



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

## Notice of Decision

Decision Date: March 10, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012241

[REDACTED]

Dear [REDACTED],

On January 20, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 7, 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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## Decision

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NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012241



## 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 and your spouse were not eligible to enroll in coverage through NY State of Health because you and your spouse were not considered lawfully present in the US?

## Procedural History

On February 11, 2016, NYSOH received your updated application for health insurance.

On February 12, 2016, NYSOH issued an eligibility determination notice, based on your February 11, 2016 application, stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. The notice stated that you and your spouse were not eligible for Medicaid because your income was over the allowable income limit for that program. The notice further stated that you needed to submit documentation of immigration status for you and your spouse by May 11, 2016 so that your eligibility could be confirmed.

On February 13, 2016, NYSOH issued a notice of enrollment confirmation confirming enrollment in an Essential Plan for you and your spouse, beginning on March 1, 2016.

On July 6, 2016, NYSOH received copies of you and your spouse's I-766 Employment Authorization Cards each reflecting a category code of "C33."

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These documents were reviewed and verified on July 11, 2016 as valid proof of you and your spouse's immigration status.

On July 12, 2016, NYSOH issued a cancellation notice stating that you and your spouse's coverage in the Essential Plan was ending effective July 31, 2016.

On July 29, 2016, NYSOH received your updated application for health insurance.

On July 30, 2016, NYSOH issued a notice based on your application for health insurance dated July 29, 2016. The notice stated that you and your spouse were not eligible for Medicaid, Child Health Plus, the Essential Plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. The notice also stated that you and your spouse were not eligible to enroll in a qualified health plan. This was because you and your spouse's "verification documents show not lawfully present."

On August 1, 2016, your NYSOH account was updated.

On August 2, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were not eligible to enroll in coverage through NYSOH because verification documents showed that you and your spouse were not lawfully present.

On September 6, 2016, your NYSOH account was updated.

On September 7, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were not eligible to enroll in coverage through NYSOH because verification documents showed that you and your spouse were not lawfully present.

On September 27, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as you and your spouse were not eligible for coverage under the Essential Plan because you were not lawfully present.

On January 20, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing Spanish Interpreter # [REDACTED] interpreted. 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 and the record reflects that you expect to file your 2016 taxes with a status of married filing jointly and you will claim four dependents on that tax return.
- 2) You are seeking insurance for you and your spouse.
- 3) Your application states you and your spouse are immigrant non-citizens.
- 4) You uploaded copies of your and your spouse's Employment Authorization cards on July 6, 2016 each with the status of C-33, which were verified on July 11, 2016.
- 5) 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.
- 6) You testified that you and your spouse currently have "working visa permits."
- 7) The application that was submitted on September 6, 2016, which requested financial assistance, listed annual household income of \$40,000.00, consisting of \$21,000.00 in income you earn from employment and \$19,000.00 your spouse earns from employment. You testified that this amount was correct at the time and is still correct.
- 8) The September 7, 2016 eligibility determination notice found that the verification documentation you submitted to NYSOH showed that you and your spouse were not lawfully present, and therefore were not eligible for advance premium tax credits, cost sharing reductions, Medicaid, the Essential Plan, Child Health Plus, or to purchase a qualified health plan at full cost.
- 9) You are requesting that you and your spouse's eligibility be redetermined for the Essential Plan.
- 10) Your application states that you live in ██████████ 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).

### Qualified Immigrants Transitioned to the Essential Plan

In New York 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).

### 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, that was the 2016 FPL, which is \$24,300.00 for a four-person household (81 Fed. Reg. 4036).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

### Qualified Health Plan

To enroll in a qualified health plan (QHP) through the Marketplace, an applicant must be a citizen or national of the United States or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

### 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.*).

## **Legal Analysis**

The only issue under review is whether NYSOH properly determined that you and your spouse were not eligible to enroll in coverage through NYSOH, because you and your spouse are not considered lawfully present in this country.

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On February 12, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. Your eligibility was contingent on you providing documentation of you and your spouse's immigration status.

On July 6, 2016, you provided to NYSOH copies of you and your spouse's I-766 Employment Authorization Cards. On July 11, 2016, this information was verified and an application was submitted to NYSOH on your behalf. That application listed an annual household income of \$40,000.00 and reflected that you and your spouse were immigrant non-citizens.

As a result, NYSOH issued an eligibility determination notice stating that you and your spouse were not qualified to enroll in coverage through NYSOH because the documentation you provided showed that you and your spouse were not lawfully present.

Your Employment Authorization documentation states you and your spouse are immigrant non-citizens with C-33 status. The status of C-33, according to the United States Customs and Immigration Services and Social Security Administration, 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.

In addition, while individuals who have been determined to be qualified aliens and 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, this is not the case for persons who received Deferred Action status.

Therefore, NYSOH was correct in finding you and your spouse 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 and your spouse met the financial criteria for Medicaid.

Your application listed annual household income of \$40,000.00, and the September 7, 2016 eligibility determination was based on that amount, which you

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confirmed was correct during the hearing. In determining an individual's eligibility for Medicaid, the determination is based on the FPL for the applicable budget period used to determine an individual's eligibility. On the date of your application, the relevant FPL was \$24,300.00 for a four-person household. An income of \$40,000.00 is 164.60% of the applicable FPL. As the income limit for Medicaid is 138% of the FPL, you and your spouse were not eligible for Medicaid at the time of your application.

Finally, federal regulations require that a person seeking enrollment in a qualified health plan through the NYSOH have United States citizenship or satisfactory or immigration status. Under the federal regulations, individuals with Deferred Action for Childhood Arrivals status are not considered to be lawfully present for the purposes of obtaining coverage in a qualified health plan through NYSOH.

Accordingly, the September 7, 2016 eligibility determination notice properly found you and your spouse to be ineligible for the Essential Plan or to enroll in a qualified health plan based on you and your spouse not being lawfully present. However, you and your spouse's ineligibility for Medicaid is properly based on your annual household income being over the limit for that program, not your legal presence.

## **Decision**

The September 7, 2016 eligibility determination is **AFFIRMED**.

**Effective Date of this Decision:** March 10, 2017

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

You and your spouse are not eligible for the Essential Plan or enrollment in a QHP because you and your spouse are not lawfully present.

Although you and your spouse qualify as PRUCOL aliens for state-based Medicaid, you are not eligible for Medicaid at this time because your household income is over the maximum allowable income limit.

## **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.

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).

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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The September 7, 2016 eligibility determination is **AFFIRMED**.

You and your spouse are not eligible for the Essential Plan or enrollment in a QHP because you and your spouse are not lawfully present.

Although you and your spouse qualify as a PRUCOL aliens for state-based Medicaid, you are not eligible for Medicaid at this time because your household income is over the maximum allowable income limit.

### **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:**

