



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

## Notice of Decision

Decision Date: January 25, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024210

[REDACTED]

[REDACTED]

On January 4, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's October 27, 2017 discontinuance 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: January 25, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024210



## Issue

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

Did NY State of Health properly determined that you were not eligible to enroll into health insurance coverage through NY State of Health, effective November 1, 2017?

## Procedural History

On October 13, 2017, NY State of Health (NYSOH) received your updated application for health insurance.

On October 14, 2017, NYSOH issued an eligibility determination notice stating in part that you were eligible to enroll in the Essential Plan for a limited time, effective November 1, 2017. The notice stated that you were not eligible for Medicaid because your income was over the allowable income limit for that program. The notice further stated that you needed to submit documentation of your household income and immigration status by January 11, 2018, so that your eligibility could be confirmed.

On October 20, 2017, you faxed a five-page document to NYSOH that included income documentation and a copy of your I-776 Employment Authorization Card reflecting a category code of "C33." This documentation was uploaded to your account on October 26, 2017.

Also on October 26, 2017, NYSOH validated the five-page faxed documentation and an updated application was submitted on your behalf.

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On October 27, 2017, NYSOH issued a discontinuance notice, based on the documentation that was verified on October 26, 2017. The notice stated that you were not eligible for the Essential Plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance and you were ineligible to enroll in a qualified health plan at full cost. This was because your “[v]erification documents show not lawfully present.” This notice further stated that you were not eligible for Medicaid because your household income was over the allowable income limit for that program.

On November 9, 2017, you contacted NYSOH’s Account Review Unit and requested an appeal of the discontinuance notice insofar as you were not eligible for health insurance coverage through NYSOH.

On January 4, 2018, you had a telephone hearing with a Hearing Officer from NYSOH’s Appeals Unit. The record was developed during the hearing and the record was held open until January 19, 2018, to allow you time to submit supporting documents.

As of January 17, 2018, you faxed a nine-page document to NYSOH’s Appeals Unit and it was made part of the record as “Appellant’s Exhibit #1.” The record was left open until January 19, 2018, to allow you time to submit additional income documentation.

As of January 19, 2018, NYSOH’s Appeals Unit did not receive any additional documents from you and none were viewable in your NYSOH account. Therefore, the record was closed the same day and this Decision is based on the record as developed at the hearing and includes Appellant’s Exhibit #1.

## **Findings of Fact**

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

- 1) You testified that you are only appealing your eligibility.
- 2) According to your NYSOH account, you expect to file your 2017 taxes with a status of head of household with four qualifying individuals.
- 3) Your October 13, 2017 application states you are a non-immigrant visa holder.
- 4) You faxed a copy of your Employment Authorization Card (EAC) on October 20, 2017, which listed an immigration status of “C-33.” This documentation was validated by NYSOH on October 26, 2017 and your immigration status was changed to immigrant non-citizen.

- 5) The status of "C-33", according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) indicates a status classified as Deferred Action on Childhood Arrivals.
- 6) The application that was submitted on October 26, 2017, in which you requested financial assistance, listed an annual household income of \$46,446.40 in earnings from your employment. You testified that this amount was correct at the time.
- 7) You testified that you were working two jobs in the month of October 2017.
- 8) You testified that your gross monthly income for the month of October 2017 was approximately \$3,000.00.
- 9) You submitted two biweekly paystubs from your one place of employment; which included a paystub, dated October 13, 2017, showing a gross income amount of \$780.97; and a paystub, dated October 27, 2017, showing a gross income amount of \$787.51.
- 10) The record contains only one biweekly paystub for the month of October 2017, from your other place of employment and there is no indication in the record that you only received one paystub for the month of October 2017 from this employment.
- 11) You testified that you believe NYSOH is incorrect in its statement that you are not lawfully present. You testified that you are here legally, and that you believe you should be eligible for health insurance coverage.
- 12) Your application states that you live in Dutchess County, New York.

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

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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).

### Qualified Immigrants Transitioned to the Essential Plan

In New York State, qualified immigrants who were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016 (New York's Basic Health Plan Blueprint, p. 19, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>). This category of qualified immigrants includes individuals lawfully admitted for permanent residence in the United States who are still in their first five years of permanent residency (18 NYCRR § 349.3, 8 USC § 1613).

### 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 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 \$28,780.00 for a five-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).

## Qualified Health Plan

To enroll in a qualified health plan (QHP) through the Marketplace, 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)).

## 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)).

The guide, “Key to I-766/I-688B, Employment Authorization Documents (EADs)”, defines certain codes on the USCIS Employment Authorization Documents” (08 MA/033, dated December 1, 2008, and as amended). It confirms that a person who has category code of “(c)(33)” has PRUCOL status for Medicaid and Child Health Plus only (*id.*).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you were not eligible to enroll in health insurance coverage through NYSOH effective November 1, 2017.

On October 14, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan for a limited time, effective November 1, 2017. Your eligibility was contingent on you providing documentation of your household income and immigration status.

On October 20, 2017, you provided to NYSOH a copy of your I-766 EAC, a letter from your employer, and a biweekly paystub. On October 26, 2017, this documentation was verified and an application was submitted to NYSOH on your behalf. That updated application listed an annual household income of \$46,466.40 and reflected that you were an immigrant non-citizen.

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As a result, NYSOH issued a discontinuance notice stating that you were not eligible for the Essential Plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and not eligible to enroll in a qualified health plan at full cost through NYSOH because the documentation you provided showed that you were not lawfully present. This notice further stated that you were not eligible for Medicaid because your household income was over the allowable income limits for that program.

Your employment authorization documentation states you are an immigrant non-citizen with a “C-33” status. The status of “C-33”, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) indicates a status classified as Deferred Action on Childhood Arrivals. Individuals who have obtained an Employment Authorization card with the status of “C-33” category are persons considered not “lawfully present” for purposes of the federal definition and are, therefore, not recognized as eligible to receive federal funding under those programs.

In addition, while individuals who have been determined to be qualified aliens and were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016, this is not the case for persons who received Deferred Action status.

Therefore, NYSOH was correct in finding you not eligible for coverage under the Essential Plan.

However, NY State has consistently recognized persons with Deferred Action status within the accepted meaning of “*PRUCOL alien*”; even though the federal government has not. The New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 NY 2d 418 [2001]), that New York must provide state-funded Medicaid to the lawfully residing immigrants who had been excluded from access to the federal Medicaid program.

Since your current Deferred Action status does confer PRUCOL status for individuals seeking Medicaid eligibility, the NYSOH Appeals Unit may review whether you met the financial criteria for Medicaid.

You are in a five-person household for purposes of this analysis. This is because you expect to file your 2017 income taxes as head of household with four qualifying individuals.

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 (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your applications, the relevant FPL was \$28,780.00 for a five-person household. Since \$46,466.40 is 161.45% of the 2017 FPL, NYSOH properly found you to be ineligible for Medicaid on an

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expected annual income basis, using the information provided in your application.

Financial eligibility for Medicaid can also be based on current monthly household income and family size.

You testified that in the month of October 2017 you were working two jobs, and you got paid biweekly at both jobs. You further testified that you made about \$3,000.00 in the month of October 2017.

You faxed a nine-page document to NYSOH which included two biweekly paystubs from your one place of employment. These paystubs included a paystub, dated October 13, 2017, showing a gross income amount of \$780.97, and a paystub, dated October 27, 2017, showing a gross income amount of \$787.51. Therefore, the record indicates that, in the month of October 2017, you received \$1,568.48 in income from one place of employment.

You also faxed two paystubs from your other job, but only one of these biweekly paystubs were from the month of October 2017; which was dated October 6, 2017. You testified that you were paid biweekly at both of your jobs. However, there is no indication in the record that you only received one paystub for the month of October 2017 from your second place of employment. Therefore, the income documentation you submitted is not sufficient to calculate the amount of gross income you received in the month of October 2017 from your second place of employment.

As such, the NYSOH Appeals Unit must rely upon the system calculated income amount for this decision for this job. The application that was submitted on October 26, 2017 states that you made \$1,040.00 on average every two weeks for this place of employment. Therefore, for the month of October 2017, your monthly household income from your second place of employment was \$2,080.00.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$3,310.00 per month. Using the documentation, you submitted and the information listed in your NYSOH account, you earned \$3,648.48 in October 2017, which exceeds the maximum allowable monthly income limit of \$3,310.00. As a result, you do not qualify for Medicaid based on your household monthly income as of the date of your application.

Finally, federal regulations require that a person seeking enrollment in a qualified health plan through the NYSOH have United States citizenship or satisfactory or immigration status. Under the federal regulations, individuals with Deferred Action for Childhood Arrivals status are not considered to be lawfully present for the purposes of obtaining coverage in a qualified health plan through NYSOH.

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Accordingly, the October 27, 2017 discontinuance notice properly found you to be ineligible for the Essential Plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and ineligible to enroll in a qualified health plan at full cost through NYSOH because you were not lawfully present. Further, your ineligibility for Medicaid is properly based on your annual household income being over the limit for that program, not your legal presence.

## **Decision**

The October 27, 2017 discontinuance notice is AFFIRMED.

**Effective Date of this Decision:** January 25, 2018

## **How this Decision Affects Your Eligibility**

NYSOH properly found you ineligible for the Essential Plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and ineligible to enroll in a qualified health plan at full cost through NYSOH because the documentation you provided showed that you were not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you were not eligible for Medicaid at the time of your October 26, 2017 application because your household income was over the maximum allowable income limit.

## **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)).

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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:

- 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 October 27, 2017 discontinuance notice is AFFIRMED.

NYSOH properly found you ineligible for the Essential Plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and ineligible to enroll in a qualified health plan at full cost through NYSOH because the documentation you provided showed that you were not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you were not eligible for Medicaid at the time of your October 26, 2017 application because your household income was over the maximum allowable income limit.

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## **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

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**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)

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### 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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