



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

Notice of Decision

Decision Date: January 31, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009514

[REDACTED]

Dear [REDACTED],

On November 21, 2016, your daughter, [REDACTED], appeared by telephone on your behalf as your authorized representative at a hearing on your appeal of NYS Department of Health's April 16, 2016 eligibility determination regarding your request for retroactive Medicaid during the month of December 2015.

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 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.

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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 for retroactive Medicaid during the month of December 2015?

Procedural History

On April 14, 2016, NYSOH received your initial application for health insurance. In that application you requested help paying medical bills for the three month period prior to your application.

On April 16, 2016, NYSOH issued an eligibility determination notice that stated you were eligible for Medicaid coverage for the treatment of emergency medical conditions only (Emergency Medicaid), effective April 1, 2016, and were not eligible to enroll in a health plan. The reason stated was “[b]ecause your household income of \$0.00 is at or below the allowable income limit of \$16,395.00, you are eligible for Medicaid coverage. However, you are 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 April 16, 2016, NYSOH issued an eligibility determination notice with regard to your request for help with paying medical bills and determined you were eligible for Emergency Medicaid coverage for the treatment of emergency medical conditions only for the period of January 1, 2016 through January 31,

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2016. The reason stated was “[b]ecause your monthly household income of \$0.00 is at or below the allowable monthly income limit of \$1,367.00, you are eligible for Medicaid coverage. However, you are 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).”

Again on April 16, 2016, NYSOH issued an enrollment notice confirming that you had health insurance coverage with Medicaid and that no action was required because the type of Medicaid coverage you were eligible for does not require/allow you to enroll in a health plan.

On May 10, 2016, NYSOH prepared a preliminary eligibility redetermination and again found you eligible for Emergency Medicaid only, effective May 1, 2016.

On May 10, 2016, you and/or your authorized representative spoke to NYSOH’s Account Review Unit and appealed being denied retroactive Medicaid for the month of December 2015.

On May 11, 2016, NYSOH issued an eligibility redetermination notice that was consistent with the May 10, 2016 preliminary eligibility redetermination.

On November 21, 2016, your daughter, acting as your authorized representative, had a telephone hearing with a Hearing Officer from NYSOH’s Appeals Unit. Your authorized representative requested that the appeal be amended to a request for Medicaid Fee-For-Service at present time and not for retroactive Medicaid coverage in December 2015. The Hearing Officer agreed to amend the issue on appeal and receive testimony on that issue alone. 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 NYSOH application, you are single and will not be filing a 2016 federal tax return. No one else is listed on your NYSOH account.
- 2) According to your authorized representative, you did not incur any medical bills in December 2015 that she knows of, but rather are concerned about your current health insurance coverage with Emergency Medicaid.
- 3) According to your authorized representative, you are seeking to change your Medicaid coverage from Emergency Medicaid to Medicaid

Fee-For-Service so that you can be treated by your medical providers and get prescription medication for your medical condition.

- 4) According to your NYSOH account, you have no income. Your authorized representative testified that this is correct.
- 5) On March 9, 2016, you faxed in an "Identity Proofing Only" cover sheet signed by a navigator or certified application counselor, attached to which was an Identity Verification Form signed by you, a copy of your Pakistan passport, issued March 16, 2015 with a March 14, 2020 expiration date, and a copy of your visa issued October 14, 2015 with an October 20, 2020 expiration date and a November 11, 2015 admission date. The Visa type is listed as "R" with a class code of "B1/B2" with clearance received October 9, 2016 (see Document [REDACTED]).
- 6) Official notice is taken that, according to the U.S. Citizenship and Immigration Services (USCIS), your visa allows you to enter the U.S. as either a business visitor or a tourist. Your form I-94 lists which classification was given to you when you entered. From either a B1 or a B2, you may apply for an extension of stay by filing form I-539 and explaining your reason for the extension. You will be allowed to remain until the date you seek or until the USCIS makes a decision, whichever comes first.
- 7) According to your documentation, you have resided in New York State since November 11, 2015 and were 45 years of age at all times relevant. Your birth date on your NYSOH application is listed as "[REDACTED]."
- 8) The record does not contain any information as to whether you were granted an extension to stay in the U.S.
- 9) Your NYSOH application states that you reside in Bronx County, New York.
- 10) Your NYSOH application lists your citizenship/immigration status as "Other," therefore, your residency status on your application could not be accessed and completed.
- 11) You responded on that application that the residence address information on your NYSOH application was your legal, fixed and permanent address.

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

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Applicable Law and Regulations

De Novo Review

NYSOH's 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).

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 is defined to mean (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 United States Code (USC) §1641): or (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission (45 CFR § 152.2).

Lawfully present immigrants who are eligible for the Essential Plan include qualified aliens in the five-year ban, persons Permanently Residing Under Color of Law (PRUCOL) and temporary non-immigrants meeting the residency requirements. Immigrants, who are pregnant or 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 the Essential Plan and will remain in Medicaid (45 CFR § 152.2(2) and (4)(i); 16 OHIP/ADM-01, New York's Basic Health Plan Blueprint, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

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.

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 application and as of the date of the hearing, 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

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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 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)).

Type "R" Visa – Class B1/B2

The "R" means "Regular" (as opposed to diplomatic or official). A person admitted in B-1 or B-2 classification will typically be granted 6 months' admission per year at a time. B-1 is for business, while B-2 is for pleasure. But, the period of admission is generally 6 months, either way.

Generally, the alien is granted a combined B-1/B-2 visa for one, three or ten years allowing him/her to stay six (6) months per year in the U.S. That person may be able to obtain an extension up to six (6) months. If he/she stays in the U.S. for one year, you must either leave the country or change your status.

The visa is permission to apply for admission to the U.S. A person can do so as long as it is valid. The validity period of the visa has no correspondence to the length of time a person may remain in the US during a single visit.

The period of authorized stay is governed by the person's I-94, which, if he or she enter the U.S. by air, will consist of a passport stamp plus his/her I-94 online record, which can be downloaded at [Department of Homeland Security Consent](#). The stamp and the electronic record should both state the date by which the person is required to leave the U.S.

Legal Analysis

The issue under review is whether NYSOH properly determined that you were eligible to enroll in Medicaid for emergency treatment only, effective April 1, 2016, and not eligible for Medicaid Fee-For-Service.

Initially, to be eligible for full Medicaid through NYSOH, you must have documents to prove your citizenship or immigration status. According to your NYSOH application of April 14, 2016, your citizenship/immigration status was listed as "Other" and, therefore, NYSOH determined that you were an otherwise

undocumented alien residing in the State of New York. As a result, the NYSOH April 16, 2016 and May 11, 2016 eligibility determination notices stating you were only eligible for Emergency Medicaid were issued.

Although your May 10, 2016 appeal reflects that you requested review for retroactive eligibility for Medicaid for December 2015, your authorized representative requested to amend the appeal to changing your eligibility for Emergency Medicaid to Medicaid Fee-For-Service so that you can get treated by your medical providers and get the prescription medication you need for your medical condition. The Hearing Officer agreed to amend the appeal and received testimony relative to your eligibility for Medicaid Fee-For-Service.

Here, the lack of a notice of eligibility determination on the issue of Medicaid Fee-For-Service eligibility instead of Emergency Medicaid eligibility does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), an appellant is as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as they are to appeal an adverse notice of eligibility determination. Since your appeal for retroactive Medicaid for the month of December 2015 has been amended to your current eligibility for financial assistance, the April 16, 2016 eligibility determination notice in which you were found eligible for Emergency Medicaid and not Medicaid Fee-For-Service because of your immigration status remains at issue.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference needs to be granted to that notice. Therefore, the issue under review is whether you were properly found eligible for Emergency Medicaid as of April 1, 2016 on the basis that you are an undocumented alien and, therefore, did not qualify for Medicaid Fee-For-Service.

For purposes of this analysis, you are in a one-person household.

The application that was submitted on April 14, 2016, listed an annual household income of \$0.00 and the eligibility determination relied upon that information.

According to your application, you are in a one-person household. This is because you are a single individual who did not expect to file federal income 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.

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On the date of your application, the relevant FPL was \$11,880.00 for a one-person household. Since an annual income of \$0.00 is 0% of the 2016 applicable FPL, you meet the financial eligibility criteria for both the Essential Plan and Medicaid.

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.

However, based on the record as developed, it is reasonable to conclude that you are here on a regular, "R," visa as a tourist because you do not work and have no income. Your R visa only allows you to remain in the U.S. for up to 6 months or, if you stay for over one year, you must leave the U.S. or apply for an extension to stay. According to your documentation, you were admitted to the U.S. on November 11, 2015. It is unclear from the record whether you filed for an extension to stay, whether one was granted, or if you remain in the United States illegally.

Further, based on your authorized representative's testimony, the applications you provided, and the immigration documentation you provided, 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 visitor, and proof of identity shows. Your residency status could not be confirmed because your immigration status on your application is listed as "Other," which prevented the residency questions from appearing for you to answer.

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 and proof of immigration status as a temporary visitor.

As such, NYSOH's findings that because you are not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL)," you only qualify for Emergency Medicaid must stand.

Therefore, the April 16, 2016 eligibility determination notice and the May 11, 2016 eligibility redetermination notices must be AFFIRMED.

If your circumstances change, please contact NYSOH and update the information on your NYSOH account so that your account can be updated and eligibility for financial assistance may be redetermined.

Decision

The April 16, 2016 eligibility determination notice and the May 11, 2016 eligibility redetermination notices must be AFFIRMED.

Effective Date of this Decision: January 31, 2017

How this Decision Affects Your Eligibility

You were not eligible for Medicaid Fee-For-Service as of April 1, 2016 or May 1, 2016 because of your nonimmigrant status in the U.S.

You were eligible for Emergency Medicaid as of April 1, 2016.

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

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Summary

The April 16, 2016 eligibility determination notice and the May 11, 2016 eligibility redetermination notices must be **AFFIRMED**.

You were not eligible for Medicaid Fee-For-Service as of April 1, 2016 or May 1, 2016 because of your nonimmigrant status in the U.S.

You were eligible for Emergency Medicaid as of April 1, 2016.

If your circumstances change, please contact NYSOH and update the information on your NYSOH account so that your account can be updated and eligibility for financial assistance may be redetermined.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

