



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

## Notice of Decision

Decision Date: June 30, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016953

[REDACTED]

Dear [REDACTED],

On June 23, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 18, 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).

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
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## Decision

Decision Date: June 30, 2017

NY State of Health Account ID [REDACTED]  
Appeal Identification Number: AP000000016953



## Issue

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

Did NY State of Health (NYSOH) properly determine that you were eligible to enroll in an Essential Plan, instead of Medicaid, as of April 1, 2017?

## Procedural History

On March 17, 2017, you updated your NYSOH account. That day, a preliminary eligibility determination was prepared finding you eligible for the Essential Plan and ineligible for Medicaid.

Also on March 17, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not eligible for coverage under Medicaid.

Also on March 17, 2017, NYSOH received a copy of your I-776 Employment Authorization Card reflecting a category code of "C33" with an expiration date of June 9, 2017 (see Document [REDACTED]).

On March 18, 2017, NYSOH issued an eligibility determination notice, based on your March 17, 2017 updated application, stating that you were fully eligible to enroll in the Essential Plan, effective April 1, 2017. The notice stated that you were not eligible for Medicaid because you are in the first five years of your qualified immigration status or are living in the United States under the color of law (PRUCOL).

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On June 8, 2017, NYSOH received a copy of two bi-weekly paystubs dated April 26, 2017 and May 10, 2017 (see Document [REDACTED]).

On June 23, 2017, NYSOH received a renewed copy of your I-776 Employment Authorization Card reflecting a category code of "C33" with an expiration date of May 3, 2019 (see Document [REDACTED]).

On June 23, 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.

## **Findings of Fact**

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

- 1) According to your NYSOH account, you were enrolled in a Medicaid Managed Care plan through March 31, 2017.
- 2) According to your NYSOH account, you expect to file your 2017 taxes with a status of single and you will claim no dependents on that tax return.
- 3) You are seeking insurance for yourself as of April 1, 2017.
- 4) Your application states you are an immigrant non-citizen.
- 5) You testified that there is no option to list yourself with a C-33 status on the application.
- 6) You uploaded a copy of your I-776 Employment Authorization card on March 17, 2017 and June 23, 2017, both showing a status of "C-33."
- 7) 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 (DACA).
- 8) According to your NYSOH account, your citizenship documentation was not verified because your documentation did not reflect a "change in immigration status."
- 9) The application that was submitted on March 17, 2017, in which you requested financial assistance, listed annual household income of \$10,464.00 in earnings from your employment.

10) On June 8, 2017, you submitted two bi-weekly paystubs showing that, on May 11, 2017, you received \$342.78 in gross wages and, on April 27, 2017, you received \$279.12 in gross wages, which equals a projected annual income in 2017 of approximately \$8,084.70.

11) You testified that you believe NYSOH is incorrect in finding that you are eligible for the Essential Plan and not Medicaid. You testified that you believe you should be found eligible for Medicaid based on your citizenship status as DACA.

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

## **Applicable Law and Regulations**

### 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).

People who receive or are eligible for Medicaid are not eligible for APTC since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan for 12 months, with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid Social Security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. Generally, no person except a United States citizen, naturalized citizen, qualified alien, or person permanently residing in the United States under color of law

103

An individual with PRUCOL status is eligible for full Medicaid benefits (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2).

### Citizenship and Immigration Status

To enroll through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the United States and reasonably expecting 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)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible to enroll, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

Under federal law, certain individuals who enter the United States on or after August 22, 1996, are not eligible for any Federal means-tested public benefit, including federal Medicaid (8 U.S. Code § 1613(a)).

However, the New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 N.Y. 2d 418 [2001]), that New York must provide state-funded Medicaid to lawfully residing immigrants who had been excluded from access to the federal Medicaid program.

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

### Definition of Lawfully Present

An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process shall not be considered to be lawfully present for the purposes of obtaining coverage through NYSOH (45 CFR §152.2(8)).

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## Qualified Immigrants

In NY State, qualified immigrants who were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016 (New York's Basic Health Plan Blueprint, p. 19, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>). This category of qualified immigrants includes individuals lawfully admitted for permanent residence in the United States who are still in their first five years of permanent residency. (18 NYCRR § 349.3, 8 USC § 1613).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined you were eligible to enroll in Essential Plan coverage, instead of Medicaid, as of April 1, 2017.

On March 18, 2017, NYSOH issued an eligibility determination notice stating that you were fully eligible to enroll in the Essential Plan, effective April 1, 2017. The notice stated that you were not eligible for Medicaid because you are in the first five years of your qualified immigration status or are living in the United States under the color of law (PRUCOL).

One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. Under federal law, certain individuals who enter the United States on or after August 22, 1996, are not eligible for any Federal means-tested public benefit, including federal Medicaid.

However, the New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 N.Y. 2d 418 [2001]), that New York must provide state-funded Medicaid to lawfully residing immigrants who had been excluded from access to the federal Medicaid program.

On March 17, 2017 and June 23, 2017, you provided to NYSOH copies of your current I-766 Employment Authorization cards indicating a status of "C-33." According to the USCIS and SSA, a status of C-33 is classified as DACA.

According to your NYSOH account, your citizenship documentation was not verified because your documentation did not reflect a "change in immigration status." You testified that this option was not present on your applications.

Since your application did not show a change in your immigration status, NYSOH did not redetermine your eligibility to reflect your actual status and then issued an eligibility determination notice stating that you were qualified to enroll in the federally-funded Essential Plan, effective April 1, 2017, through NYSOH and not eligible for Medicaid because you are in the first five years of your qualified

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immigration status or are living in the United States under the color of law (PRUCOL).

However, your employment authorization documentation (I-766 Employment Authorization card) states you are an immigrant non-citizen with a C-33 status. The status of C-33 is classified as DACA by the USCIS and SSA. 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, therefore, are not recognized as eligible to receive federal funding under those programs.

While it is true that individuals who have been determined to be qualified aliens 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, it is not the case for persons who received Deferred Action status.

NY State has consistently recognized persons with Deferred Action status within the accepted meaning of “PRUCOL” alien. This category includes, aliens granted deferred action status, and, any other alien living in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure such agency does not contemplate enforcing. Such a finding would mean that New York Court of Appeals continues to recognize their eligibility for participation in the Medicaid program through the state, as long as they meet the other requirements for the program.

The application submitted on March 17, 2017 listed a one-person household size and an annual household income of \$10,464.00, and your submitted documentation reflected a projected lesser annual income.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$12,060.00 for a one-person household. Since \$10,464.00 is 86.77% of the 2017 FPL, you would be eligible for Medicaid on an expected annual income basis. The same is true using the lesser projected annual income based on your paystub submissions.

Based on the facts presented, and you meeting the financial and non-financial criteria applicable to your current status as an immigrant non-citizen with a C-33 status, you are eligible for participation through the NY Medicaid program.

Therefore, the March 18, 2017, eligibility determination notice finding you qualified for the Essential Plan was incorrect and must be MODIFIED to state you are fully eligible for Medicaid, effective April 1, 2017.

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NYSOH is directed to assist you, at your option, in enrolling in a Medicaid Managed Care plan as of March 17, 2017, the date of your application, with a May 1, 2017 enrollment start date, provided no medical claims from May 1, 2017 through June 30, 2017 have been processed under Medicaid Fee-For-Service.

In the alternative, NYSOH is directed to find you fully enrolled without condition in your Medicaid Managed Care plan, effective July ,1 2017, which enrollment is currently based on aid to continue.

In either event, NYSOH is to notify you of your Medicaid Managed Care plan enrollment and start date.

## **Decision**

The March 18, 2017, eligibility determination notice be MODIFIED to state you are fully eligible for Medicaid, effective April 1, 2017.

NYSOH is directed to assist you, at your option, in enrolling in a Medicaid Managed Care plan as of March 17, 2017, the date of your application, with a May 1, 2017 enrollment start date, provided no medical claims from May 2017 or June 2017 have been processed through Medicaid Fee-For-Service.

In the alternative, NYSOH is directed to find you fully enrolled without condition in your Medicaid Managed Care plan, effective July ,1 2017, which enrollment is currently based on aid to continue.

In either event, NYSOH is to notify you of your Medicaid Managed Care plan enrollment and start date.

**Effective Date of this Decision:** June 30, 2017

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

By this Decision, you are eligible for Medicaid through NYSOH, effective April 1, 2017.

At present, you have Medicaid Fee-For-Service coverage as of April 1, 2017 and Medicaid Managed Care coverage as of July 1, 2017, as aid to continue during the appeal process. Your enrollment will not be disturbed until your eligibility is updated by NYSOH. NYSOH will contact you to assist you in selecting your enrollment start date in your Medicaid Managed Care plan as stated in the above-noted options. NYSOH will then notify you once this has been done.

## **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):**

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

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Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

The March 18, 2017, eligibility determination notice be MODIFIED to state you are fully eligible for Medicaid, effective April 1, 2017.

NYSOH is directed to assist you, at your option, in enrolling in a Medicaid Managed Care plan as of March 17, 2017, the date of your application, with a May 1, 2017 enrollment start date, provided no medical claims from May 2017 or June 2017 have been processed through Medicaid Fee-For-Service.

In the alternative, NYSOH is directed to find you fully enrolled without condition in your Medicaid Managed Care plan, effective July ,1 2017, which enrollment is currently based on aid to continue.

In either event, NYSOH is to notify you of your Medicaid Managed Care plan enrollment and start date.

By this Decision, you are eligible for Medicaid through NYSOH, effective April 1, 2017.

At present, you have Medicaid Fee-For-Service coverage as of April 1, 2017 and Medicaid Managed Care coverage as of July 1, 2017, as aid to continue during the appeal process. Your enrollment will not be disturbed until your eligibility is updated by NYSOH. NYSOH will contact you to assist you in selecting your enrollment start date in your Medicaid Managed Care plan as stated in the above-noted options. NYSOH will then notify you once this has been done.

## **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。我们可以为您免费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)

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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. y&b&tumi 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.

### **שׂוֹדֵיִשׁ (Yiddish)**

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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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