



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

Notice of Decision

Decision Date: October 25, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021266

[REDACTED]

Dear [REDACTED],

On October 17, 2017, you appeared by telephone at a hearing of your appeal of NY State of Health's June 26, 2017 eligibility determination and disenrollment notices.

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: October 25, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021266



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 no longer eligible to enroll in the Essential Plan and properly end their coverage effective June 30, 2017?

Procedural History

On March 21, 2017, NYSOH received your updated application for financial assistance with health insurance.

On March 24, 2017, NYSOH issued an eligibility determination notice stating, in relevant part, that your spouse was eligible to enroll in the Essential Plan for a limited time, effective April 1, 2017. The notice directed you to provide additional proof of your spouse's immigration status by June 19, 2017, to confirm their eligibility.

On April 7, 2017, NYSOH issued a plan enrollment notice confirming that as of April 6, 2017, your spouse was enrolled in an Essential Plan with an enrollment start date of April 1, 2017. The notice directed you to provide additional proof of your spouse's immigration status by June 19, 2017, to confirm their eligibility.

No proof was provided to NYSOH by the June 19, 2017 deadline.

On June 25, 2017, your NYSOH account was systematically updated.

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On June 26, 2017, NYSOH issued an eligibility determination notice stating that your spouse did not qualify for financial assistance or to purchase a qualified health plan at full cost, effective July 1, 2017, because you did not provide the information to confirm your spouse's immigration status.

Also on June 26, 2017, NYSOH issued a disenrollment notice stating that your spouse's Essential Plan coverage would end June 30, 2017, because they were no longer eligible to enroll in health insurance.

On August 3, 2017, you mailed a letter to NYSOH requesting to appeal the termination of your spouse's health insurance coverage. Further, you provided additional documentation with your appeal request (see Documents [REDACTED]).

On October 17, 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) You testified that your appeal request only relates to your spouse's eligibility for health insurance.
- 2) According to your NYSOH account, your spouse was determined eligible for the Essential Plan and enrolled in coverage, effective April 1, 2017.
- 3) According to your NYSOH account, your spouse is a "Non-immigrant Visa Holder."
- 4) You testified that the last time your spouse entered the United States was in April 2017 with a visa category of "[REDACTED]."
- 5) On October 30, 2015, U.S. Citizenship and Immigration Services (UCIS) issued you a Form I-797C, Notice of Action. The form states that an I-130 Petition for Alien Relative, for your spouse, had been received by their office on October 28, 2015 (see Document [REDACTED]; uploaded [REDACTED]).
- 6) You testified that the I-130 petition was filed with the intent to have your spouse granted permanent residency in the United States.
- 7) On August 17, 2016, the U.S. Department of State's National Visa Center issued you a letter stating, in relevant part: "The U.S. Department of State's

National Visa (NVC) received your approved immigrant visa petition from U.S. Citizenship and Immigration Services” (see Document [REDACTED]).

- 8) On December 8, 2016, the U.S. Department of State’s National Visa Center issued you a letter stating, in relevant part: “The National Visa (NVC) received all the requested documentation for this immigrant visa case. The applicant is now in the queue awaiting an interview appointment overseas, when a consular officer will adjudicate the applicant’s visa application (see Document [REDACTED]).
- 9) You testified that your spouse’s interview appointment has been scheduled for [REDACTED].

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

Applicable Law and Regulations

Eligibility for the 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).

The federal regulations state that the following non-citizens are lawfully present:

- (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. 1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5))

for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) An alien who belongs to one of the following classes:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. 1160 or 1255a, respectively);

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status;

(vii) Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;

(5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention Against Torture; or

(7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J));

(8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.

(42 CFR § 600.5; 45 CFR § 152.2).

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Verification of Eligibility – Citizenship/Immigration

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

For individuals who attest to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant (42 CFR § 600.345, 45 CFR § 155.315(c)(3), (f)(2)(i)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your spouse was no longer eligible to enroll in the Essential Plan and properly ended their coverage June 30, 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that they have a valid citizenship or immigration status.

In the notices issued on March 24, 2017 and April 7, 2017, NYSOH stated that your spouse's eligibility was conditional, and additional immigration status documentation was needed before June 19, 2017.

If NYSOH cannot verify an individual's citizenship or immigration status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice to resolve the inconsistency. In this case, NYSOH gave you until Jun 19, 2017, which is 90 days from your March 21, 2017 application.

The record reflects that you did not submit additional documentation to prove your spouse's immigration status. Therefore, NYSOH properly notified you of the inconsistency with your spouse's eligibility, and you did not submit the requested immigration status documentation before the deadline.

If NYSOH remains unable to verify the inconsistency after the 90-day period ends, it must determine an applicant's eligibility based on the information available in the data sources.

Since the requested immigration status documentation was not received within the 90-day period, NYSOH was required to redetermine your spouse's eligibility without verification of their immigration status. As a result, NYSOH properly determined that your spouse was not eligible for health insurance and ended their coverage as of June 30, 2017.

Therefore, the June 26, 2017 eligibility determination and disenrollment notices are [REDACTED].

Citizens or non-citizens, who are lawfully present, are eligible to enroll in the Essential Plan. An individual whose visa petition has been approved and has a pending application for adjustment of status is a lawfully present non-citizen.

On August 3, 2017, you mailed correspondence from the U.S. Department of State's National Visa Center to NYSOH. On August 17, 2016, you received a letter stating, that your spouse's approved immigrant visa petition had been received from U.S. Citizenship and Immigration Services. On December 8, 2016, you were issued a letter stating that all the requested documentation for this immigrant visa case had been received (see Documents [REDACTED]; [REDACTED]). Further, you testified that your spouse is seeking to become a permanent resident in the United States, and that their interview is scheduled for [REDACTED]. Therefore, there is sufficient evidence in the record to determine that your spouse is lawfully present.

Your spouse's case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance and coverage, based on being a lawfully present non-citizen.

Decision

The June 26, 2017 eligibility determination notice is [REDACTED].

The June 26, 2017 disenrollment notice is [REDACTED].

Your spouse's case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance and coverage, based on being a lawfully present non-citizen.

Effective Date of this Decision: October 25, 2017

How this Decision Affects Your Eligibility

NYSOH properly determined that your spouse ineligible for the Essential Plan and ended their coverage.

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).

Your case has been returned to NYSOH to redetermine your spouse's eligibility for financial assistance and coverage, based on being a lawfully present non-citizen.

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:

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- 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 June 26, 2017 eligibility determination notice is [REDACTED].

The June 26, 2017 disenrollment notice is [REDACTED].

NYSOH properly determined that your spouse ineligible for the Essential Plan and ended their coverage.

Your case has been RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance and coverage, based on being a lawfully present non-citizen.

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)

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).

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 b etumi ama wo obi a okyer e 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.

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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