



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

## Notice of Decision

Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008570

[REDACTED]

Dear [REDACTED],

On October 6, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 2, 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.

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## Decision

Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008570



## 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 April 1, 2016, because you were not lawfully present in the United States?

## Procedural History

On January 28, 2016, you updated your NYSOH account. That same day, documentation was uploaded to your NYSOH account.

On January 29, 2016, NYSOH issued an eligibility determination notice, based on your January 28, 2016 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. The notice further stated that you needed to submit documentation of your immigration status by April 27, 2016 so that your eligibility could be confirmed.

On February 6, 2016, NYSOH issued an eligibility redetermination notice stating that you were not qualified to enroll in coverage through NYSOH because verification documents showed that you were not lawfully present.

On April 1, 2016, you updated your NYSOH account.

That same day, NYSOH issued a preliminary eligibility determination stating that you were not eligible to enroll in health care coverage through NYSOH.

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Also on April 1, 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 April 2, 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 6, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and kept open for fifteen days at the end of the hearing to give you the opportunity to submit documentation of your gross income for the month of September 2016. No documents were submitted. The record is now closed.

## **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.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are an immigrant non-citizen.
- 4) You testified that you have DACA (Deferred Action on Childhood Arrival) status, and that you attained this status [REDACTED].
- 5) You uploaded a copy of your Employment Authorization card on January 28, 2016 with the status of C-33, which was verified on February 5, 2016 [REDACTED]).
- 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 January 29, 2016 and April 2, 2016 eligibility redetermination notices found that the verification documentation you submitted to NYSOH showed you were not lawfully present, and therefore were 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.

- 8) The application that was submitted on April 1, 2016, which requested financial assistance, listed annual household income of \$17,524.00, consisting of income you earn from employment. You testified that this amount was correct at the time.
- 9) You testified that you are now earning less income because had to leave one of your jobs at the beginning of August 2016.
- 10) You testified that your gross monthly income at this time is approximately \$810.00.
- 11) You testified that you believe NYSOH is incorrect in its statement that you are not lawfully present. You testified that you are here legally, and that you believe you should be eligible for health insurance coverage.
- 12) You further testified that you are primarily concerned with securing health insurance coverage because you do not want to incur a penalty on your income taxes for a lack of coverage.
- 13) Your application states that you live in Nassau 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)).

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*” generally 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)).

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## 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 to enroll in health coverage through NYSOH as of April 1, 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 February 5, 2016 [REDACTED]).

When you updated your application on April 1, 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*”; the federal government has not. 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 of April 1 2016 listed an annual household income of \$17,524.00, and the April 2, 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 \$17,524.00 is 148.89% 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 April 1, 2016 application.

You testified at the hearing that your income decreased as of August 2016 because you had to leave one of your jobs. You testified that your gross monthly income is now approximately \$810.00. You were given the opportunity after the hearing to submit documentation of your income, but did not do so. Therefore, there is no basis for redetermining your eligibility at this time.

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 April 1, 2016 was over the Medicaid income limit, the April 2, 2016 eligibility determination stating that you were not eligible to enroll in coverage because you were not lawfully present was correct and is **AFFIRMED**.

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If you wish to find out whether your current income level might qualify you for Medicaid, you must update your NYSOH account and provide documentation of your current monthly income so that an eligibility determination can be made.

## **Decision**

The April 2, 2016 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** October 27, 2016

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

You are not eligible to enroll in coverage through NYSOH, based on your income and immigration status.

If you wish to find out whether you are now Medicaid eligible, based on the change in your income, you must update your NYSOH account and provide documentation of your current income.

## **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):**

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 April 2, 2016 eligibility determination notice is AFFIRMED.

You are not eligible to enroll in coverage through NYSOH, based on your income and immigration status.

If you wish to find out whether you are now Medicaid eligible, based on the change in your income, you must update your NYSOH account and provide documentation of your current income.

## **Legal Authority**

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

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

