



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

## Notice of Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017411

[REDACTED]

Dear [REDACTED],

On August 31, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 22, 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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## Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017411



## 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 spouse was not eligible to enroll in coverage through NYSOH as of March 1, 2017?

## Procedural History

On February 1, 2017, you updated your spouse's application for health insurance and submitted a copy of your spouse's I-766 Employment Authorization Card listing a category code of "C33."

On February 2, 2017, NYSOH issued an eligibility determination stating that your spouse was eligible to enroll in an Essential Plan for a limited time, effective March 1, 2017. The notice directed you to submit documentation of her immigration status by May 2, 2017 so that her eligibility could be confirmed.

On February 6, 2017, NYSOH verified your spouse's immigration documentation and deemed it to be valid proof of immigration status.

On February 7, 2017, NYSOH issued an eligibility determination notice based on information verified on February 1, 2017. The notice stated that your spouse was not eligible for Medicaid, Child Health Plus, Essential plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, or to enroll in a qualified health plan at full cost. That notice further stated that your spouse does not qualify for Medicaid because her household income was over the allowable income limit for that program. This eligibility was effective March 1, 2017.

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On March 28, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice, insofar as your spouse was not eligible to enroll in health insurance through NYSOH.

On May 10, 2017, NYSOH issued an eligibility determination notice, based on your spouse's May 9, 2017 updated application, stating that your spouse was not eligible for Medicaid, Child Health Plus, Essential plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, or to enroll in a qualified health plan at full cost. That notice further stated that your spouse does not qualify for Medicaid because her household income was over the allowable income limit for that program.

On August 31, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing 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, your spouse expects to file her 2017 taxes with a status of married filing jointly and will claim two dependents on that tax return.
- 2) You are seeking insurance for your spouse.
- 3) Your spouse's application states that she is an immigrant non-citizen.
- 4) You uploaded a copy of your spouse's Employment Authorization card on February 1, 2017, which listed the status of C-33, which was verified by NYSOH on February 6, 2017.
- 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 March 21, 2017, in which you requested financial assistance, listed annual household income of \$38,480.00, consisting of \$26,000.00 you receive in employment income and \$12,280.00 your spouse receives in employment income. You testified that, although your income has increased, this amount was correct at the time.

- 7) Your spouse's application that was submitted on March 21, 2017, listed a steady monthly income of \$3,206.67, consisting of \$2,166.67 you receive each month in employment income and \$1,040.00 your spouse receives each month in employment income.
- 8) You testified that you believe your spouse was found ineligible for health insurance [through NYSOH] due to an expired work authorization card. You have since uploaded your spouse's current work authorization card.
- 9) You testified that the "██████" status is your spouse's only immigration status.
- 10) Your spouse's application states that she lives in ██████████, New York.

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.

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 2017 FPL, which is \$24,600.00 for a four-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

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(42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

### Essential Plan

To enroll in the Essential Plan 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 (42 USC § 18001 et seq. (2010); 45 CFR § 155.305(e)).

### 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 that your spouse was not eligible to enroll in coverage through NYSOH as of March 1, 2017, because your spouse is not considered lawfully present.

On February 1, 2017, you updated your spouse’s application for health insurance and she was found eligible to enroll in the Essential Plan for a limited time, effective March 1, 2017. Your spouse’s eligibility was contingent on you providing documentation of her immigration status.

Also on February 1, 2017, you provided to NYSOH a copy of your spouse’s I-766 Employment Authorization card. On February 6, 2017, the information contained

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in that card was verified and an application was submitted to NYSOH on your spouse's behalf. The March 21, 2017 updated application listed an annual household income of \$38,480.00 and reflected that your spouse was an immigrant non-citizen.

As a result, NYSOH issued an eligibility determination notice stating that your spouse was not qualified to enroll in coverage through NYSOH because her household income is over the allowable income limit for Medicaid. Additionally, your spouse was re-determined to be ineligible for other NYSOH programs because of her immigration status.

Your spouse's employment authorization documentation states your spouse is an immigrant non-citizen with a [REDACTED] status. The status of C-33, according to USCIS and 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, therefore, are 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, NYSOH was correct in finding your spouse not eligible for coverage through NYSOH.

However, 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 spouse's current Deferred Action status does confer PRUCOL status as an individual seeking Medicaid eligibility through NYS, we may review whether she meets the financial criteria for Medicaid.

Your spouse She expects to file her 2017 income taxes as married filing jointly and will claim two dependents on that tax return. Therefore, your spouse is in a four-person household for purposes of this analysis.

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 spouse's application, the relevant

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FPL was \$24,600.00 for a four-person household. Since \$38,480.00 is 156.42% of the 2017 FPL, NYSOH properly found your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your spouse's application.

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

To be eligible for Medicaid, your spouse would need to meet the non-financial criteria and have a monthly gross household income no greater than 138% of the FPL, which is \$2,829.00 per month in 2017, for a four-person household. Since the record reflects that your spouse's household received \$3,206.67 in gross household income in May 2017, your spouse does not qualify for Medicaid on the basis of monthly income as of the date of her application.

Finally, federal regulations require that a person seeking enrollment in the Essential 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 the Essential Plan through NYSOH.

Accordingly, the March 22, 2017 eligibility determination notice properly found your spouse to be ineligible for the Essential Plan based on her not being lawfully present.

Additionally, your spouse's ineligibility for Medicaid is properly based on your annual household income being over the limit for that program, not her legal presence.

## **Decision**

The March 22, 2017 eligibility determination notice is **AFFIRMED**.

**Effective Date of this Decision:** September 6, 2017

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

Your spouse is not eligible for enrollment in the Essential Plan through NYSOH because she is not lawfully present.

Although your spouse qualifies as a PRUCOL alien for state-based Medicaid, she is not eligible for Medicaid at this time because her household income is over



the maximum allowable income limit on both an annual and monthly basis for that program.

If your spouse's annual gross household income or monthly gross household income decreases, you may update her application within 30 days of that change to see if your spouse is eligible for Medicaid in the future. NYSOH may require that you provide documentary proof of income at such time.

## **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 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).

## **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 March 22, 2017 eligibility determination notice is **AFFIRMED**.

Your spouse is not eligible for enrollment in the Essential Plan through NYSOH because she is not lawfully present.

Although your spouse qualifies as a PRUCOL alien for state-based Medicaid, she is not eligible for Medicaid at this time because her household income is over the maximum allowable income limit on both an annual and monthly basis for that program.

If your spouse's annual gross household income or monthly gross household income decreases, you may update her application within 30 days of that change to see if your spouse is eligible for Medicaid in the future. NYSOH may require that you provide documentary proof of income at such time.

## **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.

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

## **(Urdu) اردو**

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

## **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.

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**אידיש (Yiddish)**

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