



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

## Notice of Decision

Decision Date: April 3, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000025528

[REDACTED]

Dear [REDACTED]

On February 27, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's November 18, 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).

This page intentionally left blank.



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

## Decision

Decision Date: April 3, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000025528



## 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 fully eligible for Medicaid?

## Procedural History

On November 17, 2017, you updated your NYSOH account. Specifically, you indicated that you are pregnant.

On November 18, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid coverage for the treatment of emergency conditions only, effective November 1, 2017. This was because your household income was at or below the allowable income limit for Medicaid, however, you were only eligible for emergency medical care and services because you were not a citizen, qualified alien, or permanently residing in the United States under color of law.

On December 8, 2017, you spoke with NYSOH's Account Review Unit and appealed insofar as you were not found fully eligible for Medicaid.

On February 27, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, Haitian Creole Interpreter [REDACTED] translated. The record was developed during the hearing and left open until

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).

March 13, 2018 to allow you time to submit your visa as well as information regarding your entry and departure from the United States.

On March 12, 2018, the Appeals Unit received via fax a copy of your passport with entry stamps and a copy of your visa. These documents were collectively marked as Appellant's Exhibit #1 and incorporated into the record. The copy of your visa was illegible and you were requested to resubmit your visa and additional time was granted for you to resubmit your visa. On March 26, 2018, the Appeals Unit received via fax a copy of your visa. This document was marked as Appellant's Exhibit #2 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 seeking to be found fully eligible for Medicaid.
- 2) You testified that you are pregnant with one child and are due [REDACTED]  
[REDACTED]
- 3) You testified that you are not married and that you do not have any other children.
- 4) You testified that you do not file a tax return in the United States.
- 5) In the application you submitted on November 17, 2017, you listed your annual expected income as \$0.00. You testified that this is correct.
- 6) You testified that you do not work and you have no other source of income.
- 7) You testified that you have no income and that your family and your boyfriend provide you with support.
- 8) You testified that you have a tourist visa and have held a tourist visa for five years. You testified that you have never had a different immigration status.
- 9) You submitted two copies of your visa, however, neither copy is legible.
- 10) You testified that you have never had a different immigration status and that you do not currently have any applications pending before the United States Citizenship and Immigration Services.

- 11) You testified that you first entered the United States in 2015, however, each time you come to the United States, you stay for a period of time and then return [REDACTED].
- 12) You testified that you most recently entered the United States in January 2018.
- 13) When asked if you intend to remain in the United States, you responded that you come and go.
- 14) You testified that when you are in the United States you stay with your boyfriend and his cousin.
- 15) You submitted your passport which shows entry stamps which indicate that you entered the United States on [REDACTED], [REDACTED] and [REDACTED].

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

## **Applicable Law and Regulations**

### Medicaid for Pregnant Women

Medicaid can be provided through the Marketplace 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)), N.Y. Soc. Serv. Law § 366(1)(b)).

In New York, a pregnant woman is eligible for Medicaid at a household income of 223% of the federal poverty level (FPL) for the applicable family size (42 CFR § 435.116 (c)(2); NY Department of Social Services Administrative Directive 13ADM-03).

“Family size” means the number of persons counted as members of an individual’s household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

For purposes of Medicaid eligibility, the family size of a pregnant woman includes the pregnant woman and the number of children she expects to deliver (42 CFR

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).

§ 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

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 \$16,240.00 for a two-person household (80 Fed. Reg. 3236, 3237).

Generally, Medicaid coverage begins on the first day of the month in which the applicant was found eligible (42 CFR § 435.915(b)).

Pregnant women are not required to document citizenship/immigration status for ongoing Medicaid eligibility. Citizenship/immigration status is not an eligibility requirement for a pregnant woman throughout her pregnancy and for 2 months after the month in which the pregnancy ends (N.Y. Soc. Serv. Law § 366 (4)(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)).

### State Residency Requirement

NYSOH must provide Medicaid to eligible residents of New York State (42 CFR §435.403(a)). In the case of individuals age 21 and over and not residing in an institution, the state of residence is the state where the individual is living and (1) intends to reside, including without a fixed address or (2) has entered the state with a job commitment or seeking employment (42 CFR §435.403(h)(1)).

### 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

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).

(42 CFR § 435.930(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. Temporary non-immigrants, who have been allowed to enter the United States temporarily for a specific purpose and for a specified period of time, do not have to meet the State residence requirement. (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

## **Legal Analysis**

The issue under review is whether that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only and not fully eligible for Medicaid.

To be eligible for full Medicaid or emergency Medicaid through NYSOH, you must be a resident of New York State.

For individuals age 21 and over and not residing in an institution, the state of residence is the state where the individual is living and intends to reside, including without a fixed address, or has entered the state with a job commitment or seeking employment.

You testified that you are present in the United States on a tourist visa and the record reflects that you periodically enter the United States and return home to Haiti. You have not applied for nor have you ever held a different immigration status. When asked whether you intend to remain in the United States, you indicated that you come and go.

Based on your testimony as well as the transient nature of your stays in New York State, which are consistent with your holding of a tourist visa, the record reflects that you do not intend to reside in New York State.

Additionally, you do not work in New York State and there is no indication in the record that your visa would permit you to legally obtain work in New York State.

Therefore, the record reflects that you are not a resident of New York State and are therefore ineligible for Medicaid.

However, there is a limited exception with regard to the residency requirement in the case of temporary non-immigrants who have been allowed to enter the United States temporarily for a specific purpose and a specified period of time.

The record reflects that as a tourist visa holder you are a temporary non-immigrant, and that you have been allowed to enter the United States on a temporary basis for the purpose of visiting and that the duration of your stay is limited to a specified period of time.

As such, you are not required to meet the residency requirement to obtain emergency Medicaid.

Since you are a pregnant temporary non-immigrant, non-resident, present in the state of New York, with an income of \$0.00, NYSOH properly found you eligible for Medicaid for the treatment of emergency medical conditions only, and the November 18, 2017 eligibility determination notice is AFFIRMED.

## **Decision**

The November 18, 2017 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** April 3, 2018

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

You remain eligible for Medicaid for the treatment of emergency medical conditions only.

## **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 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 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 November 18, 2017 eligibility determination notice is AFFIRMED.

You remain eligible for Medicaid for the treatment of emergency medical conditions only.

### **Legal Authority**

We are issuing this determination in accordance with 45 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).

**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)**

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&btumi 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).