



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

Notice of Decision

Decision Date: October 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008462

[REDACTED]

Dear [REDACTED],

On October 20, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 24, 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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008462



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 your youngest son was not eligible to enroll in coverage through NY State of Health as of March 24, 2016, because he was not lawfully present in the United States?

Procedural History

On March 2, 2016, your NYSOH account was updated. That same day, documentation was also uploaded to your account.

On March 3, 2016, NYSOH issued an eligibility determination notice stating that your youngest son was eligible to enroll in the Essential Plan for a limited time, effective April 1, 2016. The notice also directed you to submit documentation of your youngest son's immigration status before May 31, 2016.

Also on March 3, 2016, NYSOH issued a notice of enrollment confirmation confirming your youngest son's enrollment in an Essential Plan 1 beginning April 1, 2016.

On March 11, 2016, your NYSOH account was updated.

On March 12, 2016, NYSOH issued an eligibility determination notice stating that your youngest son was not eligible to enroll in coverage through NYSOH because verification documents showed that he was not lawfully present.

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Also on March 12, 2016, NYSOH issued a cancellation notice stating that your youngest son's coverage in the Essential Plan was ending April 1, 2016.

On March 18, 2016, your NYSOH account was updated.

On March 19, 2016, NYSOH issued a notice of eligibility determination stating that your youngest son was eligible to enroll in the Essential Plan for a limited time, effective May 1, 2016. The notice also directed you to submit documentation of your youngest son's immigration status before June 16, 2016.

Also on March 19, 2016, NYSOH issued a notice of enrollment confirmation, confirming your youngest son's enrollment in an Essential Plan 1 beginning May 1, 2016.

On March 23, 2016, your NYSOH account was updated.

On March 24, 2016, NYSOH issued an eligibility determination notice stating that your youngest son was not eligible to enroll in coverage through NYSOH because verification documents showed that he was not lawfully present.

Also on March 24, 2016, NSOH issued a cancellation notice stating that your youngest son's coverage in the Essential Plan was ending May 1, 2016.

On March 30, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination, insofar as it stated that your youngest son was not eligible to enroll in health insurance through NYSOH.

On October 20, 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 are appealing your youngest son's eligibility only.
- 2) The record reflects that you expect to file your 2016 taxes with a status of married filing jointly.
- 3) You plan to claim two dependents on your 2016 tax return, including your youngest son, who is the subject of this appeal.
- 4) Your application states that your youngest son is an immigrant non-citizen.

- 5) You testified that your youngest son has “DACA” status, and has lived in the United States since he was twelve years old.
- 6) You uploaded a copy of your youngest son’s Employment Authorization card on March 2, 2016 with the status of C-33, which was verified on March 11, 2016, and again on March 23, 2016. [REDACTED].
- 7) 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.
- 8) The March 24, 2016 eligibility redetermination notice found that the verification documentation you submitted to NYSOH showed your youngest son was not lawfully present, and therefore was not eligible for advance premium tax credits, cost sharing reductions, Medicaid, the Essential Plan, Child Health Plus, or to purchase a qualified health plan at full cost.
- 9) The application that was submitted on March 18, 2016, which requested financial assistance, listed annual household income of \$42,000.00, consisting of income you earn from your employment, and income your spouse earns from his employment. You testified that this amount was correct at the time, and is still correct.
- 10) You testified that your youngest son is a full-time student and that he has no income.
- 11) You testified that your youngest son was previously approved for coverage through NYSOH, and was covered on your plan in the past.
- 12) You testified that you do not know why he has been rejected for coverage this time, since he has a status that allows him to live here, and since he has been here since he was twelve years old.
- 13) 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 \$24,300.00 for a four-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 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 your youngest son was not eligible to enroll in coverage through NYSOH as of March 24, 2016 because he was not lawfully present.

You provided a copy of your youngest son's Employment Authorization card with the status of C-33, which was verified on March 23, 2016 [REDACTED].

After NYSOH verified your youngest son's Employment Authorization card, NYSOH issued an eligibility determination notice stating that he was not qualified to enroll in coverage through NYSOH because the documentation you provided showed that he was not lawfully present.

Your youngest son's employment authorization documentation states he is 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.

Your application listed an annual household income of \$42,000.00, and the March 24, 2016 eligibility determination was based on that amount, which you confirmed was correct during the hearing. 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 \$24,300.00 for a four-person household. An income of \$42,000.00 is 172.84% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, your youngest son was not eligible for Medicaid at the time of your application.

Since your youngest son's status as an immigrant non-citizen with a C-33 status makes him ineligible for any federally funded programs, and since your household income as of March 23, 2016 was over the Medicaid income limit, the March 24, 2016 eligibility determination stating that your youngest son was not eligible to enroll in coverage because he was not lawfully present was correct and is AFFIRMED.

Decision

The March 24, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: October 25, 2016

How this Decision Affects Your Eligibility

Your youngest son is not eligible to enroll in coverage through NYSOH, based on your household income and his immigration status.

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.

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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 24, 2016 eligibility determination notice is AFFIRMED.

Your youngest son is not eligible to enroll in coverage through NYSOH, based on your household income and his immigration status.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

