



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

Notice of Decision

Decision Date: December 2, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009243

[REDACTED]

Dear [REDACTED],

On November 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 28, 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.

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: December 2, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009243



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 (NYSOH) as of April 28, 2016, because you are not lawfully present in the United States?

Procedural History

On February 13, 2016, changes were made to your NYSOH account. That same day, a copy of your employment authorization card was also uploaded to your account.

On February 14, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. The notice also directed you to submit documentation of your immigration status before May 13, 2016.

Also on February 14, 2016, NYSOH issued a notice of enrollment confirmation confirming your enrollment in an Essential Plan 1, beginning March 1, 2016.

On February 28, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible to enroll in coverage through NYSOH because verification documents showed that you are not lawfully present.

Also on February 28, 2016, NYSOH issued a cancellation notice stating that your coverage in your Essential Plan was ending March 1, 2016.

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On April 13, 2016, your NYSOH account was updated.

On April 14, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible to enroll in coverage through NYSOH because verification documents showed that you were not lawfully present.

On April 27, 2016, your NYSOH account was updated. That same day, NYSOH issued a preliminary eligibility determination stating that you were not eligible to enroll in coverage through NYSOH.

Also on April 27, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination, insofar as it stated that you were not eligible to enroll in health insurance through NYSOH.

On April 28, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible to enroll in coverage through NYSOH because verification documents showed that you were not lawfully present.

On November 8, 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 are appealing to be eligible to enroll in coverage through NYSOH.
- 2) The record reflects that you expect to file your 2016 taxes with a status of single.
- 3) Your application states that you are an immigrant non-citizen.
- 4) You testified that you have a "work permit."
- 5) You uploaded a copy of your Employment Authorization card on February 13, 2016 with the status of C-33, which was verified on February 26, 2016 (see document [REDACTED]).
- 6) The status of C-33, according to the United States Customs and Immigration Services (USCIS) and the Social Security Administration (SSA), refers to a status classified as Deferred Action on Childhood Arrivals.

- 7) The April 28, 2016 eligibility redetermination notice 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 27, 2016, which requested financial assistance, listed annual household income of \$23,400.00, consisting of income you earn from your employment. You testified that this amount was correct at the time, and is still correct.
- 9) Your application states that you live in Suffolk 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).

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).

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 qualified lawfully residing immigrants who had been excluded from access to the federal Medicaid program.

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 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)).

Lawful Presence

An individual with deferred action under the Department of Homeland Security's Deferred Action for Childhood Arrivals process cannot 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).

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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 coverage through NYSOH as of April 28, 2016 because you are not lawfully present in this country.

You provided a copy of your Employment Authorization card with the status of C-33, which was verified on February 26, 2016 (see document [REDACTED]).

After NYSOH verified your Employment Authorization card, 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 qualified 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 eligibility for participation in the Medicaid program through the state, as long as they meet the other requirements for the program.

Your application listed an annual household income of \$23,400.00, and the April 28, 2016 eligibility determination was based on that amount, which you confirmed was correct during the hearing. 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 \$23,400.00 is 196.97% 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 application.

Since your status as an immigrant non-citizen with a C-33 status makes you ineligible for any federally funded programs, and since your household income as of April 27, 2016 was over the Medicaid income limit, the April 28, 2016 eligibility determination stating that you were not eligible to enroll in coverage because you are not lawfully present was correct and is AFFIRMED.

Decision

The April 28, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: December 2, 2016

How this Decision Affects Your Eligibility

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

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 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 28, 2016 eligibility determination notice is **AFFIRMED**.

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

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A Copy of this Decision Has Been Provided To:

