



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: AP0000000008699

[REDACTED]

Dear [REDACTED]

On October 14, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 25, 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 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.

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: AP000000008699



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 eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective April 1, 2016?

Procedural History

On January 5, 2016, you updated your NYSOH application.

That same day, NYSOH prepared a preliminary eligibility determination stating that you were eligible for the Essential Plan for a limited time with no monthly premium, effective February 1, 2016.

On March 16, 2016, you uploaded a document to your NYSOH account.

On March 17, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan 2, effective May 1, 2016. The enrollment confirmation notice contained a reminder that you needed to submit documentation of your immigration status by April 4, 2016.

On March 25, 2016, NYSOH issued a notice of eligibility determination stating that you were not eligible to enroll in coverage through NYSOH because verification documents showed that you were not lawfully present.

On April 6, 2016, you updated your NYSOH account. That same day, NYSOH prepared a preliminary eligibility determination stating that you were eligible to enroll in Medicaid for emergency medical care and services only, based on your immigration status. This eligibility was effective April 1, 2016.

Also on April 6, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not eligible for full Medicaid coverage.

On April 7, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid for the treatment of emergency medical conditions only, effective April 1, 2016. The notice further stated that you were only eligible for emergency medical care and services because you were not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL).

On October 14, 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 head of household with qualifying individual
- 2) You are seeking insurance for yourself only.
- 3) The record reflects that you added your nephew to your NYSOH account on April 6, 2016 and listed him as a dependent. During the hearing, you confirmed that this information was still correct, and that you live in a household of two people.
- 4) Your April 6, 2016 application states you are an immigrant non-citizen.
- 5) You provided a copy of your Employment Authorization card with the status of C-33, which is listed as verified by NYSOH on July 29, 2016 ([REDACTED]).
- 6) The "Events" tab in your NYSOH account includes a note from March 24, 2016, made by a representative from NYSOH, indicating that your Employment Authorization card was verified on that date; however, the document has a verified date of July 29, 2016 in the "Verified Documents" tab.

- 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. You confirmed that this is your status in your testimony.
- 8) The application that was submitted on April 6, 2016, which requested financial assistance, listed annual household income of \$17,108.00, consisting of income you earn from your employment only. You testified that this amount was correct.
- 9) You testified that you believe you should be eligible for health care coverage because you are lawfully present in the United States and are eligible to work.
- 10) Your application states that you live in Bronx 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 \$16,020.00 for a two-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).

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

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States citizen, naturalized citizen, qualified alien, or PRUCOL is eligible for full Medicaid benefits in New York State (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

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 U.S. 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)).

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 U.S. Code § 1613(a)).

However, the New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 N.Y. 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.

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

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§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 NY 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).

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 Social Services 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)).

Legal Analysis

The only issue under review is whether NYSOH properly determined that you were eligible for Medicaid coverage for emergency medical care and services only, effective April 1, 2016.

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You uploaded a copy of your Employment Authorization card with the status of C-33 to your NYSOH account on March 16, 2016 [REDACTED]. Someone from NYSOH indicated that they verified this document on March 24, 2016; however, the verification date in the “Documents” tab of your online NYSOH account is July 29, 2016.

When you updated your application on April 6, 2016, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid coverage for emergency medical care and services only because you were not a citizen, qualified alien, or PRUCOL, effective April 1, 2016.

In New York State, Emergency Medicaid is provided to cover emergency medical services for an individual who does not have evidence of citizenship or immigration status, even if the person is not eligible for full Medicaid coverage.

The employment authorization documentation you submitted 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, 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 N.Y. 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

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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 6, 2016 listed an annual household income of \$17,108.00, and the April 7, 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 \$16,020.00 for a two-person household. An income of \$17,108.00 is 106.79% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, you were financially eligible for Medicaid as of your April 6, 2016 application.

Since you met the financial requirements for Medicaid, and since New York State recognizes individuals with Deferred Action status as PRUCOL for purposes of state-funded Medicaid, NYSOH's determination that you were eligible for Emergency Medicaid only because you were not a citizen, qualified alien, or PRUCOL was not correct.

Therefore, the April 7, 2016 eligibility determination stating that you were eligible for Emergency Medicaid only was not correct and is RESCINDED.

Your case is RETURNED to NYSOH for a determination of your eligibility for Medicaid, effective April 1, 2016, based on a household of two with an expected annual income of \$17,108.00.

Decision

The April 7, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to the NYSOH to redetermine your eligibility for Medicaid, effective April 1, 2016, based on a household of two with an expected annual income of \$17,108.00.

NYSOH is directed to issue an eligibility determination regarding your eligibility for Medicaid immediately.

Effective Date of this Decision: October 26, 2016

How this Decision Affects Your Eligibility

For purposes of New York State-funded Medicaid, you were considered to be a person residing (in the United States) under color of law (PRUCOL) as of your April 6, 2016 application, based on your C-33 status.

NYSOH is directed to redetermine your eligibility for Medicaid, effective April 1, 2016, based on a household of two with an expected annual income of \$17,108.00.

NYSOH will issue an eligibility determination regarding your eligibility for Medicaid immediately.

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 April 7, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to the NYSOH to redetermine your eligibility for Medicaid, effective April 1, 2016, based on a household of two with an expected annual income of \$17,108.00.

NYSOH is directed to issue an eligibility determination regarding your eligibility for Medicaid immediately.

For purposes of New York State-funded Medicaid, you were considered to be a person residing (in the United States) under color of law (PRUCOL) as of your April 6, 2016 application, based on your C-33 status.

NYSOH is directed to redetermine your eligibility for Medicaid, effective April 1, 2016, based on a household of two with an expected annual income of \$17,108.00.

NYSOH will issue an eligibility determination regarding your eligibility for Medicaid immediately.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

