



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

Notice of Decision

Decision Date: September 29, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019451

[REDACTED]

Dear [REDACTED],

On August 31, 2017, you and your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health's March 16, 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: September 29, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019451

[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 coverage for the treatment of emergency medical conditions only, effective as of March 1, 2017?

Procedural History

On December 28, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were conditionally eligible to receive advance premium tax credits (APTC) and cost sharing reductions, effective February 1, 2017. The notice instructed you to provide documentation confirming your immigration status before March 14, 2017.

On December 23, 2016, you submitted to NYSOH identity proofing documentation that include a copy of your [REDACTED] passport (see Document [REDACTED]).

On January 3, 2017, you submitted a I-94 Form Visa with an admitted date stamp of June 30, 2008 with notation of class type of "B2". The departure date is stamped as December 29, 2008 (see Document [REDACTED]).

On January 4, 2017, NYSOH issued a plan enrollment notice confirming your January 3, 2017 enrollment in a silver-level qualified health plan with an enrollment start date of February 1, 2017.

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On January 13, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse were conditionally eligible to receive APTC and cost sharing reductions, effective February 1, 2017. The notice instructed you to submit documentation of your immigration status by March 27, 2017 so that your eligibility could be confirmed. The notice stated that if you miss the due date, you may lose your insurance or receive less help paying for your coverage.

On January 24, 2017, NYSOH reviewed the I-94 Visa you submitted on January 3, 2017, and it was invalidated as it was expired.

On January 25, 2017, NYSOH issued a notice stating that the documentation you submitted had been reviewed and it did not confirm the information in your application. The notice referred you to an attached list of acceptable documents that you could submit regarding your immigration status. Proof of your immigration status remained due by March 27, 2017.

On February 21, 2017, NYSOH issued a disenrollment notice stating that your silver-level qualified health plan ended effective February 1, 2017 because you did not pay your insurance bill by the payment deadline.

On February 27, 2017, NYSOH updated your account systematically based on the expired I-94 visa that you submitted on January 3, 2017.

On February 28, 2017, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid, Child Health Plus, Essential Plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and were not eligible to enroll in a qualified health plan at full cost. The notice stated that you were not eligible for Medicaid because the household income in your application of \$36,400.00 was over the allowable income limit for your household size.

On March 15, 2017, you updated your account and your reported household income changed to \$10,712.00.

On March 16, 2017, NYSOH issued an eligibility determination notice stating in part that you remained eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective March 1, 2017. This was because your household income of \$10,712.00 was below the allowable income limit for your household size. The notice further stated that you are only eligible for emergency medical care because you are not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL). You were not allowed to enroll in a health plan because of this eligibility.

On March 23, 2017, April 3, 2017 and June 1, 2017, you submitted updated applications for health insurance. On March 24, 2017, April 4, 2017, and June 2,

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2017, NYSOH issued eligibility determinations notices based on those updated applications that stated you remained eligible for Medicaid coverage for the treatment of emergency conditions only.

On June 2, 2017, NYSOH issued a notice confirming that on June 1, 2017 you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as you were only eligible for emergency Medicaid coverage and not eligible for the Essential Plan or full Medicaid.

On August 31, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing [REDACTED] Interpreter [REDACTED] assisted. During the hearing, you authorized your broker, [REDACTED] to act as your authorized representative and [REDACTED] assisted you with your testimony. The record was developed during the hearing and held open to September 15, 2017, to allow you to submit supporting documents of your immigration status.

On September 5, 2017, your authorized representative uploaded to your account a copy of [REDACTED] passport (see Document [REDACTED]). This document was made part of the record as Appellant's Exhibit # 1. The record is now closed.

Findings of Fact

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

- 1) According to your March 15, 2017 updated application, you expect to file your 2017 taxes as married filing jointly and you will claim no dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are an immigrant non-citizen and that you are not eligible for a social security number due to your immigration status.
- 4) You uploaded to your NYSOH account a copy of your passport issued by the [REDACTED] showing you are a citizen of that country.
- 5) You uploaded to your NYSOH account a copy of your I-94 Form Visa with an admitted date stamp of June 30, 2008 with notation of class of "B2". The departure date is stamped as December 29, 2008.
- 6) You testified that you have not applied for citizenship.

- 7) The applications that were submitted on March 15, 2017 and on the dates since then, in which you requested financial assistance, listed annual household income of \$10,712.00.
- 8) You and your authorized representative testified that you have no other documents to submit regarding your immigration status.
- 9) You testified that you are not well and would like to be able to see a doctor on a regular basis, but emergency Medicaid coverage will not cover regular medical treatment.
- 10) You testified that you would like to be eligible to enroll in a health care plan to be able to obtain routine medical treatment.

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).

Lawfully present immigrants who are eligible for Essential Plan include qualified aliens in the five-year ban, persons Permanently Residing Under Color of Law (PRUCOL) and temporary non-immigrants meeting residency requirements (45 CFR § 152.2(2) and (4)(i); 16 OHIP/ADM-01 (01/20/2016)). Immigrants who are pregnant or are under 21 years of age, and are in the first five years of their qualified status or are PRUCOL, are eligible for federal financial participation and, therefore, are not eligible for Essential Plan and will remain in Medicaid (*id.*).

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

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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 \$16,240.00 for a two-person household (82 Federal Register 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).

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

(18 NYCRR § 360-3.2 (iii)(a)-(c)).

Medicaid payment is provided for the care and services necessary for the treatment of an emergency medical condition to an otherwise eligible temporary

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non-immigrant (e.g., foreign student, visitor/tourist) and undocumented (illegal) alien. To be eligible for Medicaid coverage for the treatment of an emergency medical condition, a temporary non-immigrant or undocumented alien must meet all eligibility requirements, including proof of identity, income and State residence. Temporary non-immigrants, who have been allowed to enter the United States temporarily for a specific purpose and for a specified period of time, do not have to meet the State residence requirement and are considered "Where Found" for District of Fiscal Responsibility purposes. 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)).

Type "R" Visa – Class B1/B2

The "R" means "Regular" (as opposed to diplomatic or official). A person admitted in B-1 or B-2 classification will typically be granted 6 months' admission per year at a time. B-1 is for business, while B-2 is for pleasure. But, the period of admission is generally 6 months, either way.

Generally, the alien is granted a combined B-1/B-2 visa for one, three or ten years allowing him/her to stay six (6) months per year in the U.S. That person may be able to obtain an extension up to six (6) months. If he/she stays in the U.S. for one year, you must either leave the country or change your status.

The visa is permission to apply for admission to the U.S. A person can do so as long as it is valid. The validity period of the visa has no correspondence to the length of time a person may remain in the US during a single visit.

The period of authorized stay is governed by the person's I-94, which, if he or she enter the U.S. by air, will consist of a passport stamp plus his/her I-94 online record, which can be downloaded at [Department of Homeland Security Consent](#). The stamp and the electronic record should both state the date by which the person is required to leave the U.S.

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

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I-766), and have the requisite category code, to be PRUCOL (08 OHIP/INF-4, dated August 4, 2008)).

Legal Analysis

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

According to the December 15, 2016 eligibility determination notice, your eligibility for APTC and cost sharing reductions was contingent upon you providing documentation of your immigration status before March 14, 2017.

To be eligible for full Medicaid and Essential Plan participation through the NYSOH, you must have documents to prove your citizenship or immigration status.

On December 23, 2016, you submitted to NYSOH identity proofing documentation that include a copy of your [REDACTED] passport. On January 3, 2017, you submitted a I-94 Form Visa with an admitted date stamp of June 30, 2008 with notation of class of "B2". The departure date is stamped as December 29, 2008 had expired and, therefore, was invalidated by NYSOH.

According to your March 15, 2017 application, you are in a two-person household. You expect to file your 2017 income tax return with a status of married filing jointly. Your listed annual household income was \$10,712.00.

On the date of your application, the relevant FPL was \$16,240.00 for a two-person household. Since an annual income of \$10,712.00 is 65.96% of the applicable FPL, you met the financial eligibility criteria for both the Essential Plan and Medicaid.

To be eligible for Medicaid coverage for the treatment of an emergency medical condition, a temporary non-immigrant or undocumented alien must meet all eligibility requirements, including proof of identity, income, and State residence.

Based on the record as developed, it is reasonable to conclude that you are a [REDACTED]. You arrived in the United States on June 30, 2008 on an I-94 visa, which authorized a six-month visit only. The record reflects that this visa is expired, that you have not applied for citizenship, and that you have no other documentation showing your legal status to remain in the United States.

Therefore, based on your testimony, the applications you have submitted and the immigration documentation you have provided, NYSOH properly determined that you met the criteria provided by statute for the treatment of emergency medical

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conditions only, using your household income of \$10,720.00, and lack of proof of authorized immigration status.

As such, NYSOH's findings that because you are not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL)," you only qualify for Emergency Medicaid were correct.

Therefore, those portions of the March 16, 2017 eligibility determination notice and the subsequent eligibility determination notices that state you remain eligible for Medicaid coverage for the treatment of emergency medical conditions only must be AFFIRMED.

If your circumstances change, please contact NYSOH and update the information on your NYSOH account so that your account can be updated and eligibility for financial assistance may be redetermined.

Decision

Those portions of the March 16, 2017 eligibility determination notice and the subsequent eligibility determination notices that state you remain eligible for Medicaid coverage for the treatment of emergency medical conditions only are AFFIRMED.

Effective Date of this Decision: September 29, 2017

How this Decision Affects Your Eligibility

You were eligible for Emergency Medicaid as of March 1, 2017.

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

Those portions of the March 16, 2017 eligibility determination notice and the subsequent eligibility determination notices that state you remain eligible for Medicaid coverage for the treatment of emergency medical conditions only are **AFFIRMED**.

You were eligible for Emergency Medicaid as of March 1, 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).

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 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. ye bɛtumi ama wo obi a okyerɛ 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 דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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