



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

Notice of Decision

Decision Date: November 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008759

[REDACTED]

Dear [REDACTED],

On October 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 13, 2016 eligibility determination and disenrollment 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.

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 Date: November 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008759

[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 on February 13, 2016, that you were not eligible to enroll in health insurance coverage through NYSOH?

Procedural History

On November 24, 2015, NYSOH issued an eligibility determination notice, in relevant part, that stated you were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2016. The notice directed you to submit documentation to confirm your immigration status before February 16, 2016.

On November 25, 2015, NYSOH issued an enrollment notice confirming, in relevant part, that you were enrolled in an Essential Plan with a plan enrollment start date of January 1, 2016. The notice directed you to submit documentation to confirm your immigration status before February 16, 2016.

On February 2, 2016, the immigration status documentation that you faxed to NYSOH was uploaded to your account ([REDACTED]).

On February 12, 2016, NYSOH issued an eligibility determination notice that stated, in relevant part, you were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. The notice directed you to submit documentation to confirm your immigration status before May 11, 2016.

Also February 12, 2016, NYSOH issued an enrollment notice confirming, in relevant part, that you were enrolled in an Essential Plan with a plan enrollment start date of January 1, 2016. The notice directed you to submit documentation to confirm your immigration status before May 11, 2016.

On February 13, 2016, NYSOH issued an eligibility determination stating, in relevant part, that you were not eligible for Medicaid, Child Health Plus, Essential Plan, tax credit or cost-sharing reductions, and cannot enroll in a qualified health plan at full cost through NYSOH. The notice stated that the verification documents show that you are not lawfully present and your eligibility would end effective February 29, 2016.

Also on February 13, 2016, NYSOH issued a disenrollment notice stating that your insurance through NYSOH would terminate effective February 29, 2016.

On April 8, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as being determined not eligible for coverage in through NYSOH because you were not lawfully present.

On October 19, 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 federal income tax return for 2016, with a filing status of Head of Household (with a qualifying individual), and will claim one dependent on that tax return.
- 2) According to your NYSOH account, your expected 2016 income is \$26,000.00.
- 3) On November 25, 2015, NYSOH issued an enrollment notice confirming, in relevant part, that you were enrolled in an Essential Plan with a plan enrollment start date of January 1, 2016. The notice directed you to submit documentation to confirm your immigration status before February 16, 2016 ([REDACTED]).
- 4) You faxed your Employment Authorization Card (EAC) to NYSOH. The card indicates that it expires on November 13, 2016 and reflects a category code of "C33" ([REDACTED]).

- 5) You testified that your immigration status has not changed since submitting your EAC and have filed the paperwork to renew your card with the same status.
- 6) On February 13, 2016, NYSOH issued an eligibility determination stating, in relevant part, that you did not qualify to enroll through NYSOH because verification documents show that you were not lawfully present
([REDACTED])
- 7) You were disenrolled from your Essential Plan effective February 29, 2016.
- 8) You testified that you were able to enroll in health coverage through NYSOH in 2015, and therefore, should be able to continue your enrollment in 2016.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

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)).

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).

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.*).

Medicaid-Citizenship

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 (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

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)).

Medicaid-Household Income

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 \$16,020.00 for a two-person household (81 Fed. Reg. 4036).

Legal Analysis

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).

The only issue under review is whether NYSOH properly determined that you were not eligible to enroll in health insurance coverage through NYSOH as of February 13, 2016.

On November 24, 2015, NYSOH issued an eligibility determination notice stating, that you were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2016. The notice directed you to submit documentation to confirm your immigration status before February 16, 2016.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship or immigration status is satisfactory.

The documentation that was uploaded to your account for review on February 2, 2016, consisted of a copy of your employment authorization card (EAC), which stated that your category was (C33) with a card expiration date of November 13, 2016 [REDACTED]. Furthermore, you testified that your immigration status has not changed and plan on renewing your EAC with the same status.

To be eligible to enroll in coverage 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.

An individual eligible for deferred action under the Department of Homeland Security's deferred action for childhood arrivals process shall not be considered to be lawfully present and not eligible to enroll in a qualified health plan, Essential Plan or federal-funded Medicaid through NYSOH.

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.

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. The record reflects that you expect to file your 2016 federal income tax return, with the tax status of Head of Household, and plan on claiming one dependent on that return. Therefore, you have a two-person tax household.

On the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household. An income of \$26,000.00 is 163.21% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, which is \$22,108.00, you were not eligible for Medicaid at the time of the February 13, 2016 eligibility determination notice.

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Accordingly, the February 13, 2016 eligibility determination notice properly found you to be ineligible for the Essential Plan or QHP based on you not being legally present. However, your ineligibility for Medicaid is properly based on your annual household income being over the maximum allowable income limit for that program, not your legal presence.

Therefore, the February 13, 2016 eligibility determination and disenrollment notices are AFFIRMED.

Decision

The February 13, 2016 eligibility determination notice is AFFIRMED.

The February 13, 2016 disenrollment notice is AFFIRMED.

Effective Date of this Decision: November 18, 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 limit.

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 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).

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 February 13, 2016 eligibility determination notice is AFFIRMED.

The February 13, 2016 disenrollment 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 limit.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

