



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

Notice of Decision

Decision Date: April 16, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028176

[REDACTED]

[REDACTED]

On March 29, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 11, 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: April 16, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028176

[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 a qualified health plan at full cost, because NYSOH could not verify your immigration status?

Procedural History

On December 10, 2017, you submitted a non-financial application for health insurance through NYSOH.

On December 11, 2017, NYSOH issued a notice of eligibility determination stating that you do not qualify to purchase a qualified health plan at full cost through NYSOH because NYSOH could not verify your immigration status.

On January 31, 2018, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to purchase a qualified health plan at full cost through NYSOH.

On March 29, 2018, you had a hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open until April 5, 2018, to allow you time to submit support documents.

Also on March 29, 2018, NYSOH received via upload a copy of your current visa. This document is marked as Appellant's Exhibit #1 and incorporated into the record. The record is now closed.

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Findings of Fact

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

- 1) You testified that you are not seeking financial assistance with health insurance. You are seeking to be able to purchase a qualified health plan.
- 2) You testified that you currently hold an E3 visa, which permits you to work in the United States. You explained that your visa was issued J [REDACTED] and will expire on [REDACTED].
- 3) You testified that you have been issued a Social Security number and file a United States tax return.
- 4) You testified that you are currently employed and work in the state of New York.
- 5) You testified that you live at [REDACTED] NY. You testified that you sublet this apartment and have signed a sublet agreement with the individual whose name is on the lease.
- 6) You testified that you plan to remain in the United States until your current visa expires.
- 7) In the application you submitted on December 10, 2017 you indicated that you are a non-immigrant visa holder. You provided information regarding your most recent I-94, record of arrival and departure.
- 8) On December 11, 2017, you uploaded a copy of your most recent I-94 which indicates that your class of admission is E3, that you most recently entered the United States on [REDACTED], and that you were admitted until [REDACTED].
- 9) On March 29, 2018 you uploaded a copy of your current visa to your NYSOH account. Your visa indicates that it was issued on [REDACTED], expires on [REDACTED], and that your visa type is R, class E3.

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

Applicable Law and Regulations

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)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

Immigration Status

Lawfully present is defined to mean (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 United States Code (USC) §1641): or (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission (45 CFR § 152.2).

An E3 visa is a visa given to an alien who is coming to the United States pursuant to the provisions of a treaty of commerce and navigation solely to perform service in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia (8 USC §1641(b); 8 USC §1101(a)(15)(E)(iii)). Individuals with this status qualify to enroll through NYSOH.

State Residency Requirement

To be eligible for enrollment in a qualified health plan and eligible to receive an advance premium tax credit through NYSOH, an applicant must be a resident of New York State (45 CFR § 155.305(a)(3), (f)(1)(ii)(A)).

For an individual who is aged 21 or older, not living in an institution, and able to indicate intent, that individual is deemed to be a resident of the Exchange service area in which or she lives and either a) intends to reside, even without a fixed address, or b) has entered with a job commitment or is seeking employment. (45 CFR § 155.305(a)(3)(i)).

Temporary non-immigrants will be required as a condition of their eligibility to answer residency questions. An applicant must answer “Yes” to at least one of the questions in order to pass residency review (Office of Health Insurance Programs, GIS 16 MA/02). These questions include have you applied to become a legal permanent resident; do you work; do your children go to school; do you own your own home, do you rent a house or apartment.

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Legal Analysis

The only issue under review is whether NYSOH properly determined that you were not eligible to enroll in a qualified health plan at full cost through NYSOH, because NYSOH could not verify your immigration status.

On December 10, 2017, NYSOH received your application for health insurance. On December 11, 2017, NYSOH issued an eligibility determination notice stating that you were not eligible for health insurance through NYSOH because your immigration status could not be verified.

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen 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.

The December 10, 2017 application states that you are a non-immigrant visa holder. You testified, and the record confirms, that you have an E3 visa. You submitted a copy of your E3 visa which shows an issue date of [REDACTED] and expiration date of [REDACTED].

Lawful presence is defined to mean in part an alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.

Since your December 10, 2017 application indicated that you had a valid non-immigrant status, NYSOH improperly found that you were ineligible to purchase a qualified health plan at full cost due to your immigration status.

Since you are considered lawfully present, NYSOH improperly determined you ineligible to purchase a qualified health plan at full cost. Accordingly, the December 11, 2017 eligibility determination notice is RESCINDED.

Under federal regulation for the purpose of being found eligible to enroll in a qualified health plan, an individual is deemed to be a resident if they intend to reside in the state, even without a fixed address, or has entered with a job commitment or is seeking employment.

Based on your credible testimony, you would have passed the federal based residency requirements to enroll into a qualified health plan as of your December 10, 2017 application as you work in New York State and rent an apartment in New York State.

Therefore, your case is RETURNED to NYSOH to update your application to properly reflect that you are a resident of New York State insofar as you work in New York State and rent an apartment in New York State. Once your application

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properly reflects your residency status, NYSOH must redetermine your eligibility for a full cost qualified health plan based on your status as being lawfully present and a resident of New York State and to permit you to enroll in a qualified health plan through NYSOH.

Decision

The December 11, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to update your application to properly reflect that you are a resident of New York State insofar as you work in New York State and rent an apartment in New York State. Once your application properly reflects your residency status, NYSOH must redetermine your eligibility for a full cost qualified health plan based on your status as being lawfully present and a resident of New York State and to permit you to enroll in a qualified health plan through NYSOH.

Effective Date of this Decision: April 16, 2018

How this Decision Affects Your Eligibility

NYSOH improperly determined that you were not eligible to enroll in a qualified health plan on the basis of your immigration status.

Your case is being sent back to NYSOH to update your account to reflect the information you provided at your hearing. You should be permitted to enroll in a qualified health plan 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

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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 December 11, 2017 eligibility determination notice is RESCINDED.

NYSOH improperly determined that you were not eligible to enroll in a qualified health plan on the basis of your immigration status.

Your case is RETURNED to NYSOH to update your application to properly reflect that you are a resident of New York State insofar as you work in New York State and rent an apartment in New York State. Once your application properly

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reflects your residency status, NYSOH must redetermine your eligibility for a full cost qualified health plan based on your status as being lawfully present and a resident of New York State and to permit you to enroll in a qualified health plan through NYSOH.

Your case is being sent back to NYSOH to update your account to reflect the information you provided at your hearing. You should be permitted to enroll in a qualified health plan 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)

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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