



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: AP000000012975 AP000000015551

[REDACTED]

Dear [REDACTED],

On February 10, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's January 24, 2017 eligibility determination 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).

This page intentionally left blank.



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

Decision

Decision Date: March 10, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012975 AP000000015551



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 were not eligible to enroll in coverage through NY State of Health because you are not considered lawfully present?

Did NYSOH provide a timely eligibility determination notice in response to the income documentation you provided on December 6, 2016?

Procedural History

On July 20, 2016, NYSOH received your application for health insurance and a copy of your I-776 Employment Authorization Card reflecting a category code of "C33."

On July 27, 2016 your Employment Authorization Card was reviewed by NYSOH.

On July 28, 2016, NYSOH issued an eligibility redetermination notice based on information provided on July 27, 2016. The notice stated that you were not eligible for Medicaid, Child Health Plus, Essential plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. The notice also stated you were not eligible to enroll in a qualified health plan at full cost. This was because your "verification documents show not lawfully present."

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).

On September 10, 2016, NYSOH issued an eligibility redetermination notice, based on your September 9, 2016 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective October 1, 2016. The notice further stated you needed to submit documentation of your immigration status by December 8, 2016, and proof of your income by December 8, 2016 so your eligibility could be confirmed.

On September 10, 2016 NYSOH issued an enrollment confirmation notice stating that you were enrolled in the Essential Plan, effective October 1, 2016.

On September 27, 2016 NYSOH received your updated application for health insurance.

On October 7, 2016, NYSOH issued an eligibility redetermination notice, based on your September 27, 2016 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective October 1, 2016. The notice further stated you needed to submit documentation of your immigration status by December 8, 2016, and proof of your income by December 8, 2016 so your eligibility could be confirmed.

On October 31, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as your Essential Plan was not effective September 1, 2016 (AP000000012975).

On December 6, 2016 you uploaded copies of your paystubs to your NYSOH account.

On January 13, 2017 your application was rerun by NYSOH's System.

On January 14, 2017, NYSOH issued an eligibility determination notice based on the January 13, 2017 application stating that you were not eligible for Medicaid, Child Health Plus, 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 were not eligible to enroll in a qualified health plan at full cost. This was because you did not provide the information to confirm your Immigration Status and Income. Your eligibility would end effective February 1, 2017.

Also on January 14, 2017 NYSOH issued a disenrollment notice stating that your coverage in the Essential Plan would end on January 31, 2017 because you were no longer eligible to enroll in health insurance through NYSOH.

On January 23, 2017 an NYSOH representative reviewed your Employment Authorization card and submitted an application on your behalf.

On January 24, 2017 NYSOH issued an eligibility redetermination notice based on your updated application on January 23, 2017 stating you were not eligible for

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).

Medicaid, Child Health Plus, 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 were not eligible to enroll in a qualified health plan at full cost. The notice stated you were not eligible for Medicaid because the household income you provided of \$22,516.00 was over the allowable limit of \$16,395.00. The determination was effective February 1, 2017.

On February 5, 2017, you contacted NYSOH's Account Review Unit and requested an appeal because you believed NYSOH did not provide a timely notice of your eligibility (AP000000015551).

On February 10, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit for AP000000012975. During the hearing, you testified that you are appealing your ineligibility for coverage due to the determination that you were not lawfully present and NYSOH's failure to issue a timely determination. The Hearing Officer agreed to amend your hearing to also include AP000000015551. The record was developed during the hearing and held open for 15 days to allow you time to submit supporting documents showing your gross income for the month of January, 2017. NYSOH's Appeals Unit received your documents in the form of four paystubs on February 16, 2017 and have been incorporated into the record as Appellant's Exhibit 1. No other documents were received and the record closed as of February 25, 2017.

Findings of Fact

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

- 1) 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 an immigrant non-citizen.
- 4) You uploaded a copy of your Employment Authorization card on July 20, 2016 with the status of C-33, which was reviewed on July 27, 2016, and verified on September 9, 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) The application that was submitted on January 23, 2017 listed an annual household income of \$22,516.00 consisting of income you earn from your employment. You testified this amount was correct at the time.
- 7) You testified you are paid weekly, you receive \$16.00 per hour, and work approximately 35 hours a week.
- 8) You testified in the month of January, 2017 you made approximately \$1,600.00.
- 9) You provided documentation in the form of four paystubs with check dates of January 20, 2017, January 27, 2017, February 3, 2017, and February 13, 2017 in the gross amounts of \$560.00, \$556.00, \$556.00, and \$568.00 respectively.
- 10) The January 27, 2017 paystub lists a gross year to date of \$2,084.00.
- 11) You uploaded income documentation to NYSOH on December 6, 2016. At the time the paystubs were uploaded, your NYSOH application showed an annual household income of \$19,500.00.
- 12) On February 13, 2017, NYSOH representatives verified the paystubs you uploaded on December 6, 2016.
- 13) On February 13, 2017 someone with the username of [REDACTED] submitted three applications for health insurance; the first two applications listed a household income of \$16,640.00. The last application submitted that day listed an annual household income of \$0.00.
- 14) On February 14, 2017 NYSOH issued a notice stating the income information in your application does not match what NYSOH received from federal and state data sources. You were asked to provide proof of your income by February 28, 2017.
- 15) You testified that you believe NYSOH is incorrect in its statement that you are not lawfully present. You testified that you are here legally, and that you believe you should be eligible for health insurance coverage.
- 16) Your application states that you live in [REDACTED] 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 applications, that was the 2016 FPL, which is \$11,880.00 for a one-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).

Timely Notice of Medicaid Eligibility

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

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

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).

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 first issue under review is whether NYSOH properly determined that you were not eligible to enroll in coverage through NYSOH because you are not considered lawfully present.

On September 10, 2016, NYSOH issued an eligibility redetermination notice stating that you were eligible to enroll in the Essential Plan for a limited time contingent on you having satisfactory immigration status, effective October 1, 2016. You subsequently enrolled into a plan.

On October 31, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as your Essential Plan was not effective September 1, 2016.

On January 24, 2017, NYSOH issued an eligibility determination notice stating that you were no longer qualified to enroll in coverage through NYSOH because the documentation you provided showed that you were not lawfully present. You were disenrolled from your Essential Plan, effective January 31, 2017.

During your hearing, you requested that your appeal be amended to address your ineligibility for coverage due to not being lawfully present. Therefore, this decision will address your eligibility as stated in the January 24, 2017 eligibility determination notice.

Your employment authorization documentation that you submitted on July 20, 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.

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).

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 not eligible for coverage under the Essential Plan.

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 met the financial criteria for Medicaid.

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 application that was submitted on January 23, 2017 listed an annual household income of \$22,516.00 consisting of income you earn from your employment.

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 (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your applications, the relevant FPL was \$11,880.00 for a one-person household. Since \$22,516.00 is 189.53% of the 2016 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application

Financial eligibility for Medicaid can also be based on current monthly household income and family size.

You testified that in the month of January 2017 you received income of \$1,600.00. You were asked to provide income documentation of your monthly income for the month of January, 2017.

You submitted four paystubs with check dates of January 20, 2017, January 27, 2017, February 3, 2017, and February 13, 2017 in the gross amounts of \$560.00, \$556.00, \$556.00, and \$568.00 respectively. Even though you failed to submit the first two paystubs for the month of January 2017, your January 27, 2017 paystub lists a gross year to date of \$2,084.00. Therefore, absent the first two

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).

paystubs of January, we will assume that in the month of January 2017 you received \$2,084.00 in income from your job.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,367.00 per month.

Since your testimony of receiving \$1,600.00 in the month of January as well as your documentation showing a year to date of \$2,084.00 as of January 27, 2017 are over the allowable Medicaid limit of \$1,367.00 per month, you were not eligible for Medicaid on a monthly basis.

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 January 24, 2017 eligibility determination notice is AFFIRMED since it properly found you to be ineligible for the Essential Plan or QHP based on you not being lawfully present. However, your ineligibility for Medicaid is properly based on your annual household income being over the limit for that program, not your legal presence.

The second issue is whether NYSOH provided a timely eligibility determination notice in response to the income documentation you provided on December 6, 2016.

You submitted an application for health insurance on September 27, 2016 which listed an annual household income of \$19,500.00. As a result of that application, you were asked to provide documentation of your income by December 8, 2016.

On December 6, 2016 NYSOH received four paystubs to confirm your income information. At the time the paystubs were uploaded, your NYSOH application showed an annual household income of \$19,500.00.

On February 13, 2017 NYSOH representatives verified the paystubs you uploaded on December 6, 2016.

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the completed application. To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of the completed application to the date NYSOH notifies the applicant of its decision.

Even though NYSOH verification of the December 6, 2016 paystubs were outside of the 45-day window required under regulation, NYSOH issued a

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).

complete eligibility determination on January 24, 2017 based on a separate application that you submitted, which was 47 days after you submitted paystubs to complete your September 27, 2016 application.

Therefore, the January 24, 2017 eligibility determination notice was timely.

Furthermore, on February 13, 2017 someone with the username of [REDACTED] submitted three applications for health insurance; the first two applications listed a household income of \$16,640.00. The last application submitted that day listed an annual household income of \$0.00. [REDACTED] is not a username associated with an NYSOH representative and therefore the incomes that were entered into your application that day were not calculated by NYSOH as a result of the verification of your December 6, 2016 income documentation.

As a result of the updates made on February 13, 2017, NYSOH issued a notice stating the income information in your application does not match what NYSOH received from federal and state data sources.

Since you provided additional documentation to NYSOH Appeals Unit, your case is RETURNED to NYSOH to review and verify your income documentation you provided in response to the Hearing Officer's request ([REDACTED]) and provide an eligibility determination notice.

Decision

The January 24, 2017 eligibility determination notices are AFFIRMED.

The January 24, 2017 eligibility determination notice was timely.

Your case is RETURNED to NYSOH to review and verify your income documentation you provided in response to the Hearing Officer's request ([REDACTED]) and provide an eligibility determination notice.

Effective Date of this Decision: March 10, 2017

How this Decision Affects Your Eligibility

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

You are not eligible for Medicaid because your income is over the allowable income limit for that program.

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).

Your case is being sent back to NYSOH to review the income information you submitted after your hearing.

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

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).

Summary

The January 24, 2017 eligibility determination notices are AFFIRMED.

The January 24, 2017 eligibility determination notice was timely.

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

You are not eligible for Medicaid because your income is over the allowable income limit for that program.

Your case is RETURNED to NYSOH to review and verify your income documentation you provided in response to the Hearing Officer's request [REDACTED] and provide an eligibility determination notice.

Your case is being sent back to NYSOH to review the income information you submitted after your hearing.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

