



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

Notice of Decision

Decision Date: December 04, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018770

[REDACTED]

[REDACTED]

On August 31, 2017, your attorney, [REDACTED], appeared by telephone at a hearing on your appeal of NY State of Health's May 9, 2017 eligibility determination.

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: December 04, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018770

[REDACTED]

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 for Medicaid for the treatment of emergency medical conditions only, effective May 1, 2017?

Procedural History

On January 6, 2017, you updated your application for health insurance through NYSOH.

On January 7, 2017, NYSOH issued a notice of eligibility determination, stating that you were eligible to enroll in the Essential Plan, with no monthly premium, for a limited time, effective January 1, 2017. You qualified for the Essential Plan because your income was less than the allowable income limit and you were in the first five years of your qualified immigration status or permanently residing in the United States under the color of law (PRUCOL). The notice directed you to submit documentation of your immigration status by April 6, 2017.

Also on January 7, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan 4 with dental and vision coverage, and no monthly premium, beginning January 1, 2017.

On January 9, 2017 and January 25, 2017, documentation was uploaded to your NYSOH account.

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On January 31, 2017, NYSOH issued a notice stating that the documentation submitted was not sufficient to confirm the information in your application. The notice stated that you had until April 6, 2017 to submit documentation of your immigration status.

On April 11, 2017, NYSOH determined your eligibility.

On April 12, 2017, NYSOH issued notice of eligibility determination stating that you were not eligible to enroll in coverage through NYSOH, effective May 1, 2017, because you did not provide proof of your immigration status to confirm your eligibility.

Also on April 12, 2017, NYSOH issued a notice of disenrollment, stating that your enrollment in your Essential Plan 4 was ending, effective April 30, 2017, because you were no longer eligible to enroll in health insurance through NYSOH.

On May 8, 2017, your NYSOH account was updated. That same day, NYSOH prepared a notice of preliminary eligibility determination finding that you were eligible for Medicaid for the treatment of emergency medical conditions only, effective May 1, 2017.

Also on May 8, 2017 NYSOH's Account Review Unit processed a written appeal request, submitted by fax and received by NYSOH on May 5, 2017, which appealed the fact that you were not eligible for regular Medicaid coverage. Aid to Continue was also requested in the in the written appeal letter.

On May 9, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid for the treatment of emergency medical conditions only, effective May 1, 2017.

On June 20, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for the Essential Plan with no monthly premium for a limited time, effective May 1, 2017. This was because you had been granted Aid to Continue, pending the outcome of your appeal.

Also on June 20, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan 4, beginning May 1, 2017. This was also a result of your request for Aid to Continue.

On August 31, 2017, your attorney, [REDACTED], appeared at a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open through September 15, 2017 to allow your attorney time to submit a post-hearing memorandum.

On September 18, 2017, the Appeals Unit received a 28-page fax from your attorney.

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On September 28, 2017, NYSOH redetermined your eligibility for financial assistance.

On September 29, 2017, NYSOH issued a disenrollment notice, stating that your enrollment in an Essential Plan 4 was ending, effective September 30, 2017.

Also on September 29, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a Medicaid Managed Care plan, beginning October 1, 2017.

On October 1, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid, effective September 1, 2017.

Findings of Fact

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

- 1) Your application states that you will not be filing a 2017 tax return.
- 2) Your application states that you are in a household of one, with no dependents, and that you have no income.
- 3) Your May 8, 2017 application indicated that your citizenship/immigration status is "Other."
- 4) On May 5, 2017, NYSOH received several faxed documents from your attorney, including the following:
 - a. An Attorney Affirmation dated April 23, 2017 stating that your attorney, [REDACTED] called the Executive Office of Immigration Review's automated case information hotline on April 18, 2017, and that the hotline confirmed that [REDACTED] belongs to you, and that you are scheduled for a master hearing on [REDACTED] [REDACTED]
 - b. A copy of various pages from Department of Homeland Security "[REDACTED] Worksheet completed on March 5, 2014, which found that a credible fear of persecution was established, and that there was a "significant possibility the applicant's claim could be found credible in a full asylum or withholding of removal hearing" [REDACTED] [REDACTED]

- c. A copy of a Department of Homeland Security “Notice to Appear” stating that you were ordered to appear before an [REDACTED] because “you are an alien present in the United States who has not been admitted or paroled” and are therefore subject to removal from the United States. The notice ordered you to appear at an [REDACTED] on a date to be determined [REDACTED]
 - d. A copy of a “Notice of Hearing in Removal Proceedings” dated April 30, 2014 informing you that your case had been scheduled for a hearing on [REDACTED] at [REDACTED] before the Immigration Court in [REDACTED]
- 5) Your attorney alleged during the hearing that you should be considered PRUCOL because you are residing in the United States with the knowledge and acquiescence of the federal government, and that your departure is not contemplated for enforcement.
- 6) On July 17, 2017, a Notice of Hearing from the Executive Office of Immigration Review dated January 21, 2015 was uploaded to your NYSOH account. The notice stated that your original hearing for May 5, 2015 was canceled, and that your case was scheduled for a hearing on [REDACTED] at the [REDACTED]
- 7) After the hearing, your attorney submitted a 26-page post-hearing memorandum to the Appeals Unit, which alleged in part:
 - a. That you have been PRUCOL since 2014, when you were granted parole from a detention facility pending a removal hearing, and that you remain PRUCOL because your hearing is not yet complete, and there is no indication that your parole has been revoked;
 - b. That, pursuant to the [REDACTED] Court of Appeals decision in [REDACTED] you are eligible for full, state-funded, Medicaid;

This document is marked and entered into the record as “Appellant’s Exhibit One.”

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).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2016 FPL, which is \$11,880.00 for a one-household (80 Federal Register 3236, 3237).

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 (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

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;

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- (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)).

Qualified Immigrants Transitioned to the Essential Plan

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/downloads/ny-blueprint.pdf>). This category of qualified immigrants includes individuals who are lawfully present PRUCOL immigrants (NY Social Services Law §§ 366(1)(g) and 369-gg)).

The term "PRUCOL" refers to, "an alien who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the U.S. such agency does not contemplate enforcing. An alien will be considered as one whose departure the federal immigration agency does not contemplate enforcing if . . . it appears that the federal immigration agency is otherwise permitting the aliens to reside in the United States indefinitely or it is the policy of practice of such agency not to enforce the departure of aliens in a particular category" (18 NYCRR § 360-3.2(j)(1)(ii)).

However, not all PRUCOL immigrants are "lawfully present," as defined by the Affordable Care Act (42 CFR § 152.2). This includes individuals who are residing in the United States with the knowledge and permission or acquiescence of the US Citizenship and Immigration Services US Immigration and Customs Enforcement, and whose departure the US immigration agency does not contemplate enforcing. Immigrants who are not considered PRUCOL, but not "lawfully present," will remain in NY state-funded Medicaid, and are not eligible for the Essential Plan.

Legal Analysis

The issue under review is whether NYSOH properly determined that you were eligible for Medicaid for the treatment of emergency medical conditions only, effective May 1, 2017.

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You submitted an application for financial assistance with health insurance on May 8, 2017. NYSOH issued an eligibility determination on May 9, 2017, based on your May 8, 2017 application, stating that you were eligible for Medicaid for the treatment of emergency medical conditions only. An appeal was requested on your behalf and, while the appeal was pending, you were granted Aid to Continue, and placed back into Essential Plan 4 coverage as of May 1, 2017.

A hearing was held on August 31, 2017, and your attorney submitted a post-hearing memorandum on September 18, 2017.

However, on September 28, 2017, NYSOH reviewed your account and redetermined your eligibility. As a result, NYSOH found you eligible for full Medicaid, effective September 1, 2017, and enrolled you in a Medicaid Managed Care plan as of October 1, 2017.

Since NYSOH has determined that you are PRUCOL and eligible for Medicaid, which was the relief requested, the issue under appeal has been rendered moot, and the Appeals Unit will not reach the merits of the case

Decision

As NYSOH has determined that you are PRUCOL and eligible for Medicaid, your appeal of the May 9, 2017 eligibility determination notice has been rendered moot, and the Appeals Unit will not reach the merits of your case.

Effective Date of this Decision: December 04, 2017

How this Decision Affects Your Eligibility

You have been found eligible for Medicaid by NYSOH, which was the relief you requested, so your appeal is now moot.

This decision has no impact on any subsequent eligibility determinations issued by 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.

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 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
Albany, NY 12211
- By fax: 1-855-900-5557

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Summary

As NYSOH has determined that you are PRUCOL and eligible for Medicaid, your appeal of the May 9, 2017 eligibility determination notice has been rendered moot, and the Appeals Unit will not reach the merits of your case.

You have been found eligible for Medicaid by NYSOH, which was the relief you requested, so your appeal is now moot.

This decision has no impact on any subsequent eligibility determinations issued by NYSOH.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]

[REDACTED]

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 مجاناً.

বাংলা (Bengali)

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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. yebetumi ama wo obi a okyerε 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.

אַײַדיש (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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