



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

Notice of Decision

Decision Date: March 7, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000025886

[REDACTED]

Dear [REDACTED],

On February 21, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 8, 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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Decision Date: March 7, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000025886

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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 NY State of Health?

Procedural History

On December 7, 2017, NYSOH received your updated application for health insurance.

Also on December 7, 2017, NYSOH received a copy of your I-776 Employment Authorization Card reflecting a category code of "C33," and verified this document as valid proof of your immigration status.

On December 8, 2017, NYSOH issued a discontinuance notice stating that you were not eligible for Medicaid, because your household income was over the allowable income limit. The notice further stated that you were not eligible to purchase a qualified health plan, to receive tax credits or cost-sharing reductions, for the Essential Plan, or for federal Medicaid because your "verification documents show you are not lawfully present." That notice also stated that you were not eligible for state-based Medicaid because your income was over the allowable limit for that program.

On February 21, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and left

open until March 7, 2018, to allow you the opportunity to provide supporting documents.

On February 28, 2018, NYSOH received via fax copies of your paystubs. These documents were collectively made part of the record as Appellant's Exhibit #1. The record is now closed.

Findings of Fact

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

- 1) You are seeking health insurance for yourself.
- 2) According to your NYSOH account, you expect to file your 2017 taxes with a status of single and will claim no dependents on that tax return.
- 3) You testified that you are a Deferred Action for Childhood Arrivals (DACA) recipient.
- 4) You uploaded a copy of your Employment Authorization card on December 7, 2017 with the status of C-33, which was verified that same day.
- 5) 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.
- 6) The application that was submitted on December 7, 2017, in which you requested financial assistance, listed annual household income of \$23,400.00, consisting of income you earn from employment. You testified that this amount was correct.
- 7) You testified that you are paid weekly, and that your gross income per paycheck is \$450.00. You testified that your gross monthly income is approximately \$1,800.00, depending on the number of weeks in a given month. You provided documentation that your gross income for December 2017 was \$2,250.00.
- 8) You testified that you believe NYSOH is incorrect in its statement that you are not lawfully present. You testified that you are present in the United States under the status of DACA, that you are here legally, and that you believe you should be eligible for health insurance coverage.
- 9) Your application states you reside in Queens County, New York.

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

Applicable Law and Regulations

Lawfully Present Individuals Eligible under the Affordable Care Act

Under the Affordable Care Act of 2010 (ACA), only “lawfully present” non-citizens are eligible to purchase qualified health plans, and qualify for related financial assistance like advance premium tax credits, cost-sharing reductions, the Essential Plan and federal Medicaid (see, e.g., section 1411(a)(1) of the ACA (eligibility for the health insurance “exchanges” and the related affordability tax credits]).

The definition of lawfully present is codified at 45 C.F.R. section 152.2. Under this definition, “lawfully present” individuals include not only those classified as “qualified” immigrants but several other categories of non-citizens who have permission to live and/or work in the United States, and to apply for premium tax credits to help make health insurance affordable (see 8 U.S.C. § 1641; 45 C.F.R. § 155.2; 77 FR 18310 [March 27, 2012]; 26 C.F.R. § 1.36B-1(g); 77 FR 30377 [May 23, 2012]).

DACA recipients have been explicitly excluded from the definition of “lawfully present” for the purposes of determining health insurance eligibility for federally funded health insurance programs through the Marketplace (CMS State Health Officials letter (Aug. 28, 2012) (excluding individuals granted relief under the “Deferred Action for Childhood Arrivals” policy from eligibility)).

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 \$12,060.00 for a one-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).

PRUCOL Status and Medicaid and Child Health Plus Eligibility in New York State

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 coverage through NYSOH.

You testified that you are a Deferred Action for Childhood Arrivals (DACA) recipient. The credible evidence of record corroborates your testimony. On December 7, 2017 you provided to NYSOH a copy of your employment authorization document (your I-766 EAC). That card reflects you are 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.

On December 7, 2017, NYSOH reviewed your employment authorization document and verified it as valid proof of your status as a DACA recipient.

As a result, NYSOH relied on this documentation as proof of your immigration status in your December 7, 2017 application for health insurance.

In its December 8, 2017 eligibility determination, NYSOH stated that you were not eligible to enroll in coverage through NYSOH because the documentation you provided showed that you are not lawfully present, which you dispute.

In order for a non-citizen to be eligible for federally based health insurance through NYSOH, including a qualified health plan, advance premium tax credits, cost-sharing reductions, or the Essential Plan, or federal Medicaid, that person must be “lawfully present” in the United States.

However, DACA recipients have been explicitly excluded from the definition of “lawfully present” for the purposes of determining health insurance eligibility for federally funded health insurance programs through the Marketplace.

Since you have been granted DACA status, you are not considered “lawfully present” for purposes of the federal definition, and are therefore not recognized as eligible to receive federal funding under those programs.

In addition, 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 DACA status.

Therefore, NYSOH was correct in finding that you are not eligible for a qualified health plan, advance premium tax credits, cost-sharing reductions, the Essential Plan, or federal Medicaid.

However, NY State has consistently recognized persons with DACA 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

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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 DACA 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 one-person household for purposes of this analysis. This is because you expect to file your 2017 income taxes as single and will claim no dependents 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 December 7, 2017 application, the relevant FPL was \$12,060.00 for a one-person household. That application listed your gross annual income as \$23,400.00. You testified that this is correct. Since \$23,400.00 is 194.02% 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 provided documentation that, in the month of December 2017, you received income of \$2,250.00.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have a gross income no greater than 138% of the FPL which, according to the 2017 FPL, is a gross monthly income of \$1,387.00 for a one-person household. Since the documentation you provided shows that you earned a gross income of \$2,250.00 in December 2017, which exceeded the monthly allowable income limit of \$1,387.00, you do not qualify for Medicaid on the basis of monthly income as of the date of your application.

Accordingly, the December 8, 2017 discontinuance notice is AFFIRMED because it properly found you to be ineligible for a qualified health plan, advance premium tax credits, cost-sharing reductions, the Essential Plan, or federal Medicaid. based on you not being lawfully present. However, your ineligibility for Medicaid is properly based on your annual and monthly household income being over the income limits for that program, not your legal presence.

Decision

The December 8, 2017 discontinuance notice is AFFIRMED.

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).

Effective Date of this Decision: March 7, 2018

How this Decision Affects Your Eligibility

You are not eligible to purchase a qualified health plan, advance premium tax credits, cost-sharing reductions, the Essential Plan, or federal Medicaid because you are a DACA recipient and, therefore, considered not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you are not eligible for Medicaid at this time because your household income is over the maximum allowable income limit on both an annual and monthly basis.

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 December 8, 2017 discontinuance notice is AFFIRMED.

You are not eligible to purchase a qualified health plan, advance premium tax credits, cost-sharing reductions, the Essential Plan, or federal Medicaid because you are a DACA recipient and, therefore, considered not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you are not eligible for Medicaid at this time because your household income is over the maximum allowable income limit on both an annual and monthly basis.

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)

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&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.

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