



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

Notice of Decision

Decision Date: December 11, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022009

[REDACTED]

[REDACTED]

On November 2, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 26, 2017 eligibility determination 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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Decision

Decision Date: December 11, 2017

NY State of Health Account ID: [REDACTED]
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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly determine that your spouse was not eligible to purchase health insurance coverage through NYSOH?

Did NYSOH properly determine that your child was only eligible for Medicaid coverage for emergency medical care and services?

Procedural History

On August 25, 2017, you submitted an application for financial assistance through NYSOH.

On August 26, 2017, NYSOH issued an eligibility determination notice stating that your spouse did not qualify for health coverage through NYSOH because their immigration status could not be verified.

Also on August 26, 2017, NYSOH issued an eligibility determination notice stating, in relevant part, that your child remained eligible only for Medicaid coverage for the treatment of emergency conditions because they were not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

On August 30, 2017, you spoke with NYSOH's Account Review and requested an appeal relative to your spouse and child's eligibility determinations.

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On November 2, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Testimony was taken during the hearing, and the record was left open to allow you to submit proof of your spouse's and child's immigration status.

On November 2, 2017, you faxed eleven-pages of documentation to NYSOH's Appeals Unit. That documentation was made part of the record as "Appellant Exhibit A."

On November 3, 2017, you faxed three-pages of documentation to NYSOH's Appeals Unit. That documentation was made part of the record as "Appellant Exhibit B." The record is now complete and closed.

Findings of Fact

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

- 1) You testified that you are appealing your spouse and child's eligibility determinations.
- 2) According to your NYSOH account, your child was born on [REDACTED].
- 3) According to your NYSOH account, your 2017 household income listed on your August 25, 2017 application is \$40,000.00 based solely on your earnings from employment. Your household will not be filing taxes.
- 4) You testified that your spouse and child entered the United States on [REDACTED], both with a visa status of B2.
- 5) According to your NYSOH account, your spouse and child are "Non-Immigrant Visa Holder[s]."
- 6) The status of B1/B2, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as a Visitor for Business or Pleasure.
- 7) According to USCIS, the maximum period of a continuous stay under a R-B1/B2 visa is for six months at one time; without a request for an extension.

- 8) According to your August 25, 2017 application, you provided the information on your spouse's I-94 Arrival/Departure Record as proof of their immigration status. You provided the following information:

[REDACTED]

- 9) On November 2, 2017, you submitted a record of your spouse's most recent I-94 from U.S. Customs and Border Protection. The record states the following relevant information:

[REDACTED]

[REDACTED]

- 10) Based on the documents you provided, there is nothing to indicate that your spouse currently has an open application with USCIS.

- 11) According to your August 25, 2017 application, you provided the information on your child's I-94 Arrival/Departure Record as proof of their immigration status. You provided the following information:

[REDACTED]

- 12) On November 2, 2017, you submitted a record of your child's most recent I-94 from U.S. Customs and Border Protection. The record states the following relevant information:

[REDACTED]

[REDACTED]

- 13) You testified that you applied to have your child's immigration status adjusted to the visa status of "G1."

- 14) On November 3, 2017, you submitted a Form I-797A Notice of Action, from U.S. Citizenship and Immigration Services, for your child's I-539

application to extend/change nonimmigration status. The form states that the application to change your child's nonimmigrant status to "G1" has been approved. The status is valid from 10/25/2017 until duration of status (see Appellant Exhibit B, p. 2).

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

Applicable Law and Regulations

Citizenship and Immigration Status - Generally

To enroll in health insurance through NYSOH, 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 (45 CFR § 155.305(a)(1)).

Citizenship and Immigration Status – Verification Process

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

If an applicant attests 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 (45 CFR § 155.315(c)(3), (f)(2)(i)).

Medicaid – Citizenship and Immigration Status

A child who is under one year of age is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 223% of the FPL for the applicable family size. (42 CFR § 435.118(c); New York Department of Health Administrative Directive 13 OHIP/ADM-04).

Medicaid must be provided to otherwise eligible residents of the United States who are citizens, nationals, or qualified non-citizens who have provided satisfactory documentary evidence of their qualified non-citizen status (42 CFR § 435.406)).

In some cases, Medicaid will pay for emergency medical treatment for an individual who does not have evidence of citizenship or immigration status, even

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if the individual is not eligible for full Medicaid coverage (NY Soc. Serv. Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a); 42 CFR § 435.350)).

Temporary non-immigrants are individuals who can enter the United States temporarily for a specific purpose and for a specific period of time. In general, temporary non-immigrants have been eligible only for coverage of medical care and services necessary to treat an emergency medical condition. State Medicaid programs may cover temporary non-immigrant and certain other groups of pregnant women and children who are "lawfully residing" in the United States. The Centers for Medicare & Medicaid Services (CMS) has interpreted the term "lawfully residing" to mean individuals who are "lawfully present" in the United States and who are state residents (GIS 16 MA/02 "Changes in Medicaid Coverage for Temporary Non-Immigrants"; State Health Official Letter #10-006, issued July 1, 2010, "Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women").

Lawfully Present

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;

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- (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.

(45 CFR § 155.20; 45 CFR § 152.2).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your spouse was not eligible to purchase health insurance coverage through NYSOH.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm that an individual has a valid citizenship or immigration status.

On August 25, 2017, you submitted an application for financial assistance for your spouse. In that application, you attested that your spouse was a non-immigrant visa holder. Further, you provided information regarding your spouse's I-94 Arrival/Departure Record and their foreign unexpired passport. Based on that application, NYSOH issued an eligibility determination notice stating that your spouse was not eligible for health insurance because their immigration status could not be verified.

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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 stated on the notice to resolve the inconsistency. However, NYSOH did not provide your spouse with the requisite period of time to verify your spouse's immigration status.

Citizens or non-citizens, who are lawfully present, are eligible to enroll in health insurance coverage through NYSOH. An alien in nonimmigrant status, who has not violated the terms of the status under which they were admitted, is lawfully present.

On November 2, 2017, you submitted a record of your spouse's most recent I-94 from U.S. Customs and Border Protection. The record states, in relevant parts, that your spouse: (1) entered the U.S. on August 3, 2017; (2) with a class of admission of B2; and (3) had an admit until date of February 2, 2018 (Appellant Exhibit A, p. 6). Further, this documentary evidence demonstrates that the information provided in your August 25, 2017 application was accurate. Therefore, there is sufficient evidence in the record to determine that your spouse is lawfully present.

As such, the August 26, 2017, eligibility determination notice, insofar as it states your spouse was not eligible for health insurance, is **RESCINDED**.

Your spouse's case is **RETURNED** to NYSOH to determine your spouse's eligibility for financial assistance and coverage as of August 25, 2017, based on the fact that they were lawfully present in the United States and your attested household income of \$40,000.00.

The second issue under review is whether NYSOH properly determined that your child was only eligible for Medicaid coverage for emergency medical care and services.

To be eligible for full Medicaid through the NYSOH, your child must also meet the non-financial requirements; which includes having a valid immigration status. To be eligible for full Medicaid participation through the NYSOH, an applicant must have documents to prove their current citizenship or immigration status. 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

On August 25, 2017, you submitted an application for financial assistance for your child. In that application, you attested that your child was a non-immigrant visa holder. Further, you provided information regarding your child's I-94 Arrival/Departure Record and their foreign unexpired passport. Based on that application, NYSOH issued an eligibility determination notice stating that your

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child was only eligible for emergency Medicaid services because you were not a citizen, qualified alien or PRUCOL.

Certain groups of non-immigrants who are "lawfully residing" in the United States are eligible for full Medicaid coverage. "Lawfully residing" has been defined to mean individuals who are "lawfully present" in the United States. An alien in a nonimmigrant status who has not violated the terms of the status under which they were admitted or to which was changed after admission, is a lawfully present non-citizen.

You testified that your child entered the United States on [REDACTED], with a visa status of B2. On November 2, 2017, you submitted a record of your child's most recent I-94 from U.S. Customs and Border Protection. The record states, in relevant parts, that your child: (1) entered the U.S. on August 3, 2017; (2) with a class of admission of B2; and (3) had an admit until date of February 2, 2018 (Appellant Exhibit A, p. 7).

You further testified that you applied to have your child's immigration status adjusted to the visa status "G1." On November 3, 2017, you submitted a Form I-797A Notice of Action, from U.S. Citizenship and Immigration Services, for your child's I-539 application to extend/change nonimmigration status. The form states that the application to change your child's nonimmigrant status to "G1" has been approved as of 10/25/2017 until duration of status (Appellant Exhibit B, p. 2).

The record reflects that your child has continuously held a valid nonimmigrant status since entering the United States on August 3, 2017. Therefore, there is sufficient evidence in the record to determine that your child was lawfully present in the United States as of the date of your August 25, 2017, application.

As such, the August 26, 2017, eligibility determination notice stating, in relevant part, that your child remained eligible only for Medicaid coverage for the treatment of emergency conditions is RESCINDED.

Your child's case is RETURNED to NYSOH to determine your child's eligibility for financial assistance and coverage as of August 25, 2017, based on the fact that they were lawfully present in the United States and your attested household income of \$40,000.00.

Decision

The August 26, 2017, eligibility determination insofar as stating that your spouse was not eligible for health insurance is RESCINDED.

The August 26, 2017, eligibility determination notice stating, in relevant part, that your child remained eligible only for Medicaid coverage for the treatment of emergency conditions is RESCINDED.

Your spouses and child's cases are RETURNED to NYSOH to redetermine their eligibility for financial assistance and coverage as of August 25, 2017, based on their lawful presence in the United States and your attested household income of \$40,000.00.

Effective Date of this Decision: December 11, 2017

How this Decision Affects Your Eligibility

NYSOH improperly determined that your spouse was ineligible for health insurance.

NYSOH improperly determined that your child was only eligible for Medicaid coverage for emergency medical care and services.

Your case is being sent back to NYSOH to redetermine both your spouse and child's eligibility for financial assistance through NYSOH as of August 25, 2017. NYSOH will notify you of its redetermination for both of them.

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

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).

- 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

The August 26, 2017, eligibility determination insofar as stating that your spouse was not eligible for health insurance is **RESCINDED**.

The August 26, 2017, eligibility determination notice stating, in relevant part, that your child remained eligible only for Medicaid coverage for the treatment of emergency conditions is **RESCINDED**.

Your spouses and child's cases are **RETURNED** to NYSOH to redetermine their eligibility for financial assistance and coverage as of August 25, 2017, based on their lawful presence in the United States and your attested household income of \$40,000.00.

NYSOH improperly determined that your spouse was ineligible for health insurance.

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NYSOH improperly determined that your child was only eligible for Medicaid coverage for emergency medical care and services.

Your case is being sent back to NYSOH to redetermine both your spouse and child's eligibility for financial assistance through NYSOH as of August 25, 2017. NYSOH will notify you of its redetermination for both of them.

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 srε wo, frε 1-855-355-5777. ye&εtumi 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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