



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

## Notice of Decision

Decision Date: February 06, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024589

[REDACTED]

[REDACTED]

On January 10, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's November 3, 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.

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).

This page intentionally left blank.

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

## Decision

Decision Date: February 06, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024589

[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 not eligible to enroll in coverage through NYSOH as of November 2, 2017, because you were not considered lawfully present, and because you were over the allowable income limit for Medicaid?

## Procedural History

On September 6, 2017, NYSOH received a copy of your I-776 Employment Authorization Card reflecting a category code of "C33." This document was reviewed and verified on September 11, 2017 as valid proof of your immigration status.

On November 2, 2017, NYSOH received your updated application for health insurance.

On November 3, 2017, NYSOH issued a denial notice stating that you were not eligible for Medicaid because your household income of \$39,952.00 was over the allowable income limit of \$28,180.00. The notice further stated that you were not eligible for the Essential Plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and that you were not eligible to enroll in a qualified health plan at full cost. This was because your "[v]erification documents show not lawfully present."

On November 20, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility determinations insofar as you were not eligible for coverage through NYSOH.

On January 10, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open through January 25, 2018, to allow you to submit supporting documents.

On January 19, 2018, you faxed documentation to the Appeals Unit. The record is now closed.

## **Findings of Fact**

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

- 1) The record reflects that you expect to file your 2017 taxes with a status of married, filing jointly, and you will claim one dependent on that tax return.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are an immigrant non-citizen.
- 4) You faxed a copy of your Employment Authorization card on September 6, 2017 with the status of C-33, which was verified on September 11, 2017.
- 5) The status of C-33, according to the United States Citizenship and Immigration Services (USCIS) and Social Security Administration (SSA) refers to a status classified as Deferred Action on Childhood Arrivals.
- 6) The application that was submitted on November 2, 2017, which requested financial assistance, listed annual household income of \$39,952.00 consisting of \$29,952.00 in income you earn from employment, and \$10,000.00 your spouse earns from employment. You testified that this amount was correct at the time.
- 7) You testified that you expect your income to be the same in 2018.
- 8) You testified that you are paid weekly, and that your weekly pay is always \$576.92.
- 9) You testified that you expect your spouse's income to be the same in 2018.

- 10) You testified that your spouse works a seasonal job, and that he stopped working toward the end of October 2017. You testified that he had no income in the month of November 2017.
- 11) You testified that your spouse will probably start working again sometime in February 2018.
- 12) You testified that you are in the process of applying for a "Green Card," and that your spouse is a United States citizen.
- 13) You testified that you filed your application for permanent residency in October or November of 2017.
- 14) You testified that you have already had your fingerprints taken for purposes of your application for permanent residency, and your NYSOH account contains an I-797C Notice of Action confirming that you had an appointment with USCIS in [REDACTED] on [REDACTED] for [REDACTED].
- 15) You testified that you received a call from your immigration lawyer stating that you have a new employment authorization card based on your application for permanent residency.
- 16) After the hearing, you faxed an eight-page document to the Appeals Unit consisting of the following:
  - a. A one-page cover sheet;
  - b. A copy of the front of an "Employment Authorization Card" with a category code of "C09," and an expiration date of [REDACTED];
  - c. The back of your Employment Authorization Card;
  - d. A copy of five paystubs in your name for the following dates and gross earnings:
    - i. 11/3/17 - \$576.92;
    - ii. 11/10/17 - \$576.92;
    - iii. 11/17/17 - \$576.92;
    - iv. 11/24/17 - \$576.92;
    - v. 12/1/17 - \$576.92.

Together, these documents are collectively marked and entered into the record as "Appellant's Exhibit One."

- 17) The category of C-09, according to the USCIS, is in reference individuals who have applied for adjustment of status from nonimmigrant to permanent resident.

18) You testified that you are looking to be eligible for coverage through NYSOH.

19) Your application states that you live in Richmond County.

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).

### 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/downloads/ny-blueprint.pdf>). 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 \$20,420.00 for a three-person household (82 Fed. Reg. 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 only issue under review is whether NYSOH properly determined that you were not eligible to enroll in coverage through NYSOH as of November 2, 2017, because you are not considered lawfully present, and because your household income is over the income limit for Medicaid.

On September 6, 2017, you provided to NYSOH a copy of your I-766 EAC. On September 11, 2017, this information was verified. On November 2, 2017, an application was submitted to NYSOH on your behalf. That application listed an annual household income of \$39,952.00, and reflected that you were an immigrant non-citizen.

As a result, NYSOH issued an eligibility determination notice stating that you were not qualified to enroll in coverage through NYSOH because the documentation you provided showed that you were not lawfully present, and you were not eligible for Medicaid because your household income was over the allowable income limit.

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) refers to 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.

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 QHP through NYSOH.

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, of to enroll in a QWHP, based on the immigration documentation you submitted in September 2017.

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).



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 Deferred Action status does confer PRUCOL status for individuals seeking Medicaid eligibility, we may review whether you met the financial criteria for Medicaid.

You are in a three-person household. You expect to file your 2017 income taxes as married filing jointly, and will claim one dependent on that tax return.

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 \$20,420.00 for a three-person household. Since \$39,952.00 is 195.65% of the 2017 FPL, NYSOH properly found you to be ineligible for Medicaid on an 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 credibly testified that in the month of November 2017, your spouse had no income, as his work is seasonal and ended in October 2017. After the hearing, you submitted documentation to show that you received four paychecks in November 2017 that totaled \$2,307.68 (Appellant’s Exhibit One).

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 \$2,348.00 per month. Since the documentation you provided shows that you earned \$2,307.68 in November 2017, you may qualify for Medicaid based on monthly income, as of the date of your application.

Additionally, you testified during the hearing that you are in the process of applying for permanent residency. After the hearing, you submitted a copy of your updated Employment Authorization Card, showing that your status has changed from C33 to C09, which is a status conferred on individuals who have a pending application for permanent residency.

Since the November 3, 2017 eligibility determination properly stated that you were ineligible to enroll in a QHP and ineligible for the Essential Plan because the immigration documentation you submitted showed that you were not “lawfully

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).

present,” and since it properly stated that you were not eligible for Medicaid, based on the expected annual income that was provided in your application, it was correct at the time and is AFFIRMED.

However, since you have provided documentation of your monthly income in November 2017, your case is RETURNED to NYSOH to redetermine your eligibility for Medicaid based on a household of three with a monthly income of \$2,307.68 in November 2017.

Additionally, your case is RETURNED to NYSOH to update your NYSOH account to reflect your new immigration status, based on the Employment Authorization Card you submitted after the hearing, which reflects a new status of C-09.

## **Decision**

The November 3, 2017 eligibility determination is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for Medicaid on a monthly income basis, based on a household of three with a monthly income of \$2,307.68 in the month of November 2017.

Your case is RETURNED to NYSOH to update your immigration status in your NYSOH account, based on the updated Employment Authorization Card you submitted after the hearing, which reflects a new status of C09.

NYSOH is directed to notify you in writing of your new eligibility.

**Effective Date of this Decision:** February 06, 2018

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

At the time of your November 2, 2017 application, you were not eligible for the Essential Plan or enrollment in a QHP because the documentation you provided to NYSOH showed that you were not “lawfully present.”

Although you qualified as a PRUCOL alien for state-based Medicaid, you were not eligible for Medicaid at the time because your annual expected household income was over the maximum allowable income limit.

Since you provided documentation showing that your monthly income in the month of your application (November 2017) was below the monthly Medicaid

income limit, your case is being sent back to NYSOH to redetermine your eligibility for Medicaid on a monthly income basis.

Additionally, as you provided documentation showing that your immigration status has changed, your case is being sent back to NYSOH to update the immigration information in your NYSOH account to reflect your new C09 status.

NYSOH will notify you in writing of your new eligibility.

## **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 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).

## **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 November 3, 2017 eligibility determination is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for Medicaid on a monthly income basis, based on a household of three with a monthly income of \$2,307.68 in the month of November 2017.

Your case is **RETURNED** to NYSOH to update your immigration status in your NYSOH account, based on the updated Employment Authorization Card you submitted after the hearing, which reflects a new status of C09.

NYSOH is directed to notify you in writing of your new eligibility.

At the time of your November 2, 2017 application, you were not eligible for the Essential Plan or enrollment in a QHP because the documentation you provided to NYSOH showed that you were not “lawfully present.”

Although you qualified as a PRUCOL alien for state-based Medicaid, you were not eligible for Medicaid at the time because your annual expected household income was over the maximum allowable income limit.

Since you provided documentation showing that your monthly income in the month of your application (November 2017) was below the monthly Medicaid income limit, your case is being sent back to NYSOH to redetermine your eligibility for Medicaid on a monthly income basis.

Additionally, as you provided documentation showing that your immigration status has changed, your case is being sent back to NYSOH to update the immigration information in your NYSOH account to reflect your new C09 status.

NYSOH will notify you in writing of your new eligibility.

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).

## **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।

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).

## **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 okyerE 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.

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).