



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

## Notice of Decision

Decision Date: February 6, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000025025

[REDACTED]

[REDACTED]

On February 1, 2018, you appeared by telephone, with the assistance of [REDACTED] at a hearing on your appeal of NY State of Health's November 23, 2017 eligibility determination 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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## Decision

Decision Date: February 6, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000025025

[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 your November 22, 2017 updated application?

## Procedural History

On November 6, 2017, pursuant to NYSOH's request, you submitted a copy of your I-766 Employment Authorization Card with a category code of "C33" [REDACTED]. This document was reviewed and verified by NYSOH on November 7, 2017, as valid proof of your immigration status.

On November 8, 2017, NYSOH issued an eligibility determination notice stating that you did not qualify for health coverage through NYSOH, effective December 1, 2017. This was because your household income was over the allowable income limit for the Medicaid program and your verification documents showed that you were not lawfully present.

Also on November 8, 2017, a disenrollment notice was issued stating that your Essential Plan ended on December 1, 2017. This was because you were no longer eligible to enroll in health coverage through NYSOH.

On November 23, 2017, NYSOH issued an eligibility determination notice, based on your November 22, 2017 updated application, stating that you did not qualify for health coverage through NYSOH. This was because your household income

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was over the allowable income limit for the Medicaid program and your verification documents showed that you were not lawfully present.

On November 29, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as you were not eligible for health coverage through NYSOH.

On December 12, 2017, NYSOH issued an eligibility determination notice stating that you were eligible for the Essential Plan with no monthly premium for a limited time, effective December 1, 2017. The notice stated that you have been granted Aid to Continue until a decision is made on your appeal.

Also on December 12, 2017, a plan enrollment notice was issued confirming your enrollment in the Essential Plan with no monthly premium, effective December 1, 2017.

On February 1, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing closed at the end of the hearing.

## **Findings of Fact**

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

- 1) According to your NYSOH account, you expect to file your 2017 taxes with a status of married filing jointly and you will claim no dependents on that tax return.
- 2) You are seeking health insurance for yourself.
- 3) Your application states you are an immigrant non-citizen.
- 4) You uploaded a copy of your Employment Authorization card on November 6, 2017 with the status of C-33, which was verified on the next day.
- 5) The status of C-33, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as Deferred Action on Childhood Arrivals.
- 6) The application that was submitted on November 22, 2017, in which you requested financial assistance, listed an annual household income of \$23,920.00, consisting of \$10,400.00 in income you earned from employment and \$13,520.00 in income your spouse earned from

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employment in 2017. You testified that your gross employment income for 2017 was \$11,119.00. You further testified that you are not sure if your spouse's income is accurate and that you are unable to obtain any proof of his income because you are currently separated.

- 7) You testified that the income in your November 22, 2017 application was calculated by the certified application counselor and based on your and your spouse's paystubs.
- 8) According to your NYSOH account, your and your spouse's November 2017 monthly income is \$1,993.34, which is the same as your average gross monthly income in 2017 and consists of \$866.67 you earn in employment income each month and \$1,126.67 your spouse earns in employment income each month.
- 9) According to your NYSOH account and your testimony, you do not plan on taking any deduction on your 2017 income tax return.
- 10) You testified that you need health insurance because you have urgent medical needs.
- 11) According to your NYSOH account and your testimony, you live in Suffolk County, New York.

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

## **Applicable Law and Regulations**

### 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 \$16,240.00 for a two-person household (82 Federal Register. 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).

### Essential Plan

To enroll in the Essential Plan through NYSOH, 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 (see 42 CFR § 600.305 (5), 45 CFR § 155.305(e), NY Social Services Law § 369-gg (8), 42 USC § 18051 (e)(B)).

### 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 the November 22, 2017 application, because you are not considered lawfully present.

On November 6, 2017, pursuant to NYSOH's request, you submitted a copy of your I-766 Employment Authorization Card reflecting a category code of "C33." [REDACTED] This document was reviewed and verified by NYSOH on November 7, 2017 as valid proof of your immigration status.

The November 22, 2017 updated application listed an annual household income of \$23,920.00 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 you are over the allowable income limit for Medicaid. Additionally, you were redetermined to be ineligible for other NYSOH programs because of your immigration status.

Your employment authorization documentation states you are an immigrant non-citizen with a C-33 status. The status of C-33, according to the USCIS and SSA is in reference 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.

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 through NYSOH.

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, we may review whether you met the financial criteria for Medicaid.

According to your NYSOH account, you expect to file your 2017 taxes with a status of married filing jointly and you will claim no dependents on that tax return. Therefore, for purposes of this analysis, you are in a two-person household.

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 application, the relevant FPL was \$16,240.00, for a two-person household. Since \$23,920.00 is 147.29% 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.

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

According to your NYSOH account, your and your spouse's monthly household income for November 2017 was calculated to be \$1,993.34 per month, based on the income you attested to in your application.

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 \$1,868.00 per month in 2017. Since your application states that your gross monthly household income for November 2017 is \$1,993.34, you do not qualify for Medicaid based on monthly income as of the date of your application.

Finally, federal regulations require that a person seeking enrollment in the Essential 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 the Essential Plan through NYSOH.

Accordingly, the November 23, 2017 eligibility redetermination notice properly found you to be ineligible for the Essential Plan based on you not being lawfully present.

Additionally, 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 November 23, 2017 eligibility determination notice is **AFFIRMED**.

**Effective Date of this Decision:** February 6, 2018

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).



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

You are not eligible for enrollment in the Essential Plan because you are 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 application because your household income was over the maximum allowable income limit.

If your household size or income change in the future, you may update your application to see if you are eligible for financial assistance through NYSOH.

## **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):**

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 23, 2017 eligibility redetermination notice is AFFIRMED.

You are not eligible for enrollment in the Essential Plan because you are not lawfully present.

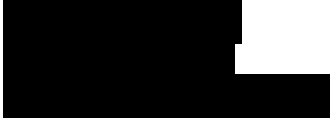
Although you qualify as a PRUCOL alien for state-based Medicaid, you were not eligible for Medicaid at the time of your application because your household income was over the maximum allowable income limit.

If your household size or income change in the future, you may update your application to see if you are eligible for financial assistance through NYSOH.

## **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 مجانًا.

### বাংলা (Bengali)

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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।

### **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

### **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

### **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

### **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

### **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

### **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&btumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

### **(Urdu) اردو**

آپ کو ہم کریں۔ کال پر 1-855-355-5777 کرم براہ تو ہے ضرورت کی مدد لیے کے سمجھنے اسے کو آپ اگر ہے۔ دستاویز اہم ایک یہ ہیں۔ سکتے کر فراہم مترجم مفت ایک میں زبان مادری کی

### **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.

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### אידיש (Yiddish)

. מיר קענען אייך 1-855-355-5777 דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט וואס איר רעדט. געבן א דאלמעטשער פריי פון אפצאל אין די שפראך