Date of this Decision: November 7, 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 limits on both an annual and monthly basis.

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 March 5, 2016 and March 24, 2016 eligibility redetermination notices are **AFFIRMED**.

The March 5, 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 limits on both an annual and monthly basis.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

