



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

Notice of Decision

Decision Date: January 31, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024123

[REDACTED]

[REDACTED]

On January 18, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health’s November 8, 2017 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
 - NY State of Health Appeals
 - P.O. Box 11729
 - Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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Decision

Decision Date: January 31, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024123

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine that you were eligible to enroll in the Essential Plan, effective December 1, 2017, and not eligible for Medicaid?

Procedural History

On November 7, 2017, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was prepared stating that you were eligible for the Essential Plan with no monthly premium.

Also on November 7, 2017, you spoke to NYSOH's Account Review Unit and appealed the preliminary eligibility determination, insofar as it stated that you were not eligible for Medicaid.

On November 8, 2017, NYSOH issued a notice of eligibility determination, stating that you are eligible to enroll in the Essential Plan, with no monthly premium, effective December 1, 2017. You qualified for the Essential Plan because your income was less than the allowable income limit and you were in the first five years of your qualified immigration status or you are living in the United States under the color of law.

On January 18, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held

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open until February 2, 2018, to allow you time to submit proof of your permanent resident status and paystubs.

On January 25, 2018, the Appeals Unit received via fax a copy of your permanent resident card and paystubs. This document was marked as Appellant's Exhibit #1 and incorporated into the record. The record is now closed.

Findings of Fact

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

- 1) You testified that you are appealing only your eligibility.
- 2) Your NYSOH account reflects that you reside in [REDACTED] with your two children and their father.
- 3) You testified, and your NYSOH account reflects that you will be filing taxes with a filing status of head of household and will be claiming two dependents.
- 4) Your NYSOH reflects that your children's father will not be filing taxes.
- 5) The application that was submitted on November 7, 2017, which requested financial assistance, listed your expected annual household income is \$15,600.00, consisting of income you earn from employment. You testified that this is correct.
- 6) You testified that you are paid hourly, at \$12.00 per hour, that you typically work 25 hours per week, and that you receive a bi-weekly paycheck.
- 7) You provided paystubs for pay periods from October 8, 2017 through October 21, 2017, and October 22, 2017 through November 4, 2017.
- 8) You testified that you have resided in the United States since [REDACTED] 1999, and that you became a lawful permanent resident in early 2001.
- 9) You provided documentation in the form of a Permanent Resident card which shows that you are originally from [REDACTED] and you have been lawful permanent resident of the United States since [REDACTED] 2001 with a category of NC7.
- 10) Your NYSOH account reflects that your non-citizen class of admission code is NC7.

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

Applicable Law and Regulations

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

Lawfully present non-citizens who are eligible for Essential Plan include qualified aliens in the five-year ban, certain 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.*).

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 \$20,1600.00 for a three-person household (81 Fed. Reg. 4036.).

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 \$20,420.00 for a three-person household (82 Fed. Reg. 8831).

Household Size

In the case where a child is claimed by one parent as a dependent and who is living with both parents who are not filing a joint tax return (42 CFR § 435.603(f)(2)(ii)), the child's family includes the following persons, if living with the child: (1) the child's parents, (2) the child's spouse, (3) the child's children and siblings under the age of 19, or 21 if a full-time student (42 CFR § 435.603(f)(3)).

Lawfully Present Non-Citizens Transitioned to the Essential Plan

In New York State, lawfully present non-citizens who were formerly eligible for state-funded Medicaid, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of April 1, 2015 (New York's Basic Health Plan Blueprint, p. 19, as approved March 2015; see <https://www.medicaid.gov/basic-health-program/downloads/ny-blueprint.pdf>). This category of non-citizens includes lawful permanent residents who are still in their first five years of permanent residency (18 NYCRR § 349.3, 8 USC § 1613).

Pursuant to Sec. 202 of PL 105-100, the United States Citizenship and Immigration Service (USCIS) has classified non-citizens with a class of admission code of NC7 is a Nicaraguan or Cuban national granted adjustment of status to a lawful permanent resident as the spouse of alien granted permanent residence (<https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-32054.html>).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were eligible to enroll in the Essential Plan, effective December 1, 2017, and not eligible for Medicaid.

The Essential Plan is provided through NYSOH to individuals who are lawfully present non-citizens who are ineligible for Medicaid or Child Health Plus because 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.

According to your NYSOH account, you reside with your two children and their father. You testified, and your application states, that you expect to file your 2018

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income taxes as head of household and will be claiming two dependents on that tax return. Therefore, you are in a three-person household.

The application that was submitted on November 7, 2017 listed an annual household income of \$15,600.00 and the eligibility determination relied upon that information. You testified that this was correct, and that you are paid on an hourly basis at \$12.00 per hour, that you typically work 25 hours per week and that you receive a paycheck bi-weekly. You provided paystubs which corroborate your testimony.

On the date of your application, the relevant FPL was \$20,420.00 for a three-person household. Since an annual income of \$15,600.00 is 77.37% of the 2016 FPL and 76.39% of the 2017 FPL, you meet the financial eligibility criteria for both the Essential Plan and Medicaid.

As of January 1, 2016, legal permanent residents who were receiving Medicaid through NY State, but were not eligible for Medicaid under federal law due to being in the first five years of their permanent residency, must now receive coverage through the Essential Plan. The record indicates that NYSOH determined that you were in the first five years of your qualified immigration status and thus not eligible for Medicaid.

However, you testified and provided documentation that you have been lawful permanent resident since [REDACTED] 2001, with a class of admission code of NC7, as a [REDACTED] granted adjustment of status to a lawful permanent resident. Since you are a lawful permanent resident and are not within the first five years of your qualified immigration status you should not have been denied Medicaid on that basis.

Therefore, since the November 8, 2017 eligibility determination improperly stated that you were within the first five years of your qualified immigration status and thus not eligible for Medicaid it is RESCINDED.

Decision

The November 8, 2017 eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility as of November 7, 2017 based on your status as a legal permanent resident outside of your first five years of your qualified immigration status, in a three-person household, residing in [REDACTED] with an annual household income of \$15,600.00.

Effective Date of this Decision: January 31, 2018

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How this Decision Affects Your Eligibility

You were improperly found eligible for the Essential Plan on the basis of your immigration status.

This is not a final determination of your eligibility.

Your case is being sent back to NYSOH to redetermined your eligibility and to notify you accordingly.

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

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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):

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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 November 8, 2017 eligibility determination is RESCINDED.

You were improperly found eligible for the Essential Plan on the basis of your immigration status.

Your case is RETURNED to NYSOH to redetermine your eligibility as of November 7, 2017 based on your status as a legal permanent resident outside of your first five years of your qualified immigration status, in a three-person household, residing in [REDACTED] with an annual household income of \$15,600.00.

This is not a final determination of your eligibility.

Your case is being sent back to NYSOH to redetermined your eligibility and to notify you accordingly.

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 okyer& 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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