



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

Notice of Decision

Decision Date: January 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012019

[REDACTED]

[REDACTED]

On December 2, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's September 3, 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.

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Decision

Decision Date: January 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012019

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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 eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective September 1, 2016?

Procedural History

On August 5, 2016, NYSOH received your completed application for health insurance.

On August 6, 2016, NYSOH issued an eligibility determination notice, based on your August 5, 2016 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective August 1, 2016. The notice stated you were also eligible for additional benefits through Medicaid. The notice asked that you provide immigration documentation to prove your immigration status by November 3, 2016. The determination was based on your attested household income of \$16,200.00.

Also on August 6, 2016, NYSOH issued an enrollment confirmation notice confirming your enrollment in the Essential Plan 3, with \$0.00 premium per month starting August 1, 2016.

On August 29, 2016, NYSOH received your immigration documentation in the form of an expired "J1" Visa. See [REDACTED].

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Your immigration documentation was verified on September 2, 2016.

On September 3, 2016, a disenrollment notice was issued terminating your Essential Plan 3 effective September 30, 2016.

Also on September 3, 2016, an eligibility determination notice was issued finding you eligible for Medicaid for the treatment of emergency medical conditions only. The determination was effective September 1, 2016. The notice stated this was because your household income of \$16,200.00 was below the income limit for Medicaid. 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.

On September 15, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as you were not eligible for coverage under the Essential Plan but only eligible for emergency Medicaid.

On December 22, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and remained open for 15 days to allow you time to provide proof of your current immigration status. On January 10, 2017 NYSOH Appeals Unit received a fax containing a copy of your marriage certificate. No other documentation was received and the record is now closed.

Findings of Fact

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

- 1) The record reflects that your August 5, 2016 application stated you expect to file your 2016 taxes with a status of single and you will claim no dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are a non-immigrant Visa Holder.
- 4) The record supports on August 29, 2016, you uploaded a copy of your "J 1" visa with an expiration date of December 30, 2015.
- 5) The status of J-1, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as an Exchange Visitor.

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- 6) The application that was submitted on August 5, 2016, which requested financial assistance, listed annual household income of \$16,200.00, consisting of income you earn from employment. You testified that this amount was correct at the time.
- 7) You testified you do not currently have an open application with USCIS.
- 8) You testified that you believe you should be eligible to enroll in the Essential Plan as previously determined by NYSOH.
- 9) Your application states that you live in Kings County.

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).

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.

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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 applications, 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)).

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)).

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)).

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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 ([REDACTED] [REDACTED]), and have the requisite category code, to be PRUCOL (08 OHIP/INF-4, dated August 4, 2008)).

The guide, “Key to [REDACTED], 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 “J 1” if the individual does not pass the residency review they are eligible for emergency Medicaid (*id.*).

Legal Analysis

The only issue under review is whether NYSOH properly determined that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective September 1, 2016.

On August 6, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan for a limited time, effective August 1, 2016. Your eligibility was contingent on you providing documentation of your immigration status by November 3, 2016.

You then uploaded a copy of your immigration documentation on August 29, 2016. The documentation received was in the form of a “J-1” visa with an expiration date of December 30, 2015. The status of J-1, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as an Exchange Visitor.

As a result, NYSOH issued an eligibility determination notice on September 3, 2016, finding you eligible for Medicaid for the treatment of emergency medical conditions only. The determination was effective September 1, 2016. The notice stated this was because your household income of \$16,200.00 was below the income limit for Medicaid. The notice further explained 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.

To be eligible for full Medicaid and Essential Plan participation through the NYSOH, you must have documents to prove your citizenship or immigration status. Since the documentation you provided is currently expired, NYSOH is unable to verify your immigration status for purposes of determining your eligibility for public benefits.

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Based on your testimony and the application you provided on August 5, 2016, NYSOH determined you meet the criteria provided by statute for the treatment of Emergency Medical conditions, as your income, proof of identity, and state residence shows.

Accordingly, the September 3, 2016, eligibility determination notice properly found you to be ineligible for the Essential Plan and only eligible for the treatment of Emergency Medical conditions through Medicaid it is correct and is AFFIRMED.

Should your immigration status change, or you receive a newly issued identification card you may submit that documentation and reapply to NYSOH.

Decision

The September 3, 2016, eligibility determination is AFFIRMED.

Effective Date of this Decision: January 13, 2017

How this Decision Affects Your Eligibility

You are not eligible for the Essential Plan because NYSOH is unable to verify your immigration status without valid issued information.

You are eligible for the Emergency treatment of medical conditions under Medicaid.

Should your immigration status change, or you receive a newly issued identification card you may submit that documentation and reapply to NYSOH.

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:
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- By fax: 1-855-900-5557

Summary

The September 3, 2016, eligibility determination is AFFIRMED.

You are not eligible for the Essential Plan because NYSOH is unable to verify your immigration status without valid issued information.

You are eligible for the Emergency treatment of medical conditions under Medicaid.

Should your immigration status change, or you receive a newly issued identification card you may submit that documentation and reapply to NYSOH.

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:

