



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

Notice of Decision

Decision Date: February 9, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022592

[REDACTED]

Dear [REDACTED]

On November 29, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 18, 2017 eligibility determination and August 18, 2017 disenrollment notice.

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
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Albany, NY 12211

Decision

Decision Date: February 9, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022592



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, and not eligible for the Essential Plan, effective August 1, 2017?

Procedural History

On September 10, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan with additional benefits through Medicaid, effective October 1, 2016. You subsequently enrolled into an Essential Plan.

On August 2, 2017, NYSOH issued a renewal notice stating that based on the information from federal and state data sources a decision could not be made about whether or not you qualify for financial help with paying for your coverage. You were asked to update your account between August 16, 2017 and September 15, 2017.

On August 17, 2017, NYSOH received your updated application for health insurance.

On August 18, 2017, NYSOH issued an eligibility determination notice, based on your August 17, 2017 application, stating that you remained eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective

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August 1, 2017. This was because you are not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL).

Also on August 18, 2017, NYSOH issued a disenrollment notice stating that your coverage in your Essential Plan would end as of August 31, 2017 because the type of Medicaid coverage you are eligible for does not require/allow you to enroll in a plan.

On September 19, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of the eligibility determination insofar as you were not determined eligible for coverage under the Essential Plan.

On November 29, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit, with the assistance of Mandarin Interpreter [REDACTED]. The record was developed during the hearing and held open up to December 13, 2017, to allow you to submit supporting documents.

On December 8, 2017, NYSOH received the requested documentation and it was entered into the record as Appellant's Exhibit #1. The record was closed that day.

Findings of Fact

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

- 1) The record reflects that you do not expect to file a 2017 federal tax return, and you testified that this is correct.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are a non-immigrant visa holder.
- 4) The application that was submitted on August 17, 2017, which requested financial assistance, listed annual household income of \$0.00. You testified that this amount was correct at the time.
- 5) The August 17, 2017 application states that you have not applied to become a legal permanent resident, you do not work, you do not have a child in school, you do not own your own home, and you do not rent a house or apartment.
- 6) You submitted a copy of your R-B1/B2 visa, with an expiration date of [REDACTED].

- 7) The record contains a copy of your most recent I-94 form, which indicates that your most recent date of entry was July 22, 2017, and an admit until date of [REDACTED].
- 8) 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.
- 9) 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.
- 10) You testified that you have had your B1/B2 visa since 2008 or 2009.
- 11) You testified that you believe NYSOH is incorrect in its determination that you do not qualify for the Essential Plan.
- 12) Your application states that you live in Westchester County.
- 13) You testified that you reside with your daughter at [REDACTED] and that you intend to continue to reside with her.

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).

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 \$12,060.00 for a one-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).

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

Visa- Class B1/B1

A person admitted into the United States under a B-1 or B-2 classification is classified as a visitor for business or pleasure. Under a B-1 or B-2 visa, the period of admission is normally six months. After a period of six months, the person may either leave the county or apply for an extension of their stay using an “I-94” form (U.S Citizenship and Immigration Services, B-1 Temporary

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Business Visitor, <https://www.uscis.gov/working-united-states/temporary-visitors-business/b-1-temporary-business-visitor>).

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)).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

State Residency Requirement

To be eligible for enrollment in the Essential Plan, an applicant must be a resident of New York State (New York’s Basic Health Plan Blueprint, p. 15, as approved January 2017; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>, 45 CFR § 155.305(a)(3), (f)(1)(ii)(A)).

Under current Office of Health Insurance policy, 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?

Under federal law, for an individual who is aged 21 or older, not living in an institution, and able to indicate intent, that individual is deemed to be a resident of the Exchange service area in which or she lives and either a) intends to reside,

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even without a fixed address, or b) has entered with a job commitment or is seeking employment. (45 CFR § 155.305(a)(3)(i)).

Legal Analysis

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

You were found eligible for and enrolled into an Essential Plan as of October 1, 2016. On August 17, 2017, you submitted an updated application to NYSOH in order to renew your Essential Plan coverage.

On August 18, 2017, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective August 1, 2017. The notice stated this was because your household income was below the income limit for Medicaid. The notice further explained you are only eligible for the treatment of emergency medical care and services because you are not a citizen, qualified alien, or PRUCOL. You were subsequently disenrolled from your Essential Plan, effective August 31, 2017.

One of the non-financial requirements for enrollment in the Essential Plan through NYSOH, is that an applicant be a citizen 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.

The August 17, 2017 application states that you are a Non-Immigrant Visa Holder. You testified, and the record confirms, that you have a B1/B2 visa. You submitted a copy your "R- B1/B2" visa with an expiration date of [REDACTED]. You also submitted a copy of your I-94 form, which indicates that your most recent date of entry to the United States is July 22, 2017.

The status of "B1/B2", according to the USCIS, is in reference to a status classified as a Visitor for Business or Pleasure. The maximum period of stay for a person in the United States under a "B1/B2" visa is six months. Once the six-month period has lapsed, the "B1/B2" visa holder must either leave the United States or file an "I-94" Form to be awarded an extension of their stay. Each reentry into the United States, or extension of their stay under the visa is indicated with a "I-94" stamp; which can either be electronic or physically stamped on the visa.

Since your August 17, 2017 application indicated that you had a valid non-immigrant status and the documentation you provided confirms that your current

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visa had an admit date until [REDACTED], you should have been considered a lawfully present non-citizen and NYSOH improperly determined you eligible for Medicaid coverage for the treatment of emergency medical conditions only based on your lawful presence status.

However, one of the conditions of enrollment into the Essential Plan through NYSOH is for the applicant to be a resident of NY State. According to Department of Health Medicaid policy, 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.

The residency section of the August 17, 2017 application states that you have not applied to become a legal permanent resident, you do not work, you do not have a child in school, you do not own your own home, and you do not rent a house or apartment.

Therefore, based on your answers to the residency questions on your NYSOH application, you would not be deemed a resident of NY State for the purposes of obtaining health coverage through NYSOH.

However, under federal regulation for the purposes of being found eligible to enroll in the Essential Plan, an individual is deemed to be a resident if they intend to reside in the state, even without a fixed address, or has entered with a job commitment or is seeking employment.

You testified that you reside with your daughter at [REDACTED] and that you intend to continue to reside with her in NY State.

Based on your credible testimony, you would have passed the federal based residency requirements to enroll into the Essential Plan as of your August 17, 2017 application since you intend to continue to reside in NY State with your daughter.

In addition, NYSOH is required to inform all enrollees in writing an explanation of any changes to eligibility and the factual findings relevant to the actions of NYSOH and to allow the enrollee to notify NYSOH that such information is inaccurate. The record does not contain any written notice that informs you that you were ineligible for enrollment in the Essential Plan because of your residency status.

Since as of your August 17, 2017 application you should have been considered a lawfully present non-immigrant, and a resident of NY State, NYSOH improperly determined you eligible for Medicaid coverage for the treatment of emergency medical conditions only based on your immigrations status. Accordingly, the

August 18, 2017 eligibility redetermination notice and disenrollment notices are RESCINDED.

Your case is RETURNED to NYSOH to assist you in updating your NYSOH account in order to properly reflect that you are resident of NY State in accordance with your testimony. Once your application properly reflects your residency status, your eligibility for and enrollment in the Essential Plan should be reinstated as of September 1, 2017.

Your current I-94 stamp expired as of [REDACTED], therefore NYSOH is also directed to rerun your eligibility as of February 1, 2018 to determine if an updated electronic I-94 stamp has been obtained, if no electronic stamp has been obtained by NYSOH's system they are to provide you with an additional 90 days of conditional Essential Plan eligibility as of February 1, 2018 to allow you time to resubmit an updated hard copy of your I-94 stamp.

Decision

The August 18, 2017 eligibility determination notice is RESCINDED.

The August 18, 2017 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to assist you in updating your NYSOH account in order to properly reflect that you are resident of NY State in accordance with your testimony. Once your application properly reflects your residency status, your eligibility for and enrollment in the Essential Plan should be reinstated as of September 1, 2017.

Your current I-94 stamp expired as of [REDACTED], therefore NYSOH is also directed to rerun your eligibility as of February 1, 2018 to determine if an updated electronic I-94 stamp has been obtained, if no electronic stamp has been obtained by NYSOH's system they are to provide you with an additional 90 days of conditional Essential Plan eligibility as of February 1, 2018 to allow you time to resubmit an updated hard copy of your I-94 stamp.

Effective Date of this Decision: February 9, 2018

How this Decision Affects Your Eligibility

NYSOH improperly determined you eligible for Medicaid for the treatment of emergency conditions only.

Your case is being sent back to NYSOH to reinstate your coverage into the Essential Plan as of September 1, 2017 and to allow you time to submit an updated copy of your I-94 stamp.

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:
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Summary

The August 18, 2017 eligibility determination notice is RESCINDED.

The August 18, 2017 disenrollment notice is RESCINDED.

NYSOH improperly determined you eligible for Medicaid for the treatment of emergency conditions only.

Your case is RETURNED to NYSOH to assist you in updating your NYSOH account in order to properly reflect that you are resident of NY State in accordance with your testimony. Once your application properly reflects your residency status, your eligibility for and enrollment in the Essential Plan should be reinstated as of September 1, 2017.

Your current I-94 stamp expired as of [REDACTED], therefore NYSOH is also directed to rerun your eligibility as of February 1, 2018 to determine if an updated electronic I-94 stamp has been obtained, if no electronic stamp has been obtained by NYSOH's system they are to provide you with an additional 90 days of conditional Essential Plan eligibility as of February 1, 2018 to allow you time to resubmit an updated hard copy of your I-94 stamp.

Your case is being sent back to NYSOH to reinstate your coverage into the Essential Plan as of September 1, 2017 and to allow you time to submit an updated copy of your I-94 stamp.

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&etumi 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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