



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: AP000000012452

[REDACTED]

Dear [REDACTED],

On January 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 20, 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

Decision Date: February 7, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012452

[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 you were eligible to enroll in the Essential Plan, effective October 1, 2016, and not eligible for Medicaid?

## Procedural History

On September 19, 2016, NYSOH received your updated application for health insurance.

On September 20, 2016, NYSOH issued a notice of eligibility determination, stating that you are eligible to enroll in the Essential Plan, with no monthly premium, effective October 1, 2016. You qualified for the Essential Plan because your income was less than the allowable income limit and you were in the first five years of your qualified immigration status or you are living in the United States under the color of law.

On October 7, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determinations insofar as it stated that you were not eligible for Medicaid.

On January 24, 2017, 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.

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## Findings of Fact

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

- 1) You are seeking insurance for yourself.
- 2) You testified that you will be filing taxes with a filing status of single and claiming no dependents on your tax return.
- 3) The application that was submitted on September 19, 2016, which requested financial assistance, listed annual household income of \$13,587.96. You testified that your annual income for 2016 was \$14,067.96.
- 4) You testified that you anticipate taking deductions for tuition on your 2016 tax return, however, you were not sure of the value of the deductions you will be claiming.
- 5) You testified that you filed your 2015 tax return as a United States resident for tax purposes and will file your 2016 tax return as a United States resident for tax purposes.
- 6) You testified that you are a non-immigrant visa holder.
- 7) You testified that you have been present in the United States since January 2010.
- 8) You submitted a copy of a United States visa with issue date August 4, 2010 and expiration date August 3, 2015. The visa indicates class F1, which is a full-time student visa.
- 9) You submitted your Social Security card with an issue date of August 17, 2011 which indicates that the card is valid for work only with Department of Homeland Security authorization.
- 10) You submitted an I-797B Notice of Action dated April 17, 2016. This Notice of Action indicates that the petition for you to be granted an O1 visa was granted.
- 11) You submitted a copy of a United States visa with issue date June 3, 2016 and expiration date February 28, 2019. The visa indicates class O1, which is a non-immigrant temporary worker visa granted to an alien who possesses extraordinary ability in the sciences, arts, education, business, or athletics.

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12) You submitted an I-94 detailing your arrivals and departures from the United States from August 11, 2011 to September 4, 2016.

13) You testified that you are seeking to be found eligible for Medicaid rather than the Essential Plan, as you have been lawfully present in the United States for more than five years.

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 \$11,770.00 for a one-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

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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 application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

### 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 you were eligible to enroll in the Essential Plan, effective October 1, 2016, and not eligible for Medicaid.

The application that was submitted on September 19, 2016 listed an annual household income of \$13,587.96 and the eligibility determination relied upon that information.

According to your testimony, you are in a one-person household. You expect to file your 2016 income taxes as single and will claim no 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.

The 2015 FPL for a one-person household was \$11,770.00 and the 2016 FPL for a one-person household was \$11,880.00. Since an annual income of \$13,587.96

is 115.45% of the 2015 FPL and 114.38% of the 2016 FPL, you meet the financial eligibility criteria for both the Essential Plan and Medicaid.

You testified that your annual income for 2016 was \$14,067.96, which is 119.52% of the 2015 FPL and 118.42% of the 2016 FPL. Therefore, based on your testimony, you continue to meet the financial eligibility criteria for both the Essential Plan and Medicaid.

As of January 1, 2016, lawful 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 immigrations status, must now receive coverage through the Essential Plan.

The record reflects that you are a lawfully present non-immigrant visa holder. Therefore, because you are not a lawful permanent resident, NYSOH properly determined that you do not meet the non-financial requirements for Medicaid.

Since you meet the non-financial and financial requirements for the Essential Plan, NYSOH properly determined you to be eligible for Essential Plan coverage.

Therefore, since the September 20, 2016, eligibility determination properly stated that, based on the information you provided, you were eligible for the Essential Plan effective October 1, 2016, it was correct and is AFFIRMED.

## **Decision**

The September 20, 2016 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** February 7, 2017

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

You remain eligible for the Essential Plan.

You are 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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P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The September 20, 2016 eligibility determination is AFFIRMED.

You remain eligible for the Essential Plan.

You are 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:**

