



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

Notice of Decision

Decision Date: January 22, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000027149

[REDACTED]

[REDACTED]

On January 22, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 12, 2018 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: January 22, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000027149



Issues

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

Did NY State of Health (NYSOH) properly determine 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, or to enroll in a qualified health plan at full cost through NYSOH effective January 1, 2018, because you are not considered lawfully present?

Did NYSOH properly determine that you were ineligible for Medicaid?

Procedural History

On December 11, 2017, NYSOH received your updated application for health insurance. Also on December 11, 2017, NYSOH received a copy of your I-776 Employment Authorization Card reflecting a category code of "C33."

On December 12, 2017, NYSOH issued an eligibility determination notice, based on your December 11, 2017 application, stating that you were eligible to enroll in the Essential Plan with a \$20.00 premium per month for a limited time, effective January 1, 2018. 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 immigration status by March 11, 2018 so that your eligibility could be confirmed.

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On December 15, 2017, NYSOH issued a discontinuance notice based on information verified on December 12, 2017. The notice stated that you were not eligible the Essential plan, tax credits or cost-sharing reductions to help pay for the cost of insurance or to enroll in a qualified health plan at full cost. This was because your “[v]erification documents show not lawfully present.” The notice also stated that you were not eligible for Medicaid because your income was over the allowable limit for that program.

Also on December 15, 2017, NYSOH issued a notice of plan enrollment, stating that your enrollment with the Essential Plan ended effective January 1, 2018, because you are no longer eligible to enroll in health insurance through NY State of Health.

On January 11, 2018, you submitted an application for health insurance.

On January 12, 2018, NYSOH issued a discontinuance notice, stating that you were not eligible the Essential plan, tax credits or cost-sharing reductions to help pay for the cost of insurance or to enroll in a qualified health plan at full cost. This was because your “[v]erification documents show not lawfully present.” The notice also stated that you were not eligible for Medicaid because your income was over the allowable limit for that program.

Also on January 12, 2018, you contacted NYSOH’s Account Review Unit and requested an appeal of those eligibility determinations insofar as you were not eligible for coverage under the Essential Plan because you were not lawfully present.

On January 16, 2018, NYSOH received your request for an expedited appeal due to your medical condition. This request was approved and you were scheduled for an expedited hearing.

On January 22, 2018, you had an expedited telephone hearing with a Hearing Officer from NYSOH’s Appeal Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You are seeking insurance for yourself.
- 2) Your application states you are an immigrant non-citizen.

- 3) You uploaded a copy of your Employment Authorization card on December 11, 2017 with the status of C-33, which was verified on December 12, 2017.
- 4) 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.
- 5) 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.
- 6) The application that was submitted on January 11, 2018, which requested financial assistance with health insurance, listed annual household income of \$21,371.00, consisting of income you earn from employment. You testified that this amount was correct at the time.
- 7) You testified that you were recently married, and that you reside with your spouse.
- 8) Your NYSOH account does not list your spouse as a household member on your account. You testified that you did not add your spouse to your NYSOH account because she is not seeking insurance through NYSOH.
- 9) You testified, and the record reflects, that you expect to file your 2018 taxes with married filing single, and that you will not claim any dependents on that tax return.
- 10) You testified, and your application states, states that you live in Queens 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

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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/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 applications, that was the 2017 FPL, which is \$12,060.00 for a one-person household (81 Fed. Reg. 4036).

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).

"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)).

In the case of a married couple living together, each spouse is included in the Medicaid household of the other spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4)).

In general, household income means the aggregate modified adjusted gross income of every person who is included in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)).

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 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, or to enroll in a qualified health plan at full cost through NYSOH effective January 1, 2018, because you are not considered lawfully present.

On December 11, 2017 you provided to NYSOH a copy of your I-766 EAC. On December 12, 2017 this information was verified. On January 11, 2018 you submitted an updated application for health insurance listing an annual household income of \$21,371.00 and reflected that you were an immigrant non-citizen, in a one-person household living in Queens County.

As a result, NYSOH issued a discontinuance 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.

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) is in reference to a status classified as Deferred Action on Childhood Arrivals (DACA). 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 DACA status.

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

Additionally, federal regulations require that a person seeking enrollment in a qualified health plan through 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. Therefore, NYSOH properly found you ineligible to enroll in a qualified health plan.

In order to be found eligible for advance payments of the premium tax credit or cost-sharing reductions, and individual must be eligible to enroll in a qualified health plan. As you are ineligible to enroll in a qualified health plan as noted

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above, NYSOH properly found you ineligible for advance payments of the premium tax credit and cost-sharing reductions.

The second issue is whether NYSOH properly found you ineligible for Medicaid.

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.

Your application stated that you were in a one-person household. You expect to file your 2017 income taxes as married filing single, and will not claim any 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 applications, the relevant FPL was \$12,060.00 for a one-person household. Since \$12,060.00 is 177.20% 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.

During the hearing, you testified that you were recently married and residing with your spouse. Currently, your NYSOH account does not contain any information regarding your spouse. You testified that this was because your spouse is not seeking health insurance through NYSOH.

You are required to update your NYSOH account within 30 days of any changes that may affect your eligibility; this includes adding your spouse as a member of your household even if she is not seeking insurance coverage through NYSOH. Although you do not plan to file a joint tax return with your spouse and your spouse is not seeking insurance coverage through NYSOH, your spouse is counted as a household member because you are married and reside together.

Household income consists of the aggregate modified adjusted gross income of every person in the household who is required to file a federal tax return. Here, your household income consists of your own income plus your spouse's income.

Without additional information regarding your spouse, we are unable to review your eligibility for Medicaid on a monthly household income basis. Accordingly, there is insufficient information to return your case to NYSOH to assess your eligibility for Medicaid on the basis of monthly income as of the date of each application. Please contact NYSOH to update your account.

As NYSOH properly found you ineligible to enroll in the Essential Plan, to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, or to enroll in a qualified health plan at full cost because you are not considered lawfully present, and ineligible for Medicaid as your income is over the allowable income limit for that program, the January 12, 2018 discontinuance notice is **AFFIRMED**.

Decision

The January 12, 2018 discontinuance notice is **AFFIRMED**.

Effective Date of this Decision: January 22, 2018

How this Decision Affects Your Eligibility

You are not eligible for the Essential Plan or enrollment in a QHP because you are 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.

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.

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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 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 January 12, 2018 discontinuance notice is **AFFIRMED**.

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You are not eligible for the Essential Plan or enrollment in a QHP because you are 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.

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।

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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 okyerε 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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