



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

Notice of Decision

Decision Date: December 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009003

[REDACTED]

Dear [REDACTED],

On November 1, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 20, 2016 eligibility determination notice.

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).

This page intentionally left blank.



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

Decision

Decision Date: December 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009003

[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 that you were eligible to enroll in the Essential Plan, effective March 1, 2016, and not eligible for Medicaid after February 29, 2016?

Procedural History

On December 6, 2014, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid, effective November 1, 2014.

On September 15, 2015, NYSOH issued a renewal notice stating in relevant part that, based on the information from federal and state data sources, there was not enough information to make a determination on your eligibility for the upcoming year. NYSOH requested that you updated the information in your account before November 15, 2015 so a determination could be made.

On November 10, 2015, NYSOH received your updated application for health insurance.

On November 11, 2015 and again on December 31, 2015, NYSOH issued notices of eligibility determination, stating in part that you remained eligible for Medicaid effective November 1, 2015 and December 1, 2015 respectively.

Also on November 11, 2015 and again on December 31, 2015, NYSOH issued enrollment notices confirming in relevant part your enrollment in a Medicaid Managed Care plan with a January 1, 2016 coverage start date.

On February 21, 2016, NYSOH issued an eligibility redetermination notice, stating in part that you were eligible to enroll in the Essential Plan, effective March 1, 2016. You qualified for the Essential Plan because your income was less than the allowable income limit and you were in the first five years of your qualified immigration status or you are living in the United States under the color of law. It further stated you no longer qualified for Medicaid as of February 29, 2015.

On February 22, 2016, NYSOH issued a disenrollment notice that stated your Medicaid Managed Care plan coverage was terminated, effective February 29, 2016, because you were no longer eligible to remain enrolled in your current health insurance.

Also on February 22, 2016, NYSOH issued an enrollment notice confirming your enrollment in the Essential Plan 4 with a March 1, 2016 start date of coverage.

On March 21, 2016, NYSOH issued an eligibility redetermination notice that stated in relevant part that you were eligible to enroll in the Essential Plan and you also qualified for additional benefits through Medicaid, effective May 1, 2016.

Also on March 21, 2016, NYSOH issued an enrollment notice confirming in part your enrollment in the Essential Plan 4 with a March 1, 2016 start date of coverage.

On April 19, 2016, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was prepared stating in part that you were eligible for the Essential Plan.

Also on April 19, 2016, you spoke to NYSOH's Account Review Unit and appealed the preliminary eligibility determination insofar as it stated that you were not eligible for Medicaid.

On April 20, 2016, NYSOH issued an eligibility redetermination notice, stating in part that you are eligible to enroll in the Essential Plan, with no monthly premium, effective May 1, 2016. You qualified for the Essential Plan because your income was less than the allowable income limit and you were in the first five years of your qualified immigration status or you are living in the United States under the color of law.

On November 1, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, a Spanish Interpreter (ID# [REDACTED])

assisted. 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 you will not be filing taxes this year and have not filed taxes for several years.
- 2) According to your NYSOH account, you live in a four-person household.
- 3) According to your NYSOH account, you were 57 years old when the February 21, 2016 eligibility redetermination notice was issued.
- 4) You testified that you are a permanent Resident Alien and have resided in the United States since January 1990.
- 5) According to your NYSOH account, you provided documentation in the form of your Resident Alien card. The back of the card lists an admittance date of January 4, 1990. You testified that the card is correct and has no expiration date.
- 6) You testified that you intend to remain in the United States as a permanent Resident Alien.
- 7) According to your NYSOH account and your testimony, you have had Medicaid coverage for several years.
- 8) The applications that were submitted on November 10, 2015 and April 19, 2016, in which you requested financial assistance, listed annual household income of \$0.00. You testified that this information is accurate.

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

Applicable Law and Regulations

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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).

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).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$24,250.00 for a four-person household (80 Federal Register 3236, 3237).

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 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 (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 2015 FPL, which is \$24,250.00 for a four-person household (80 Federal Register 3236, 3237).

Permanently Residing Under Color of Law (PRUCOL)

The term PRUCOL means an alien who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the U.S. such agency does not contemplate enforcing.

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).

An alien will be considered as one whose departure the federal immigration agency does not contemplate enforcing if, based on all the facts and circumstances in a particular case, it appears that the federal immigration agency is otherwise permitting the alien to reside in the United States indefinitely or it is the policy or practice of such agency not to enforce the departure of aliens in a particular category (18 NYCRR § 360-3.2(j)(1)(ii)).

PRUCOL status includes aliens on whose behalf an immediate relative petition has been approved, and members of their families covered by the petition, who are entitled to voluntary departure and whose departure the federal immigration agency does not contemplate enforcing (18 NYCRR § 360-3.2(j)(1)(ii)(e)).

The Documentation Guide for Citizenship and Immigrant Eligibility for Health Coverage in New York State, revised March 3, 2008, page 9, lists a Form "I-797 indicating I-130 Relative Petition has been approved" is documentation for PRUCOL, a public benefits eligibility category.

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).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were eligible to enroll in the Essential Plan, effective March 1, 2016, and not eligible for Medicaid.

On April 19, 2016, you spoke with NYSOH's Account Review Unit and requested a telephone hearing to review the preliminary eligibility determination that was prepared when you updated your account on that date. However, NYSOH had previously redetermined your eligibility for the Essential Plan on February 20, 2016 based on a system generated review of your account.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, the full issue under review is whether, on February 20, 2016, you were properly determined eligible for the Essential Plan, effective March 1, 2016.

The application that was submitted on November 10, 2015 and again on April 19, 2016 listed an annual household income of \$0.00 and the eligibility determinations issued on those dates relied upon that information.

According to your application, you are in a four-person household. You will not be filing taxes in 2016.

The Essential Plan is provided through NYSOH to individuals who are lawfully present non-citizens who are ineligible for Medicaid or Child Health Plus as a result of their immigration status, and have a household income that is between 0% and 200% of the FPL. Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size.

On the date of your November 10, 2015 application, the relevant FPL was \$24,250 for a four-person household. Since an annual income of \$0.00 is 0% of the 2015 FPL and the 2016 FPL, you meet the financial eligibility criteria for both the Essential Plan and Medicaid.

As of January 1, 2016, legal permanent residents who were receiving Medicaid through NY State, but were not eligible for Medicaid under federal law due to being in the first five years of their permanent residency, must now receive coverage through the Essential Plan. The record indicates that NYSOH determined that you were in the first five years of your qualified immigration status and, thus, not eligible for Medicaid

However, you testified and provided documentation that you are a permanent Resident Alien with a valid Resident Alien card, and have been a permanent resident since January 4, 1990. Further, you testified that you intend on staying in the United States under your current status as a resident alien.

As such, those portions of the February 21, 2016, March 21, 2016 and April 20, 2016 eligibility determination finding that you were within the first five years of your qualified immigration status and, thus, not eligible for Medicaid were incorrect. Therefore, those portions of the February 21, 2016, March 21, 2016 and April 20, 2016 eligibility determination notices are RESCINDED to the extent that they relate to your eligibility, as is the February 22, 2016 disenrollment notice.

Your case is RETURNED to NYSOH to fully reinstate your eligibility for Medicaid and your enrollment in your Medicaid Managed Care plan, effective March 1, 2016 and continuing.

Decision

The February 21, 2016, March 21, 2016 and April 20, 2016 eligibility determination notices are RESCINDED only as they relate to your eligibility for Medicaid.

The February 22, 2016 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to fully reinstate your eligibility for Medicaid and your enrollment in your Medicaid Managed Care plan, effective March 1, 2016 and continuing, and to notify you accordingly.

Effective Date of this Decision: December 8, 2016

How this Decision Affects Your Eligibility

You were improperly found eligible for the Essential Plan on the basis of your immigration status.

Your case is being sent back to NYSOH to reinstate your Medicaid eligibility and Medicaid Managed Care enrollment, effective March 1, 2016. NYSOH will notify you once this has been completed.

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 21, 2016, March 21, 2016 and April 20, 2016 eligibility determination notices are RESCINDED as they relate to your eligibility for Medicaid.

The February 22, 2016 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to fully reinstate your eligibility for Medicaid and your enrollment in your Medicaid Managed Care plan, effective March 1, 2016 and continuing, and to notify you accordingly.

You were improperly found eligible for the Essential Plan on the basis of your immigration status.

Your case is being sent back to NYSOH to reinstate your Medicaid eligibility and Medicaid Managed Care enrollment, effective March 1, 2016. NYSOH will notify you once this has been completed.

Legal Authority

We are issuing this determination in accordance with 45 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).

A Copy of this Decision Has Been Provided To:

