



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

Notice of Decision

Decision Date: July 28, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016296

[REDACTED]

Dear [REDACTED],

On June 6, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's December 14, 2016 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).

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Decision

Decision Date: July 28, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016296



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 your children were eligible for Medicaid coverage for the treatment of emergency medical conditions only effective December 1, 2016?

Procedural History

On June 29, 2016, NYSOH received your children's initial application for health insurance.

On June 30, 2016, NYSOH issued an eligibility determination notice based on your last application stating your two children were conditionally eligible for Medicaid, effective June 1, 2016. The notice requested you provide proof of their immigration status by September 27, 2016.

On June 30, 2016, you uploaded copies of your two children's visa documentation.

Your children were then enrolled in a Medicaid Managed Care plan effective August 1, 2016.

Your children's eligibility was redetermined by NYSOH on October 5, 2016.

On October 6, 2016, NYSOH issued a disenrollment notice terminating your children's Medicaid Managed Care plan effective October 31, 2016.

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On October 24, 2016, an eligibility determination notice was issued stating your two children were no longer eligible for health insurance through NYSOH effective November 1, 2016. The notice stated this was because you did not provide the immigration status information to confirm their eligibility.

On November 15, 2016, NYSOH received another copy of your children's visa documentation.

On November 22, 2016, NYSOH issued an eligibility determination notice stating your two children were conditionally eligible for Medicaid effective November 1, 2016.

Also on November 22, 2016, an enrollment notice was issued confirming your children's enrollment in a Medicaid Managed Care plan starting January 1, 2017.

On November 30, 2016, your children's immigration documentation was verified by a NYSOH representative.

On December 1, 2016, NYSOH issued a notice stating your children's enrollment in their Medicaid Managed Care Plan ended January 1, 2017. The notice stated this was because they were eligible for Medicaid coverage for the treatment of emergency medical conditions only.

Also on December 1, 2016, NYSOH issued an eligibility determination notice stating your children were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective January 1, 2017. The notice stated this was because they were not a citizen, qualified alien, or permanently residing in the United States under the color of law.

On December 14, 2016, NYSOH issued an eligibility determination notice stating your children were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective December 1, 2016. The notice stated this was because they are not a citizen, qualified alien, or permanently residing in the United States under the color of law.

On February 27, 2017, you spoke to NYSOH's Account Review Unit and appealed the determination that your children were found eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective December 1, 2016, and requested they be redetermined eligible for Medicaid, and allowed to enroll in a Medicaid Managed Care plan.

On June 6, 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 your two children.
- 2) You are seeking your two children be redetermined eligible for Medicaid and be allowed to enroll in a Medicaid Managed Care plan.
- 3) You testified that your children have United States visa's.
- 4) You uploaded copies of your children's visas on June 30, 2016, and November 15, 2016.
- 5) Your NYSOH account indicates a NYSOH representative verified your children's immigration documentation on November 30, 2016.
- 6) Your application states your children are non-immigrant visa holders.
- 7) Your NYSOH application and visa documents indicate that your children's visa falls under the F2 category which according to US Customs and Immigration Services is for foreign students and their dependents.
- 8) You testified you were a student with [REDACTED].
- 9) Your children's visa document states it was issued on September 5, 2013 and expires on September 3, 2018.
- 10) Your children entered the United States on [REDACTED].
- 11) You testified that you have no pending application before an immigration court.
- 12) The application that was submitted on December 13, 2016, which requested financial assistance, listed annual household income of \$11,142.82.
- 13) Your December 13, 2016, application states you expect to file your 2017 taxes with a status of married filing jointly, and you will claim two dependents on that return. You testified this was correct.
- 14) Your application states that you live in [REDACTED].

15) On July 21, 2017, NYSOH correct your account and redetermined your children's eligibility, finding them eligible for Medicaid effective, July 1, 2017.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

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.

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the federal poverty level (FPL) for the applicable family size (42 CFR § 435.118(c); New York State Department of Social Services Administrative Directive 13 OHIP/ADM-03).

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 one-person household (81 Fed. Reg. 4036).

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)).

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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 “F2” if the individual does not pass the residency review they are eligible for emergency Medicaid (*id.*).

Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment of bodily functions; or
- (c) Serious dysfunction of any bodily organ or part

(42 CFR § 435.930(c)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

Legal Analysis

The only issue under review is whether NYSOH properly determined that your two children were eligible for Medicaid coverage for the treatment of emergency medical conditions only effective December 1, 2016.

On June 30, 2016, NYSOH issued an eligibility determination notice stating that your two children were conditionally eligible for Medicaid, effective June 1, 2016. The notice requested you provide proof of their immigration status by September 27, 2016.

You then uploaded a copy of your children’s immigration documentation on June 30, 2016.

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In order to be eligible for full Medicaid benefits, a child must meet the financial and non-financial requirements of that program. There is no evidence in the record that your children would be ineligible for Medicaid based on the financial requirements. One of the non-financial requirements of Medicaid is to have satisfactory immigration status.

On December 14, 2016, NYSOH issued an eligibility redetermination notice stating your children were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective December 1, 2016. The notice stated this was because they are not a citizen, qualified alien, or permanently residing in the United States under the color of law.

However, the immigration documentation you provided shows that your children have a "F2" visa with an expiration date of September 3, 2018. The status of F2, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified for foreign students and their dependents.

After your June 6, 2017 telephone hearing, NYSOH redetermined your children's eligibility, finding them eligible for Medicaid on July 21, 2017, effective, July 1, 2017.

Since NYSOH has conceded the point that your children are eligible for Medicaid based on their current immigration status, which remained the same from the date of your June 30, 2016 initial application, a further discussion of the merits of your case is not necessary.

Therefore, the December 14, 2016, eligibility determination notice finding your children eligible for the treatment of emergency medical conditions only, effective December 1, 2016 is RESCINDED. Your case is RETURNED to NYSOH to ensure your children are enrolled in Medicaid fee for service effective December 1, 2016 and to assist you in choosing a Medicaid Managed Care plan for your children.

Decision

The December 14, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to ensure your children are enrolled in Medicaid fee for service effective December 1, 2016 and to assist you in choosing a Medicaid Managed Care plan for your children.

Effective Date of this Decision: July 28, 2017

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).

How this Decision Affects Your Eligibility

Your children are eligible for full Medicaid fee for service benefits effective December 1, 2016.

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 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):

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 can contact us in any of the following ways:

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

Summary

The December 14, 2016 eligibility determination notice is RESCINDED.

Your children are eligible for full Medicaid fee for service benefits effective December 1, 2016.

Your case is RETURNED to NYSOH to ensure your children are enrolled in Medicaid fee for service effective December 1, 2016 and to assist you in choosing a Medicaid Managed Care plan for your children.

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 مجاناً.

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।

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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&etumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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.

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