



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

Notice of Decision

Decision Date: January 30, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012929

[REDACTED]

[REDACTED]

[REDACTED]

On January 9, 2017, you and your Attorney appeared by telephone at a hearing on your appeal of NY State of Health's October 30, 2016 and January 6, 2017 eligibility determination notices.

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 Date: January 30, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000012929

[REDACTED]

[REDACTED]

Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly determine that you and your spouse were eligible for Medicaid for the treatment of emergency medical conditions only effective October 28, 2016?

Did NYSOH properly disenroll your child from his Medicaid Managed Care plan for failure to provide a Social Security Number effective February 1, 2017?

Procedural History

On September 21, 2015, NY State of Health received you and your spouse's application for financial assistance with your health insurance.

On September 22, 2015, an eligibility determination notice was issued finding you and your spouse conditionally eligible for Medicaid effective September 1, 2015. The determination was based on the condition you provide documentation to confirm your Immigration Status and Social Security Number before December 20, 2015.

On September 22, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Medicaid Managed Care plan effective September 1, 2015.

On March 23, 2016, you uploaded citizenship documents for you and your spouse in the form of a letter from U.S. Citizenship and Immigration Services (See Document: [REDACTED]).

On March 30, 2016, you and your spouse's eligibility were redetermined.

On March 31, 2016, an eligibility redetermination notice was issued finding you eligible to enroll in the Essential Plan with additional benefits through Medicaid. You no longer qualified for Medicaid effective April 1, 2016. Your spouse was found conditionally eligible for the Essential Plan with additional benefits through Medicaid effective April 1, 2016. You were asked to provide documentation confirming your spouse's Immigration Status before April 18, 2016. The notice explained you and your spouse qualified for the Essential Plan with no monthly premium because the household income you listed in your application of \$0.00 was below the income limit for that program, and you were in the first five years of your qualified immigration status or living in the United States under the color of law (PRUCOL).

On March 31, 2016, a disenrollment notice was issued terminating your and your spouse's Medicaid Managed Care plan effective March 31, 2016. The notice stated this was because you were no longer eligible to remain enrolled in your current health insurance.

Also on March 31, 2016, an enrollment confirmation notice was issued confirming your and your spouse's enrollment on March 30, 2016 in the Essential Plan 4 with no monthly premium effective April 1, 2016.

On July 9, 2016, an eligibility determination notice was issued finding you and your spouse eligible to enroll in the Essential Plan for a limited time effective August 1, 2016. The notice stated NYSOH was checking federal data sources to confirm your immigration status, and you would be contacted if you need to send in proof of an eligible immigration status.

On August 5, 2016, an eligibility determination notice was issued finding you and your spouse eligible to enroll in the Essential Plan for a limited time effective September 1, 2016. The determination was based on you and your spouse providing Social Security Numbers to NYSOH and your spouse providing proof of immigration status by October 6, 2016.

On October 27, 2016 NYSOH issued a disenrollment notice stating that your spouse's coverage through the Essential Plan would end effective October 31, 2016.

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Also on October 27, 2016, NYSOH issued a cancellation notice stating that your coverage through the Essential Plan would end effective November 1, 2016.

On October 29, 2016, NYSOH redetermined you and your spouse's eligibility and made a preliminary eligibility determination finding you both eligible for Medicaid for the treatment of emergency medical conditions only effective October 28, 2016. The determination further found your child conditionally eligible for Medicaid effective October 1, 2016.

On October 29, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you and your spouse determined no longer eligible for coverage under the Essential Plan because you were not lawfully present.

On October 30, 2016, NYSOH issued an eligibility determination notice based on the October 29, 2016 application stating that you and your spouse were eligible for Medicaid for the treatment of emergency medical conditions only effective October 28, 2016. The notice stated this was because you and your spouse were not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL). The determination further found your child conditionally eligible for Medicaid effective October 1, 2016. The determination requested you provide proof of your child's Social Security Number by December 29, 2016 and proof of his Immigration Status by January 13, 2017.

On November 8, 2016, Aid to Continue through the length of your appeal was granted by NYSOH and you and your spouse were enrolled into the Essential Plan 4 effective November 1, 2016.

A Hearing was scheduled for December 15, 2016 with a Hearing Officer from NYSOH's Appeals Unit. The hearing on that date was adjourned to January 9, 2017 in order for your appointed Attorney Representative to receive the evidence packet provided by NYSOH.

On January 6, 2017, an eligibility determination notice was issued finding your child no longer eligible for health insurance through NYSOH effective February 1, 2017. The notice stated this was because you did not provide information to confirm your child's Social Security Number.

On January 9, 2017 you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During your hearing you amended your original appeal to include your child who was determined ineligible for his Medicaid Managed Care plan as of February 1, 2017 for failing to provide proof of his Social Security Number. The record was developed during the hearing and closed at the end of the proceeding.

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On January 20, 2017 your child's Social Security number was added to his NYSOH account.

On January 21, 2017 NYSOH issued an eligibility determination notice stating that your child was conditionally eligible for Medicaid, effective February 1, 2016. His eligibility was conditioned on you providing proof of his immigration status by April 20, 2017.

Also on January 21, 2017 an enrollment confirmation notice was issued stating that he was eligible for Medicaid through NYSOH and that he was enrolled in his Medicaid Managed Care plan.

Findings of Fact

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

- 1) You are seeking insurance for yourself, your spouse, and your child.
- 2) Your application states that you will be filing taxes with a filing status of married filing jointly and claiming one dependent on your tax return.
- 3) You testified that you and your spouse are Immigrant non-citizens who have Employment Authorization cards with the status of C14.
- 4) You provided documentation in the form of your and your spouse's Employment Authorization cards on August 12, 2016. See Documents 
- 5) Both cards indicate the status of C14 is valid from April 26, 2016 through February 5, 2018.
- 6) You testified that you recently obtained C14 status from U.S. Citizenship and Immigration Services on April 26, 2016.
- 7) The application that was submitted on March 30, 2016, which requested financial assistance, listed annual household income of \$0.00.
- 8) The record indicates that your child was added to your NYSOH account as applying for insurance on September 30, 2016. The application that was submitted that day indicates that he was an immigrant non-citizen and did not have a Social Security Number because you were in the process of applying for one.

- 9) You testified that you did not know your child was going to be disenrolled from his Medicaid Managed Care plan until you received the notice dated January 6, 2017.
- 10) On November 22, 2016, your child's Social Security Number and card was added to your NYSOH account. See Document: [REDACTED].
- 11) On October 15, 2016, you uploaded documents pertaining to your child's Immigration Status [REDACTED], and [REDACTED]. There is no indication that these documents have been reviewed or verified by NYSOH.
- 12) On January 20, 2017, a NYSOH representative updated your child's Social Security number in your account and your child was reenrolled into his Medicaid Managed Care plan with a February 1, 2017 effective date.

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).

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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 (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

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 \$20,160.00 for a three-person household (81 Fed. Reg. 4036).

Deferred Action

The category of C-14 designated on an Employment Authorization Card refers to individuals granted deferred action. (See 08 MA/033
Found here: <http://health.state.nyenet/docs/2008gis/08ma033.pdf>
<http://health.state.nyenet/docs/2008gis/08ma033att.pdf>)

PRUCOL

The term “*PRUCOL alien*” refers to an alien who is permanently residing in the United States with the “*knowledge and permission or acquiescence*” of the federal immigration agency and whose departure from the U.S. the agency does not contemplate enforcing. An alien is considered as one whose departure the federal immigration agency does not contemplate enforcing if it is the agency’s policy or practice not to enforce the departure of aliens in a particular category, and the alien falls within that category; or, based on all the facts and circumstances of the case, it appears that the federal immigration agency is permitting the alien to reside in the U.S. indefinitely. This category includes (i) aliens granted deferred action status, and (l) any other alien living in the United States with the knowledge and permission or acquiescence of the federal

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immigration agency and whose departure such agency does not contemplate enforcing (18 NYCRR §360-3.2(i)-(l)(1)(ii)).

Definition of Lawfully Present

Lawfully present means, an individual with deferred action status, except individuals with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process (45 CFR §§ 155.20, 152.2 (4)(vi)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were eligible for Medicaid for the treatment of emergency medical conditions only effective October 28, 2016.

On March 31, 2016, an eligibility redetermination notice was issued finding you eligible to enroll in the Essential Plan with additional benefits through Medicaid. Your spouse was found conditionally eligible for the Essential Plan with additional benefits through Medicaid effective April 1, 2016. The notice explained you and your spouse qualified for the Essential Plan with no monthly premium because the household income you listed in your application of \$0.00 was below the income limit for that program, and you were in the first five years of your qualified immigration status or living in the United States under the color of law (PRUCOL). You and your spouse were subsequently enrolled into the Essential Plan 4.

On October 30, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible for Medicaid for the treatment of emergency medical conditions only effective October 28, 2016. The notice stated this was because you and your spouse were not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL).

To be eligible for full Medicaid or Essential Plan participation through NYSOH, you must have satisfactory immigration status.

You testified that you and your spouse are Immigrant Non-Citizens. You testified, and provided documentation in the form of your and your spouse's Employment Authorization cards, indicating that you both have a status of C14. That status is valid from April 26, 2016 through February 5, 2018.

For the purpose of obtaining coverage through NYSOH, lawfully present means an individual with deferred action status, except individuals with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process.

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Since a category of C14 is in reference to a person who has been granted deferred action status, you and your spouse should have been found lawfully present for the purpose of obtaining financial assistance through NYSOH.

As of January 1, 2016, lawfully present individual 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 status, must now receive coverage through the Essential Plan. Your and your spouse's current status was valid as of April 26, 2016 and therefore you both were within the first five years of your qualified status and would not qualify for federal Medicaid.

Since you and your spouse meet the non-financial and financial requirements for the Essential Plan, NYSOH improperly determined you and your spouse eligible for Medicaid for the treatment of emergency medical conditions because you were not lawfully present.

Therefore, the October 30, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your and your spouse's coverage in the Essential Plan, as of October 28, 2016.

The second issue is whether NYSOH properly disenrolled your child from his Medicaid Managed Care plan for failure to provide a Social Security Number effective February 1, 2017.

During your hearing you testified you recently received a notice on January 6, 2017 stating that your child was no longer eligible for health insurance through NYSOH effective February 1, 2017 because you did not provide information to confirm your child's Social Security Number. As a result, his eligibility in his Medicaid Managed Care plan would be terminated.

On January 20, 2017, a NYSOH representative updated your child's Social Security number in your account and your child was reenrolled into his Medicaid Managed Care plan with a February 1, 2017 effective date.

Since your child's enrollment and eligibility was voluntarily corrected by NYSOH, NYSOH Appeals Unit does not need to reach the merits of whether or not your child was improperly disenrolled for failure to submit a Social Security number.

Accordingly, the January 6, 2017 eligibility determination notice is RESCINDED.

However, as a result of the January 20, 2017 update your child is only conditionally eligible for Medicaid contingent on you providing proof of his immigration status by April 20, 2017.

On October 15, 2016 you uploaded documents pertaining to your child's Immigration Status [REDACTED]. There is no indication that these documents have been reviewed or verified by NYSOH.

Therefore, your case is RETURNED to NYSOH to verify the documents you provided to NYSOH of his immigration status [REDACTED], and to ensure his coverage with his Medicaid Managed Care plan is continues while those documents are verified.

Decision

The October 30, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your and your spouse's coverage in the Essential Plan, as of October 28, 2016.

The January 6, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to verify the documents you provided to NYSOH of his immigration status [REDACTED], and to ensure his coverage with his Medicaid Managed Care plan is continues while those documents are verified.

Effective Date of this Decision: January 30, 2017

How this Decision Affects Your Eligibility

You and your spouse remain eligible for the Essential Plan 4 with \$0.00 premium effective April 1, 2016.

You and your spouse are not eligible for Medicaid.

Your child is to remain eligible and enrolled in his Medicaid Managed Care plan while his documentation is verified by 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.

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 October 30, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your and your spouse's coverage in the Essential Plan, as of October 28, 2016.

You and your spouse remain eligible for the Essential Plan 4 with \$0.00 premium effective April 1, 2016.

You and your spouse are not eligible for Medicaid.

The January 6, 2017 eligibility determination notice is RESCINDED.

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Your case is RETURNED to NYSOH to verify the documents you provided to NYSOH of his immigration status [REDACTED], and to ensure his coverage with his Medicaid Managed Care plan is continues while those documents are verified.

Your child is to remain eligible and enrolled in his Medicaid Managed Care plan while his documentation is verified by NYSOH.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]

[REDACTED]