



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

Notice of Decision

Decision Date: October 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008344

[REDACTED]

Dear [REDACTED],

On October 13, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 26, 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: October 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008344

[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 coverage through NY State of Health as of March 26, 2016, because you were not lawfully present in the United States?

Procedural History

On February 26, 2016, you created your NYSOH account. That same day, you uploaded documentation to your NYSOH account.

On February 27, 2016, NYSOH issued an eligibility determination notice, based on your February 26, 2016 application, stating that you were eligible to enroll in the Essential Plan, at a cost of \$20.00 per month, for a limited time, effective April 1, 2016. This notice also stated that you needed to provide documentation of your immigration status by May 26, 2016 in order to continue your eligibility.

Also on February 27, 2016, a notice of enrollment confirmation was issued, confirming your enrollment in an Essential Plan 1, effective April 1, 2016.

On March 9, 2016, NYSOH issued a notice of eligibility redetermination stating that you were not qualified to enroll in health insurance through NYSOH because verification documents showed that you were not lawfully present.

Also on March 9, 2016, NYSOH issued a cancellation notice stating that your Essential Plan 1 coverage would end effective April 1, 2016.

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On March 25, 2016, you updated your NYSOH account. That same day, NYSOH issued a preliminary eligibility determination stating that you were not eligible to purchase health care coverage through NYSOH.


Also on March 25, 2016, you spoke to NYSOH's Account Review Unit and appealed the preliminary eligibility determination, insofar as it stated that you were not eligible to enroll in health insurance through NYSOH.

On March 26, 2016, NYSOH issued an eligibility determination notice stating that you were not qualified to enroll in coverage through NYSOH because verification documents showed that you were not lawfully present.

On October 13, 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) The record reflects that you expect to file your 2016 taxes with a status of single, and you testified that this is correct.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are an immigrant non-citizen.
- 4) You testified that you have a work authorization that you renew every two years.
- 5) You uploaded a copy of your Employment Authorization card on February 10, 2016 with the status of C-33, which was verified on March 8, 2016.

- 6) 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.
- 7) The March 26, 2016 eligibility redetermination notice found that the verification documentation you submitted to NYSOH showed you were not lawfully present, and therefore were not eligible to receive advance payments of the premium tax credit, cost sharing reductions, Medicaid, the

Essential Plan, or Child Health Plus, or to purchase a qualified health plan at full cost.

- 8) The application that was submitted on March 25, 2016, which requested financial assistance, listed annual household income of \$22,880.00, consisting of income you earn from your employment only. You testified that this amount was correct at the time.
- 9) You testified that your job ended in approximately July 2016 and that you have not had any income since then.
- 10) You testified that you did not file for Unemployment Insurance Benefits because you were not aware of how to do so.
- 11) You testified that you have been living off of your savings.
- 12) You testified that you asked your former employer for a letter stating when your job ended, but that your former employer did not understand what you were asking for and only responded that they would look into it.
- 13) You testified that you never heard back from your former employer, so you wrote a letter indicating that you were no longer working and submitted it to NYSOH.
- 14) A handwritten letter stating that you were no longer at [REDACTED] since 06/23/2016 was uploaded to your NYSOH account on September 9, 2016. This letter also states that you requested a termination letter from the company but that they could not provide you with one. Lastly, the letter states that you are unemployed and living on your savings. The letter is dated "09/08/2016" and is signed with a signature and the printed name [REDACTED]
- 15) You testified that you earned approximately \$1,760.00 in gross income for the month of June 2016, prior to being terminated from your job.
- 16) You testified that you work and pay taxes and believe that you should be able to receive at least a basic level of health insurance coverage since you are here lawfully.
- 17) Your application states that you live in Queens County

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 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 federal poverty level (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 application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Federal Register 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).

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 in New York State (NY Social Services Law § 122(1); 18 NYCRR § 360-3.2).

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)).

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)).

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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.

PRUCOL

The term “*PRUCOL alien*” refers to an alien who is permanently residing in the United States with the “knowledge and permission or acquiescence” of the federal immigration agency and whose departure from the U.S. the agency does not contemplate enforcing. An alien is considered as one whose departure the federal immigration agency does not contemplate enforcing if it is the agency’s policy or practice not to enforce the departure of aliens in a particular category, and the alien falls within that category; or, based on all the facts and circumstances of the case, it appears that the federal immigration agency is permitting the alien to reside in the United States indefinitely. This category generally 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).

Qualified Immigrants

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).

Legal Analysis

The only issue under review is whether NYSOH properly determined that you were not eligible for financial assistance as of March 26, 2016 because you were not lawfully present.

You provided a copy of your Employment Authorization card with the status of C-33, which was verified on March 8, 2016 ([REDACTED]).

When you updated your application on March 25, 2016, NYSOH issued an eligibility determination notice stating that you were not qualified to enroll in coverage through NYSOH because the documentation you provided showed that you were not lawfully present.

Your employment authorization documentation states 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, this 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.

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Your application of March 25 2016 listed an annual household income of \$22,880.00, and the March 26, 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 \$11,880.00 for a one-person household. An income of \$22,880.00 is 192.59% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, you were not eligible for Medicaid at the time of your March 25, 2016 application.

Since your status as an immigrant non-citizen with a C-33 status makes you ineligible for any federally funded programs, and since your income as of March 25, 2016 was over the Medicaid income limit, the March 26, 2016 eligibility determination stating that you were not eligible to enroll in coverage because you were not lawfully present was correct and is AFFIRMED.

However, you testified at the hearing that your job ended in July 2016, and that you have not had any income since then. You further testified that you have been living on your savings. Your NYSOH account contains a handwritten letter uploaded on September 8, 2016 stating that you tried to get a letter from your employer to show that your employment ended on June 23, 2016, but were unable to. Since you submitted a dated, signed letter regarding your lack of income, and since you testified under oath that you have not worked since June 23, 2016, it is determined that your monthly income was \$0.00 from July 1, 2016 through the present.

Therefore, your case is RETURNED to NYSOH to determine your eligibility for Medicaid, effective July 1, 2016, based on \$0.00 in monthly income. NYSOH is directed to notify you in writing of its determination of your eligibility.

Decision

The March 26, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to determine your eligibility for Medicaid based on a monthly income of \$0.00, effective July 1, 2016.

NYSOH is directed to issue a written determination of your eligibility as of July 1, 2016.

Effective Date of this Decision: October 26, 2016

How this Decision Affects Your Eligibility

You were not eligible to enroll in coverage through NYSOH, based on your income and immigration status, as of March 26, 2016.

Your case is returned to NYSOH so that your eligibility for Medicaid as of July 1, 2016 can be determined, based on your monthly income of \$0.00.

NYSOH will send you a written notice regarding your eligibility for Medicaid as of July 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 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 March 26, 2016 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to determine your eligibility for Medicaid based on a monthly income of \$0.00, effective July 1, 2016.

NYSOH is directed to issue a written determination of your eligibility as of July 1, 2016.

You were not eligible to enroll in coverage through NYSOH, based on your income and immigration status, as of March 26, 2016.

Your case is returned to NYSOH so that your eligibility for Medicaid as of July 1, 2016 can be determined, based on your monthly income of \$0.00.

NYSOH will send you a written notice regarding your eligibility for Medicaid as of July 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

