



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

## Notice of Decision

Decision Date: December 9, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009660

[REDACTED]

Dear [REDACTED],

On November 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 17, 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 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: December 9, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009660

[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 your daughter ([REDACTED]) was eligible to enroll in the Essential Plan, effective March 1, 2016, and not eligible for Medicaid?

## Procedural History

On February 7, 2015, NYSOH found your daughter ([REDACTED]) eligible for Medicaid effective February 1, 2015. The determination was based on your attested household income of \$30,160.00. She was subsequently enrolled in a Medicaid Managed Care plan.

On February 16, 2016, NYSOH received your update application for health insurance.

On February 17, 2016, NYSOH issued a notice of eligibility determination, stating that your daughter was eligible to enroll in the Essential Plan, with no monthly premium, effective March 1, 2016. She no longer qualified for Medicaid effective February 29, 2016. The notice stated she qualified for the Essential Plan because her income was less than the allowable income limit and she was in the first five years of her qualified immigration status or she was living in the United States under the color of law.

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That same day an enrollment confirmation notice was issued confirming your daughter's enrollment in the Essential Plan 3 with medical, dental, and vision for \$0.00 per month starting March 1, 2016.

On May 17, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as your daughter was no longer eligible for coverage under Medicaid.

On November 22, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to 15 days, to allow you to submit a copy of your daughter's Permanent Resident card.

On December 2, 2016, the Appeals Unit received the front copy of your daughter's Permanent Resident card (Appellant's Exhibit 1).

## **Findings of Fact**

A review of the record supports the following findings of fact:

- 1) You are seeking insurance for daughter ( [REDACTED] )
- 2) Your application states that you will be filing taxes with a filing status of married filing jointly and claiming two dependents on your tax return.
- 3) You testified that your daughter has a permanent resident card.
- 4) You testified your daughter has obtained the status of a Lawful Permanent Resident in February, 2014.
- 5) The copy of your daughter's Lawful Permanent resident card shows the category of FX2, which according to the Department of Homeland Security is in reference to a "child of a lawful permanent resident, new arrival." (Appellant's Exhibit 1).
- 6) The Lawful Permanent Resident Card you provided for your daughter states she has been a resident since February 8, 2014. (Appellant's Exhibit 1).
- 7) The application that was submitted on February 16, 2016, which requested financial assistance, listed annual household income of \$30,908.80.

- 8) You testified the dentist your child was seeing for dental work does not accept the Essential Plan, and only accepts Medicaid.

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).

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).

### 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 your daughter (██████████) was eligible to enroll in the Essential Plan with \$0.00 premium, effective March 1, 2016, and not eligible for Medicaid.

The application that was submitted on February 16, 2016, listed an annual household income of \$30,908.80 and the eligibility determination relied upon that information.

According to your application, you are in a four-person household. You expect to file your 2016 income taxes as married filing jointly and will claim two dependents on that tax return.

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 application, the relevant FPL was \$24,250.00 for a four-person household. Since an annual income of \$30,909.00 is 127.46% of the 2015 FPL and 127.96% of the 2016 FPL, you meet the financial eligibility criteria for both the Essential Plan and Medicaid.

However, you testified that your daughter is a lawful permanent resident, and has had permanent resident status since February 2014 or approximately two years

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as of the date of your February 16, 2016 application. The documentation you provided to NYSOH, show's based on your daughter's Lawful Permanent resident has a category of FX2, which according to the Department of Homeland Security is in reference to a "child of a lawful permanent resident, new arrival." The card further shows she has been a resident since February 8, 2014 (Appellant's Exhibit 1).

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. Therefore, because your daughter is in the first five years of permanent residency, NYSOH properly determined that she does not meet the non-financial requirements for Medicaid.

Since your daughter meets the non-financial and financial requirements for the Essential Plan, NYSOH properly determined her to be eligible for Essential Plan 3 coverage with \$0.00 premium.

Therefore, since the February 17, 2016, eligibility determination properly stated that, based on the information you provided, your daughter was eligible for the Essential Plan with \$0.00 premium responsibility effective March 1, 2016, it was correct and is AFFIRMED.

## **Decision**

The February 17, 2016 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** December 9, 2016

## **How this Decision Affects Your Eligibility**

Your daughter remains eligible for the Essential Plan with \$0.00 premium responsibility effective March 1, 2016.

Your daughter is not eligible for Medicaid.

## **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.

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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 17, 2016 eligibility determination is AFFIRMED.

Your daughter remains eligible for the Essential Plan with \$0.00 premium responsibility effective March 1, 2016.

Your daughter is not eligible for Medicaid.

### **Legal Authority**

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

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**A Copy of this Decision Has Been Provided To:**

