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

Notice of Decision

Decision Date: April 19, 2018

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000027882

[redacted]

[redacted],

On March 28, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 24, 2018 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).

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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).

nystateofhealth
The Official Health Plan Marketplace

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

Decision

Decision Date: April 19, 2018

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000027882

[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 January 24, 2018?

Procedural History

On December 5, 2017, NYSOH received your updated application for health insurance.

On December 6, 2017, NYSOH issued a notice stating that the information in your application did not match what NYSOH had received from state and federal data sources. You were requested to submit proof of income by December 20, 2017.

On December 8, 2017 you submitted proof of income documentation.

On December 11, 2017, NYSOH reviewed and verified the income documentation you submitted on December 8, 2017 and the income in your application was updated from attested $15,000.00 to $17,891.25 and an updated application for health insurance was submitted on your behalf.

On December 12, 2017, NYSOH issued an eligibility redetermination notice based on information verified on December 11, 2017. The notice stated that you were not eligible for Medicaid. This was because your income of $17,891.25 was over the allowable income limit for that program. The notice also stated 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. This was because your "verification documents show not lawfully present."

On December 21, 2017, January 17, 2018 and January 23, 2018 you submitted updated applications for health insurance. In response to those applications, NYSOH issued eligibility determinations on December 22, 2017, January 18, 2017 and January 24, 2018, all stating that you were not eligible for Medicaid. This was because your income of $17,891.25 was over the allowable income limit for that program. The notices also stated 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. This was because your "verification documents show not lawfully present." The January 24, 2018 eligibility determination was effective as of February 1, 2018.

On January 26, 2018, you contacted NYSOH's Account Review Unit and requested an appeal of the January 24, 2018 eligibility determination insofar as you were not eligible for health insurance because you were not lawfully present.

On March 28, 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 up to March 30, 2018, to allow you to submit supporting documents. On March 28, 2018, NYSOH Appeals Unit received via secure facsimile, your two-page submission which was marked as Appellant's Exhibit # 1 and was incorporated into the record. The record was closed at that time.

Findings of Fact

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

1) The record reflects that you expect to file your 2018 taxes with a status of single and you will claim no dependents on that tax return.

2) You are seeking insurance for yourself.

3) Your application state you are an immigrant non-citizen.

4) According to your NYSOH account, you originally submitted a copy of your Employment Authorization Card (EAC) on September 29, 2016. You submitted a color copy of that same EAC on December 21, 2017. Your EAC indicates it is valid from [redacted] to [redacted] with category code of C-33, which was verified on December 21, 2017.

5) The status of C-33, according to the United States Customs and Immigration Services and Social Security Administration is in reference to a status classified as Deferred Action on Childhood Arrivals.

6) The applications that were submitted on December 21, 2017, January 17, 2018 and January 23, 2018, which requested financial assistance, listed annual household income of $17,891.25. You testified that this amount was correct at the time.

7) You testified that during 2017 you were going to school and were working as [redacted] at [redacted] earning $15.00/hour with part time hours every week. You testified that you [redacted] in [redacted].

8) You testified that following [redacted] in January 2018, you are now working full time, 40-hours a week, are paid bi-weekly and earn a yearly salary of $36,000.00.

9) The recent earning statements you submitted had pay dates of March 13, 2018 and March 27, 2018 with gross pay of $1,384.62 per each of those pay periods. The March 27, 2018 earning statement reflected year-to-date earnings of $8,278.31.

10) You testified that you are applying for permanent residency, but have only just started that process.

11) You testified that you want to purchase health insurance because you have [redacted] and you are unable to afford the medical bills.

12) Your application states that you live in Westchester 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/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 January 23, 2018 application, that was the 2018 FPL, which is $12,140.00 for a one-person household (83 Fed. Reg. 2642).

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 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 (45 CFR § 155.305(a)(1)).

Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally available to a person who is eligible to enroll in a qualified health plan and (1) expects to have a household income between 138% and 400% of the applicable FPL, (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a qualified health plan, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (*see* 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a qualified health plan through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level qualified health plan (45 CFR § 155.300(a), 45 CFR § 155.305(g)(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 United States Customs and Immigration Services 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 (i*d*.).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were not eligible to enroll in coverage through NYSOH as of January 24, 2018.

You initially submitted a copy of your EAC on September 29, 2016. You submitted a color copy of that same EAC on December 21, 2107. Your EAC is valid from [redacted] to [redacted] with category code of C-33, which was verified on December 21, 2017. The January 23, 2018 application listed an annual household income of $17,891.25 and the eligibility determination relied upon that information.

As a result, of the January 23, 2018 application, 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. That notice also stated that you were not eligible for Medicaid because your household income of $17,891.25 was over the allowable income limit for that program.

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 and Social Security Administration, 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.

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.

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 though

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 for 2018 for the reasons noted above, NYSOH properly found you ineligible for advance payments of the premium tax credit and cost-sharing reductions.

Accordingly, the January 24, 2018 eligibility determination notice properly found you to be ineligible to enroll in a qualified health plan, ineligible for APTC and cost-sharing reductions, and ineligible for the Essential Plan based on you not being considered lawfully present.

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.

You are in a one-person household. You expect to file your 2018 income taxes as single and will claim zero 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 January 23, 2018 application, the relevant FPL was $12,140.00 for a one-person household. Since $17,891.25 is 147.37% of the 2018 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 testified that since [redacted] in December 2017 you have been employed full time as a [redacted] at [redacted]. You testified that you work a 40-hour week and are paid a salary of $36,000.00 a year. The two earning statements you submitted indicate bi-weekly earnings of $1,384.62. The March 27, 2018 statement reflected year-to-date earnings totaling $8,278.31 or $2,759.43 per month for three months.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the 2018 FPL, which is $1,397.00 per month. Since the evidence in the record indicates that you earned, $2,759.43 per month you do not qualify for Medicaid based on monthly income as of the date of your January 23, 2018 application.

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 24, 2018 eligibility determination notice is AFFIRMED.

Decision

The January 24, 2018 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: April 19, 2018

How this Decision Affects Your Eligibility

You are 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 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)

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the 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 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

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).

- By fax: 1-855-900-5557

Summary

The January 24, 2018 eligibility determination notice is AFFIRMED.

You are 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 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:

[redacted]

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).

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。我们可以为您免费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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईले बोल्ने भाषामा तपाईलाई नि:शुल्क 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 yɛ tow krataa a ho hia. Sɛ wo hia ɛho nkyerɛkyerɛmu a, yɛ srɛ wo, frɛ 1-855-355-5777. yƐbƐtumi ama wo obi a ɔkyerƐ kasa a woka no ase ama wo kwa a wontua hwee.

اردو (Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم1-855-355-5777 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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