



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

Notice of Decision

Decision Date: July 6, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015988

[REDACTED]

Dear [REDACTED],

On May 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 18, 2017 and February 19, 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: July 6, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000015988

[REDACTED]

Issue

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

Did NY State of Health properly determine you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective March 1, 2017, because you were not a citizen, qualified alien, or permanently residing in the United States under color of law?

Procedural History

On February 4, 2017, NYSOH received your updated applications for health insurance. Your applications indicated your immigration status was “other.”

On February 5, 2017, NYSOH issued an eligibility determination notice, based on your February 4, 2017 updated applications, stating you were eligible for Medicaid for the treatment of emergency medical conditions only, effective February 1, 2017. The notice further stated you were only eligible for emergency medical care services because you were not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

On February 7, 2017, NYSOH received your Employment Authorization Card with a category code of C-33. On February 17, 2017, NYSOH verified this document and updated your application for health insurance listing your immigration status as “immigrant non-citizen.”

On February 18, 2017, NYSOH issued an eligibility determination notice stating you were eligible to enroll in the Essential Plan with no monthly premiums,

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effective March 1, 2017. The notice stated that you were eligible for the Essential Plan because you were in the first five years of your qualified immigration status or you were PRUCOL.

On February 18, 2017, NYSOH received your updated application for health insurance. That application listed your immigration status as “other.” That day a preliminary eligibility determination was prepared finding you eligible for Medicaid for the treatment of emergency medical conditions only.

Also on February 18, 2017, you contacted NYSOH’s Account Review Unit and requested an appeal of that eligibility determination insofar as you were not found eligible for full Medicaid.

On February 19, 2017, NYSOH issued an eligibility determination notice, based on your February 18, 2017 updated application, stating you were eligible for Medicaid for the treatment of emergency medical conditions only, effective March 1, 2017. The notice further stated you were only eligible for emergency medical care services because you were not a citizen, qualified alien or PRUCOL.

On May 24, 2017, you had a telephone hearing with a Hearing Officer from NYSOH’s Appeals Unit. The record was developed during the hearing and held open to June 16, 2017, to allow you to submit supporting documents.

As of June 16, 2017, the Appeals Unit did not receive any documents from you and none were viewable in your NYSOH account. Therefore, the record was closed that same day and this decision is based on the record as developed at the time of the hearing.

Findings of Fact

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

- 1) According to your account, you were enrolled in a Medicaid Managed Care plan in 2016.
- 2) On October 20, 2016, you updated your application to renew your coverage for the upcoming coverage year. That application indicated your immigration status was “non-immigrant visa holder.” The application indicated your immigration documentation type was an “I-766 (Employment Authorization Card).”
- 3) You testified you have a “Deferred Action on Childhood Arrivals” (DACA) immigration status. You testified you have an Employment Authorization Card as documentation of your immigration status.

- 4) You testified you are not a visa holder, but you were advised by your Certified Application Counselor to use “non-immigrant visa holder” as your immigration status on your application because of your DACA status.
- 5) According to the eligibility determination notice issued on October 21, 2016, NYSOH found you eligible to enroll in the Essential Plan, effective November 1, 2016, because you were in the first five years of your qualified immigration status or because you were PRUCOL.
- 6) You testified, and your account confirms, you enrolled in an Essential Plan on October 20, 2016. Your coverage through this plan became effective on November 1, 2016.
- 7) You were disenrolled from your Medicaid Managed Care plan, effective October 31, 2016.
- 8) You testified you knew you were not eligible to enroll in the Essential Plan because of information you had read online indicating your DACA status only qualified you to receive Medicaid. You testified you updated your application on February 4, 2017 and changed your immigration status to “other”, because you did not want to remain enrolled in the Essential Plan and receive benefits you were not entitled to.
- 9) Based on the updated immigration status in your February 4, 2017 applications, NYSOH determined you eligible for emergency Medicaid only and you were disenrolled from your Essential Plan, effective February 28, 2017.
- 10) On February 7, 2017, you uploaded a copy of your Employment Authorization card with a category code of “C-33.”
- 11) 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.
- 12) According to your account, your Employment Authorization Card was verified by NYSOH on February 17, 2017 and your application was updated with an immigration status of “immigrant non-citizen.” Based on this change, NYSOH again determined you eligible for the Essential Plan.
- 13) You updated your application, again, on February 18, 2017, switching your immigration status back to “other.” NYSOH again determined you eligible for emergency Medicaid only, because you were not PRUCOL.

- 14) You testified, and your account confirms, since your Essential Plan coverage was terminated on February 28, 2017, you have only had emergency Medicaid Coverage.
- 15) You testified you are seeking full Medicaid eligibility based on your qualifying income and your DACA immigration status.
- 16) Your most recent application, filed on February 18, 2017, indicated you have an anticipated annual income for 2017 of \$9,600.00. You testified this amount is accurate and consists of [REDACTED] work you do.
- 17) You were directed to submit proof of your income by June 16, 2017, but the NYSOH Appeals Unit received no such documentation by that deadline and the record closed thereafter.
- 18) Your account confirms NYSOH accepted the \$9,600.00 attested income amount in your February 18, 2017 application and the February 18, 2017 eligibility determination was based on that information.
- 19) That application indicated you will file your 2017 tax return with a tax filing status of single and you will claim no dependents on that tax return.
- 20) Your applications indicate you live in [REDACTED].

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 2017 FPL, which is \$12,060.00 for a one-person household (82 Fed. Reg. 8831).

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).

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 issue under review is whether NYSOH properly determined you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective March 1, 2017, because you were not a citizen, qualified alien or permanently residing in the United States under color of law

According to your account, you were determined eligible to enroll in the Essential Plan based on your October 20, 2016 application indicating your immigration status was that of a “non-immigrant visa holder” and you enrolled in an Essential Plan, effective November 1, 2016. However, you testified you are not a visa holder, but you have an immigration status of “Deferred Action on Childhood Arrivals” (DACA).

According to the regulations, individuals with a DACA status are 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, based on your DACA immigration status, you were not eligible for the Essential Plan, because it is a federally funded program.

You testified you knew you were not eligible to enroll in the Essential Plan because of information you had read online indicating your DACA status only qualified you to receive Medicaid. You testified you updated your application on February 4, 2017 and changed your immigration status to “other”, because you did not want to remain enrolled in the Essential Plan and receive benefits you were not entitled to. As a result of this change in your application, NYSOH

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determined you eligible for emergency Medicaid only because, based on the information in your application, you were not a citizen, qualified alien or PRUCOL and you were subsequently disenrolled from your Essential Plan, effective February 28, 2017.

However, on February 7, 2017 you uploaded an Employment Authorization Card with the category code of C-33, which, according to the USCIS and SSA, is in reference to a DACA immigration status. According to your account, this documentation was verified by NYSOH on February 17, 2017 and the immigration status in your application was updated to “immigrant non-citizen.” Based on this change, NYSOH again determined you eligible for the Essential Plan. However, as discussed above, individuals with a DACA immigration status are not considered “lawfully present” under the federal definition, and, therefore, not eligible to enroll in the federally funded Essential Plan.

Therefore, the February 18, 2017 eligibility determination stating you were eligible to enroll in the Essential Plan, effective March 1, 2017, is not correct and must be RESCINDED.

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.

According to your account, your most recent application was submitted on February 18, 2017. This is after NYSOH had verified your Employment Authorization Card confirming you have a DACA immigration status. Since, according to the regulations, your Deferred Action status conferred PRUCOL status for the purposes of seeking Medicaid eligibility, NYSOH improperly found you ineligible for full Medicaid coverage because you were not a citizen, qualified alien, or PRUCOL.

Therefore, the February 19, 2017 eligibility determination notice stating you were eligible for Medicaid for the treatment of emergency medical conditions only, because you were not a citizen, qualified alien, or PRUCOL, effective March 1, 2017, is not correct and must be RESCINDED.

It is noted that although you were directed to submit documentation confirming your income for 2017 and you failed to comply with that directive, your account confirms that NYSOH accepted the attested income amount in your February 18, 2017 application, because the February 19, 2017 eligibility determination was based on that information. Accordingly, your case is RETURNED to NYSOH to redetermine your eligibility for Medicaid, as of February 18, 2017, based on a PRUCOL status utilizing the information in the February 18, 2017 application

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indicating you are in a one-person household with an anticipated annual income of \$9,600.00.

Decision

The February 18, 2017 eligibility determination is RESCINDED.

The February 19, 2017 eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for Medicaid, as of February 18, 2017, based on a PRUCOL status with a one-person household and an annual income of \$9,600.00.

Effective Date of this Decision: July 6, 2017

How this Decision Affects Your Eligibility

You qualify as a PRUCOL alien for the purposes of state-funded Medicaid.

This is not a final determination of your eligibility.

Your case is being returned to NYSOH to redetermine your eligibility for full Medicaid coverage based on your PRUCOL status and the income information in your February 18, 2017 application.

You will receive an updated eligibility determination from NYSOH.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace 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 Federal Marketplace. This must be done within 30 days of the

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Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

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 February 18, 2017 eligibility determination is RESCINDED.

The February 19, 2017 eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for Medicaid, as of February 18, 2017, based on a PRUCOL status with a one-person household and an annual income of \$9,600.00.

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 qualify as a PRUCOL alien for the purposes of state-funded Medicaid.

This is not a final determination of your eligibility.

You will receive an updated eligibility determination from NYSOH.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye b etumi ama wo obi a okyer e kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.