

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

Notice of Decision

Decision Date: February 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010503

[REDACTED]

Dear [REDACTED],

On December 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 30, 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).

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Decision

Decision Date: February 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010503



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 Emergency Medicaid, and not the Essential Plan, effective May 1, 2016?

Procedural History

On April 18, 2016, NYSOH received an update to your application for health insurance.

On April 19, 2016, NYSOH issued an eligibility determination notice, based on the information contained in the April 18, 2016 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective May 1, 2016. To finalize your eligibility, you were directed to provide immigration documentation by July 17, 2016.

On April 20, 2016, NYSOH issued an enrollment notice confirming your selection of an Essential Plan 4, together with vision and dental coverage, as of April 19, 2016. The notice also stated that your Essential Plan coverage would be effective May 1, 2016.

On April 27, 2016, NYSOH received an Employment Authorization Card reflecting a Category Code of "C33," valid from June 5, 2014 through June 4, 2016.

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On April 29, 2016, NYSOH redetermined your eligibility based on the information contained in your application as of April 29, 2016.

On April 30, 2016, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective May 1, 2016.

On May 23, 2016, NYSOH received an update to your application for health insurance.

On May 25, 2016, NYSOH issued an eligibility determination notice, based on the information contained in the May 23, 2016 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective June 1, 2016. To finalize your eligibility, you were requested to provide immigration documentation by August 22, 2016.

Also on May 25, 2016, NYSOH issued an enrollment notice confirming your selection of an Essential Plan 4, together with vision and dental coverage, as of May 24, 2016. The notice also stated that your Essential Plan coverage would begin effective June 1, 2016.

Finally, on May 25, 2016, NYSOH issued a disenrollment notice confirming that your Medicaid fee-for-service coverage would end effective May 31, 2016.

On June 24, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as you were found eligible for emergency Medicaid during the month of May 2016, rather than the Essential Plan.

On October 17, 2016, NYSOH received a Notice of Action (Form I-797C) issued to you by Dept. of Homeland Security (USCIS) on August 11, 2016.

On November 18, 2016, NYSOH received an updated Employment Authorization Card reflecting a Category Code of "C33," valid from August 11, 2016 through August 10, 2018.

On December 12, 2016, NYSOH 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 testified that you are appealing only your eligibility.

- 2) You testified, and your application reflects, that you reside with your spouse and your child.
- 3) Your application states you will be filing your 2016 taxes as married filing jointly. You will claim your child as a dependent on that application.
- 4) On April 18, 2016, you were found eligible for enrolled the Essential Plan for a limited time, pending receipt of immigration documentation by July 17, 2016. At that same time, you enrolled in an Essential Plan 4, with dental and vision coverage, effective May 1, 2016.
- 5) On April 27, 2016, you provided to NYSOH a copy of your Employment Authorization Card, which reflected a category code of C33.
- 6) The status of C33, 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.
- 7) The application that was submitted on April 18, 2016, which requested financial assistance, listed an annual household income of \$0.00, consisting of income you earn from employment. You testified that this amount was correct at the time. This application stated that you are an immigrant non-citizen.
- 8) You testified that during the month of May 2016, you believed you ought to have been eligible to enroll in the Essential Plan, rather than having been found for emergency Medicaid.
- 9) You testified that you incurred approximately \$3,000.00 in medical bills during the month of May 2016 relating to a physical you received along the accompanying lab work.

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

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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).

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>).

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)).

The guide, "Key to I-766/I-688B, Employment Authorization Documents (EADs)", defines certain codes on the USCIS Employment Authorization Documents" (08 MA/033, dated December 1, 2008, and as amended). It confirms that a person who has category code of "(c)(33)" has PRUCOL status for Medicaid and Child Health Plus only (*id.*).

Medicaid

Medicaid can be provided 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 that is at or below 138% of the federal poverty level for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), NY Soc. Serv. Law § 366(1)(b)).

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

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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. 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 (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

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 \$20,160.00 for a three-person household (80 Federal Register 3236, 3237).

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)).

To get treatment for an emergency medical condition, 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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you eligible for emergency Medicaid and not the Essential Plan effective May 1, 2016.

NYSOH issued an eligibility determination on April 19, 2016, finding you eligible for coverage under the Essential Plan for a limited time, pending the receipt of

proof of your immigration status by July 17, 2016. You enrolled in an Essential Plan with coverage to begin effective May 1, 2016.

In response to NYSOH request for proof of your immigration status, on April 27, 2016, you provided to NYSOH a copy of your I-766 Employment Authorization Card. On April 29, 2016, this information was verified and an application was submitted to NYSOH on your behalf. That application listed an annual household income of \$0.00 and reflected that you were an immigrant non-citizen.

As a result, NYSOH issued an eligibility determination notice on April 30, 2016 stating that you were eligible for Medicaid for the coverage of emergency medical conditions only. Accordingly, your Essential Plan coverage was terminated effective May 1, 2016.

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.

Therefore, NYSOH was correct in finding you not eligible for coverage under the Essential Plan.

However, NY State has consistently recognized persons with Deferred Action status within the accepted meaning of "*PRUCOL alien*"; even though the federal government has not. 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 the lawfully residing immigrants who had been excluded from access to the federal Medicaid program.

Since your current Deferred Action status does confer PRUCOL status for individuals seeking Medicaid eligibility, we may review whether you met the financial criteria for Medicaid.

You are in a three-person household. You expect to file your 2016 income taxes as married filing jointly and will claim your child as a dependent on that tax return.

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 (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your applications, the relevant FPL was \$20,160.00 for a one-person household. Since \$0.00 is 0.00% of the 2016 FPL,

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NYSOH should have found you eligible for full Medicaid benefits, rather than Medicaid for the coverage of emergency medical conditions only.

Accordingly, the April 30, 2016 eligibility determination notice is MODIFIED to state that you were eligible for full Medicaid benefits effective May 1, 2016.

Your case is RETURNED to effectuate the changes to your account noted above.

All determination issued by NYSOH on or after April 30, 2016 are not affected by the findings of this Decision.

Decision

The April 30, 2016 eligibility determination notice is MODIFIED to state that you were eligible for full Medicaid benefits effective May 1, 2016.

Your case is RETURNED to effectuate the changes to your account noted above.

Effective Date of this Decision: February 7, 2017

How this Decision Affects Your Eligibility

You are eligible for full Medicaid benefits effective May 1, 2016.

You are not eligible for the Essential Plan.

All determination issued by NYSOH on or after April 30, 2016 are not affected by the findings of this Decision.

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.

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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 30, 2016 eligibility determination notice is MODIFIED to state that you were eligible for full Medicaid benefits effective May 1, 2016.

Your case is RETURNED to effectuate the changes to your account noted above.

You are eligible for full Medicaid benefits effective May 1, 2016.

You are not eligible for the Essential Plan.

All determination issued by NYSOH on or after April 30, 2016 are not affected by the findings of this Decision.

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:

