



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

Notice of Decision

Decision Date: March 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012134

[REDACTED]

Dear [REDACTED]

On January 18, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 16, 2016 eligibility redetermination 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: March 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012134



Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health properly determine that, as of October 1, 2016, you were ineligible to enroll in health insurance because you are not lawfully present?

Procedural History

On August 20, 2016, NY State of Health (NYSOH), issued an eligibility determination notice stating that you were conditionally eligible for the Essential Plan, effective as of October 1, 2016. The notice stated that additional information was required to confirm your eligibility and directed you to provide immigration status documentation before November 17, 2016.

On September 8, 2016, NYSOH received documentation regarding your immigration status; which was verified by NYSOH on September 15, 2016 (see Document [REDACTED]).

On September 16, 2016, NYSOH issued an eligibility determination stating that you were not qualified to enroll through NYSOH because your verification documents show that you are not lawfully present.

Also on September 16, 2016, NYSOH issued a cancellation notice, stating that your Essential Plan coverage would end effective October 1, 2016. This was because you were no longer eligible to enroll in health insurance through NYSOH.

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On September 21, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the September 16, 2016 eligibility redetermination notice insofar as you were found ineligible for health insurance through NYSOH.

On January 18, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was held open until February 2, 2017 for you to submit proof of your immigration status. On January 20, 2017, you submitted an I-797-Notice of Action, which was made part of the record as "Appellant's Exhibit A" (see Document [REDACTED]). No further documentation was received by February 2, 2017, and the record was closed that same day.

Findings of Fact

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

- 1) You are applying for health insurance through NYSOH for yourself.
- 2) According to your August 19, 2016 application, you expected to file a 2016 federal income tax return with a filing status of married filing jointly and would claim three dependents. You attested to an annual household income of \$41,800.00. You testified that this was correct at that time.
- 3) On September 8, 2016, NYSOH received a copy of your employment authorization card, which showed an immigration status of C-33. This document was verified by NYSOH on September 15, 2016 (see Document [REDACTED]).
- 4) On January 20, 2017, you submitted an I-797-Notice of Action from Department of Homeland Security, United States Citizenship and Immigration Services (USCIS). That notice, dated May 5, 2015, stated that the I-130 immigrant petition "Approval Notice, Section: Husband or wife of U.S. Citizen, 201 (b) INA" had been approved (see Appellant's Exhibit A).

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

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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).

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)).

PRUCOL status includes aliens on whose behalf an immediate relative petition has been approved, and members of their families covered by the petition, who are entitled to voluntary departure and whose departure the federal immigration agency does not contemplate enforcing (18 NYCRR § 360-3.2(j)(1)(ii)(e)). The Documentation Guide for Citizenship and Immigrant Eligibility for Health Coverage in New York State, revised March 3, 2008, page 9, lists a Form "I-797 indicating I-130 Relative Petition has been approved" is documentation for PRUCOL, a public benefits eligibility category.

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.*).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were ineligible for to enroll in health insurance because you are not lawfully present.

To be eligible for health insurance through NYSOH, you must have documents demonstrating your citizenship or immigration status.

The sole basis given in the September 16, 2016 notice of eligibility determination that you were ineligible to enroll in health coverage through NYSOH was because you are not lawfully present.

The employment authorization documentation that you submitted on September 8, 2016 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, based on the information given to NYSOH at the time, NYSOH was correct in finding you not eligible for coverage under the Essential Plan.

However, the record reflects that on January 20, 2017, you submitted an I-797-Notice of Action from Department of Homeland Security, United States Citizenship and Immigration Services (USCIS). That notice, dated May 5, 2015, stated that the I-130 immigrant petition “Approval Notice, Section: Husband or wife of U.S. Citizen, 201 (b) INA” had been approved (see Appellant’s Exhibit A).

Since a Form I-797 indicating that an I-130 Relative Petition had been approved is sufficient documentation to prove PRUCOL status, NYSOH improperly found you ineligible for health coverage through NYSOH on the basis that you were not lawfully present.

Therefore, the September 16, 2016 eligibility determination and cancellation notices must be RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility as of September 16, 2016, on the basis of your PRUCOL status, and being in a five-person household with an expected annual income of \$41,800.00.

Decision

The September 16, 2016 eligibility determination and cancellation notices are RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility as of September 16, 2016, on the basis of your PRUCOL status, and being in a five-person household with an expected annual income of \$41,800.00.

Effective Date of this Decision: March 3, 2017

How this Decision Affects Your Eligibility

The September 16, 2016, eligibility determination and cancellation notices have been cancelled.

You will receive a new eligibility determination from NYSOH reflecting your eligibility for financial assistance as of September 16, 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 September 16, 2016, eligibility determination and cancellation notices are RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility as of September 16, 2016, on the basis of your PRUCOL status, and being in a five-person household with an expected annual income of \$41,800.00.

The September 16, 2016, eligibility determination and cancellation notices have been cancelled.

You will receive a new eligibility determination from NYSOH reflecting your eligibility for financial assistance as of September 16, 2016

Legal Authority

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

A Copy of this Decision Has Been Provided To:

