



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

Notice of Decision

Decision Date: December 05, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022083

[REDACTED]

[REDACTED]

On November 29, 2017, you and your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health's August 3, 2017 and August 15, 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: December 05, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022083

[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 your spouse was eligible for Medicaid coverage for the treatment of emergency medical conditions only and not the Essential Plan, effective as of August 1, 2017?

Procedural History

On September 9, 2016, NYSOH issued an eligibility determination notice that stated in part that your spouse was eligible to enroll in the Essential Plan, effective September 1, 2016.

Also on September 9, 2016, NYSOH issued an enrollment confirmation notice that stated in part that your spouse was enrolled in the Essential Plan, effective September 1, 2016.

On July 2, 2017, NYSOH issued a notice stating that based on the information from federal and state sources a decision could not be made about whether or not your spouse qualified for financial help paying for health coverage. You were asked to update your account between July 16, 2017 and August 15, 2017 to complete your household's renewal.

On August 2, 2017, you submitted an updated application for health insurance for your household. Part of the update included a change to your spouse's last name.

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On August 3, 2017, NYSOH issued an eligibility determination notice stating that your spouse was eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective August 1, 2017. The notice further stated that your spouse was only eligible for emergency medical care because she was not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

On August 4, 2017, NYSOH issued a disenrollment notice stating that your spouse's enrollment in her Essential Plan would end as of September 1, 2017.

On August 15, 2017, NYSOH issued an eligibility determination notice stating that your spouse was eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective August 1, 2017. The notice further stated that your spouse was only eligible for emergency medical care because she was not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

On September 1, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as your spouse was only eligible for emergency Medicaid coverage and not eligible for the Essential Plan.

On September 8, 2017, NYSOH issued an eligibility determination notice stating that your spouse was eligible for the Essential Plan for a limited time, effective September 1, 2017 because she had been granted Aid to Continue until a decision on your appeal could be made.

Also on September 8, 2017, NYSOH issued an enrollment confirmation notice stating that your spouse was enrolled in the Essential Plan, effective September 1, 2017.

On November 16, 2017, you had a scheduled telephone hearing with a Hearing Officer from the NYSOH Appeals Unit. That day, you and the Hearing Officer agreed to adjourn the hearing to November 29, 2017.

On November 29, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing [REDACTED] assisted. 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 are only appealing your spouse's ineligibility for a health plan through NYSOH.
- 2) Your NYSOH account indicates that you expect to file your 2017 taxes as married filing jointly with your spouse and claim your two children as dependents on that tax return.
- 3) You testified that your spouse is a non-immigrant visa holder.
- 4) In the applications that were filed with NYSOH on August 2, 2017 and August 24, 2017 your spouse's immigration status is listed as "other".
- 5) In the applications that were filed with NYSOH on August 2, 2017 and August 24, 2017 your annual household income was listed as \$24,000.00.
- 6) You testified that you and your spouse were married on [REDACTED]
- 7) You testified that when you renewed your household's health insurance for 2017 through NYSOH, you changed your spouse's last name to reflect her married name.
- 8) You testified that you renewed your spouse's visa so that it would state her married name.
- 9) On August 3, 2017, you faxed a copy of your spouse's current Visa. The Visa shows the following:



- 10) You testified that you and your spouse rent a residence but that your spouse's name is not on the lease.

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

Applicable Law and Regulations

Essential Plan

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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.*).

Temporary non-immigrants will be required as a condition of their eligibility to answer residency questions. An applicant must answer “Yes” to at least one of the questions in order to pass residency review (Office of Health Insurance Programs, GIS 16 MA/02). These questions include have you applied to become a legal permanent resident; do you work; do your children go to school; do you own your own home, do you a rent a house or apartment?

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 \$24,300.00 for a four-person 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.

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

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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 \$24,600.00 for a four-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 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

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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)).

Citizenship / Immigration Status

Lawfully present is defined to mean (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 United States Code (USC) §1641): or (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 (45 CFR § 152.2).

An G-1 visa is a diplomatic visa given to a designated principal resident or family member of a representative of a foreign government recognized by the United States under the Immigration and Nationality Act ((8 USC §1641(b); 8 USC § 1101(a)(15)(G)(i)). Individuals with these statuses qualify to enroll through NYSOH.

Legal Analysis

The issue under review is whether NYSOH properly determined that your spouse was eligible for Medicaid coverage for the treatment of emergency medical conditions only and not the Essential Plan, effective August 1, 2017.

Your spouse was found eligible for and enrolled in the Essential Plan, effective September 1, 2016.

On July 2, 2017, NYSOH issued a renewal notice stating asking you to update your account between July 16, 2017 and August 15, 2017 so that a decision could be made regarding your spouse's eligibility for financial assistance.

On August 2, 2017, you submitted an updated application for health insurance for your household. Part of the update included a change to your spouse's last name. You testified that when you renewed your household's health insurance for 2017 through NYSOH you changed your spouse's last name to reflect her married name.

As a result of the August 2, 2017 application, your spouse was determined eligible for Medicaid coverage for the treatment of emergency medical conditions only because she was not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL). She was subsequently disenrolled from her Essential Plan effective September 1, 2017.

In order to be eligible for the Essential Plan through NYSOH, an applicant must be lawfully present and have a valid immigration or citizenship status. Lawfully

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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.

You testified that your spouse is a non-immigrant visa holder. On August 3, 2017, you faxed a copy of your spouse's current Visa showing that she has a diplomatic G-1 Visa with an expiration date of [REDACTED] the Immigration and Nationality Act, a G-1 Visa denotes a status of a qualified non-immigrant visa holder and your spouse should therefore be considered lawfully present for the purposes of obtaining health insurance through NYSOH.

Furthermore, you testified that you and your spouse rent a residence. Your application indicates that your children also attend school in New York State. Therefore, you meet the residency requirements to be found eligible for the Essential Plan.

The Essential Plan is provided through NYSOH to individuals who are lawfully present non-citizens who are ineligible for Medicaid or Child Health Plus as a result of their immigration status, and have a household income that is between 0% and 200% of the FPL. 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 that is at or below 138% of the FPL for the applicable family size.

Since an annual income of \$24,000.00 is 98.77% of the 2016 FPL and 97.56% of the 2017 FPL, your spouse would meet the financial eligibility criteria for both the Essential Plan and Medicaid.

However, as was discussed above, your spouse is non-immigrant G-1 visa holder. As of January 1, 2016, non-immigrant visa holders who were eligible for Medicaid through NY State, but were not eligible for Medicaid under federal law due to their immigration status, must now receive coverage through the Essential Plan. Therefore, your spouse does meet the financial and non-financial requirements for the Essential Plan only.

Since your spouse meets the non-financial and financial requirements for the Essential Plan, NYSOH improperly determined she was eligible for Medicaid for the treatment of an emergency medical condition only.

Therefore, the August 3, 2017 and August 15, 2017 eligibility determination notices are RESCINDED as they pertain to your spouse's eligibility.

Decision

The August 3, 2017 and August 15, 2017 eligibility determination notices are **RESCINDED** as they pertain to your spouse's eligibility.

Your case is **RETURNED** to NYSOH to reinstate your spouse's coverage in the Essential Plan as of September 1, 2017 and to ensure that all information contained in your NYSOH account is accurate in light of your spouse's unexpired visa [REDACTED] and your testimony in regard to her NY state residency.

Effective Date of this Decision: December 05, 2017

How this Decision Affects Your Eligibility

Your spouse was improperly determined eligible for Medicaid for the treatment of an emergency medical condition only.

Your case is being sent back to reinstate your spouse's Essential Plan as of September 1, 2017 and to ensure that all information in your NYSOH account is accurate.

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 3, 2017 and August 15, 2017 eligibility determination notices are **RESCINDED** as they pertain to your spouse's eligibility.

Your spouse was improperly determined eligible for Medicaid for the treatment of an emergency medical condition only.

Your case is **RETURNED** to NYSOH to reinstate your spouse's coverage in the Essential Plan as of September 1, 2017 and to ensure that all information contained in your NYSOH account is accurate in light of your spouse's unexpired visa [REDACTED] and your testimony in regard to her NY state residency.

Your case is being sent back to reinstate your spouse's Essential Plan as of September 1, 2017 and to ensure that all information in your NYSOH account is accurate.

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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 مجاناً.

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।

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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&btumi 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.

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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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