



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

Notice of Decision

Decision Date: January 18, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008803

[REDACTED]

Dear [REDACTED],

On October 18, 2016, [REDACTED] appeared by telephone on your behalf as your authorized representative at a hearing regarding your appeal of NY State of Health's April 11, 2016 eligibility redetermination.

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 the 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: January 18, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008803



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 February 1, 2016 and again as of April 1, 2016?

Procedural History

On February 9, 2016, NYSOH issued an eligibility determination notice, based on your February 8, 2016 updated application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective February 1, 2016. The notice directed you to confirm your immigration status by providing documentation before May 8, 2016.

That same day, NYSOH issued an enrollment confirmation notice stating that coverage in the Essential Plan 4 you selected would start on February 1, 2016.

On February 10, 2016, you uploaded a copy of your I-797B, Notice of Action issued by the United States Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) on April 10, 2014, that showed your Petition for a Nonimmigrant Worker was approved for a Class "01" valid from "04/10/2014 to 03/31/2017."

The notice further stated that, "[t]he approval of this visa petition does not in itself grant any immigration status and does not guarantee alien beneficiary will

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subsequently be found eligible for a visa, for admission to the United States, or for an extension, change or adjustment of status" (see Document [REDACTED]).

Your immigration documentation was verified by NYSOH on February 24, 2016.

On February 25, 2016, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective February 1, 2016. The notice stated this was because your household income of \$0.00 is at or below the allowable income limit of \$16,243.00, you are eligible for Medicaid coverage; however, you were only eligible for emergency medical care and services because you are not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

Also on February 25, 2016, NYSOH issued a disenrollment notice stating that your coverage in an Essential Plan 4 would end effective February 29, 2016 because you were no longer eligible to remain enrolled in your current health insurance plan.

Again on February 25, 2016, NYSOH issued an enrollment confirmation notice confirming you were enrolled in Medicaid and the type of Medicaid coverage you are eligible for does not require/allow you to enroll in a health plan.

On April 11, 2016, based on your updated application, NYSOH made a preliminary determination finding you eligible for Medicaid for the treatment of emergency medical conditions only, effective April 1, 2016.

Also on April 11, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as you were only eligible for emergency Medicaid and not the Essential Plan or full Medicaid.

On April 12, 2016, NYSOH issued an eligibility redetermination notice, based on your April 11, 2016 updated application, stating that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective April 1, 2016. The reason stated was:

To be eligible for New York State Medicaid Programs or the Essential Plan, an individual must be a U.S. citizen, national, Native American, have satisfactory immigration status [either qualified alien or permanently residing in the U.S. under color of law (PRUCOL)] or be lawfully present in the U.S. AND a New York State Resident. Because you are not a U.S. citizen, national, Native American, qualified alien, PRUCOL alien or lawfully present in the U.S. AND a New York State Resident, you may receive Medicaid coverage only for the treatment of emergency medical conditions or for medical services provided to pregnant women, if otherwise eligible.

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On October 18, 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) According to your February 24, 2016 application, you expect to file your 2016 taxes with a status of single and you will claim no dependents on that tax return.
- 2) At the time of your application you were 36 years old. As of the date of this Decision, you are 37 years old.
- 3) You are seeking insurance for yourself.
- 4) Your application states you are a non-immigrant Visa Holder.
- 5) According to your NYSOH account, on February 20, 2015, one year before your February 8, 2016 updated application, you uploaded Identity Proofing documents, including a copy of your U.S. Visa with identifying personal information, an issue date of April 29, 2014, and an expiration date of March 31, 2017. The Visa type/class is listed as "R-01" (see Document [REDACTED]).
- 6) The status of R-01, according to the USCIS, refers to a status classified as a "temporary nonimmigrant worker."
- 7) The applications that were submitted on February 8, 2016 and April 11, 2016, in which you requested financial assistance, listed annual household income of \$0.00.
- 8) Your authorized representative testified that you are a talented artist, have no income, live on the support of friends and family, and are working on a sponsorship deal.
- 9) Your authorized representative testified that, at the time of the hearing, you did have an open application with USCIS.
- 10) Your authorized representative testified that you should be eligible to enroll in full Medicaid, as in the past, or the Essential Plan as previously determined by NYSOH.

- 11) Your application states that you live in New York County, New York.
- 12) Your authorized representative testified that you have been a resident of the State of New York since your arrival in 2014.
- 13) According to your NYSOH application, you answered “No” to the questions on the residency test.

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

Applicable Law and Regulations

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

Lawfully present immigrants who are eligible for Essential Plan include qualified aliens in the five-year ban, persons Permanently Residing Under Color of Law (PRUCOL) and temporary non-immigrants meeting residency requirements (45 CFR § 152.2(2) and (4)(i); 16 OHIP/ADM-01 (01/20/2016)). Immigrants who are pregnant or are under 21 years of age, and are in the first five years of their qualified status or are PRUCOL, are eligible for federal financial participation and, therefore, are not eligible for Essential Plan and will remain in Medicaid (*id.*).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York’s Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

Medicaid

A person who meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard is eligible for Medicaid benefits (45 CFR § 155.305(c)). One of the non-financial criteria for

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Medicaid eligibility is the immigration status of the person applying for health insurance. A person is eligible for Medicaid when his or her immigration status is satisfactory and he or she meets all other requirements for 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 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 \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

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 Soc. Serv. 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)).

Medicaid payment is provided for the care and services necessary for the treatment of an emergency medical condition to an otherwise eligible temporary non-immigrant (e.g., foreign student, visitor/tourist) and undocumented (illegal) alien. To be eligible for Medicaid coverage for the treatment of an emergency medical condition, a temporary non-immigrant or undocumented alien must meet all eligibility requirements, including proof of identity, income and State residence. Temporary non-immigrants, who have been allowed to enter the United States temporarily for a specific purpose and for a specified period of

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time, do not have to meet the State residence requirement and are considered "Where Found" for District of Fiscal Responsibility purposes. 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)).

Immigration Status

Generally, no person except a United States citizen, a naturalized citizen, a qualified alien, and persons permanently residing in the United States under color of law (PRUCOL), is eligible for medical assistance from the state (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2(j)).

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)).

Legal Analysis

The only issue under review is whether NYSOH properly determined that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective February 1, 2016 and again as of April 1, 2016.

On February 9, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan for a limited time, effective February 1, 2016. Your eligibility was contingent on you providing documentation of your immigration status before May 8, 2016.

To be eligible for full Medicaid and Essential Plan participation through the NYSOH, you must have documents to prove your citizenship or immigration status.

You uploaded a copy of your immigration documentation on February 10, 2016. The documentation received was in the form of an "R-01" visa with an expiration date of March 31, 2017. According to the USCIS, the status of R-01, refers to a status classified as a "temporary nonimmigrant worker," which is defined as an individual seeking to enter the United States temporarily for a specific purpose.

Based on your documentation as verified by NYSOH on February 24, 2016, your immigration status was determined to be that of a temporary nonimmigrant

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worker, which ordinarily would have qualified for the Essential Plan provided you met the residency requirements. Although your authorized representative credibly testified that you have lived in New York since your arrival in 2014, your NYSOH application shows that you answered “No” to the question on the residency test. Therefore, you did not meet the residency requirements to be eligible for the Essential Plan.

To be eligible for Medicaid coverage for the treatment of an emergency medical condition, a temporary non-immigrant or undocumented alien must meet all eligibility requirements, including proof of identity, income and State residence.

Based on your authorized representative’s testimony, the application you provided on February 8, 2016, and the immigration documentation you provided on February 10, 2016, NYSOH determined you met the criteria provided by statute for the treatment of emergency medical conditions only, as your income of \$0.00, proof of immigration status as a temporary nonimmigrant worker, and proof of identity shows. The State residency requirement was satisfied by virtue of you residing within New York County, New York.

Therefore, NYSOH determined you met the criteria provided by statute for the treatment of emergency medical conditions only, based on your income of \$0.00, proof of immigration status as a temporary nonimmigrant worker, and residency in New York. Based thereon, by the February 25, 2016 eligibility redetermination notice you were properly determined eligible for Medicaid for the treatment of emergency medical conditions only and that notice must be **AFFIRMED** as correct when made.

Notwithstanding and since your authorized representative credibly testified that you have resided in the State of New York since 2014, your case is **RETURNED** to NYSOH to assist you in updating your application so that your residency status can be confirmed and your eligibility for financial assistance redetermined using a 37 year-old individual in a one-person household with no income, who is a nonimmigrant worker possessing a valid visa and residing in New York County, New York.

Decision

The February 25, 2016, eligibility redetermination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to assist you in updating your application so that your residency status can be confirmed and your eligibility for financial assistance redetermined using a 37 year-old individual in a one-person household with no income, who is a nonimmigrant worker possessing a valid visa and residing in New York County, New York.

Effective Date of this Decision: January 18, 2017

How this Decision Affects Your Eligibility

You currently remain eligible for the treatment of emergency medical conditions under Medicaid.

Your case is being sent back to NYSOH to assist you in updating your application, specifically, the question to the residency test. NYSOH will then be able to redetermine your eligibility for financial assistance for a 37 year-old individual in a one-person household with no income, who is a nonimmigrant worker possessing a valid visa and residing in New York County, New York.

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:

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- By fax: 1-855-900-5557

Summary

The February 25, 2016, eligibility redetermination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to assist you in updating your application so that your residency status can be confirmed and your eligibility for financial assistance redetermined using a 37 year-old individual in a one-person household with no income, who is a nonimmigrant worker possessing a valid visa and residing in New York County, New York.

You currently remain eligible for the treatment of emergency medical conditions under Medicaid.

Your case is being sent back to NYSOH to assist you in updating your application, specifically, the question to the residency test. NYSOH will then be able to redetermine your eligibility for financial assistance for a 37 year-old individual in a one-person household with no income, who is a nonimmigrant worker possessing a valid visa and residing in New York County, New York.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

