



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

Notice of Decision

Decision Date: April 20, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028559

[REDACTED]

On April 4, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's February 1, 2018 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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Decision

Decision Date: April 20, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028559

[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 eligible for emergency Medicaid only as of January 1, 2018?

Procedural History

According to your NYSOH account and pursuant to NYSOH's request, you submitted proof of citizenship on January 31, 2018 (see Documents [REDACTED]). These documents were verified by NYSOH that same day.

On February 1, 2018, NYSOH issued an eligibility determination notice, based on your January 31, 2018 updated application, stating that you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective January 1, 2018. The notice stated that you were you are only eligible for emergency medical care and services because you are not a citizen, qualified alien or permanently residing in the United States under color of law (PRUCOL).

On February 6, 2018, you contacted NYSOH's Account Review Unit and requested an appeal of the eligibility determination insofar as you were not eligible for full Medicaid coverage.

On April 4, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

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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 January 31, 2018 application and your testimony, you are a student with no income and do not plan on filing taxes. No one else is claiming you as a dependent on their tax returns.
- 3) At the time of your January 31, 2018 application, you were [REDACTED].
- 4) Your application states you are an immigrant non-citizen.
- 5) You uploaded a copy of your Form I-797A Notice of Action with an issue date of [REDACTED], and an expiration date upon the end of this immigration status, along with a I-20 Certificate of Eligibility for Nonimmigrant Student Status on January 31, 2018, with both documents conferring the status of F-1 (see Document [REDACTED]).
- 6) The status of F-1, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as temporary student.
- 7) The I-20 notice you submitted, which was dated [REDACTED], stated that your status was approved on [REDACTED] and that your approved status is expected to begin on [REDACTED] and end on [REDACTED] (*id.*).
- 8) You testified that you a foreign student and that you reside with your parents in New York State while in school and plan to remain living in New York State once you complete your studies.
- 9) You testified that you are seeking full medical coverage with Medicaid.
- 10) According to your NYSOH account and your testimony, you live in [REDACTED], New York.

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

Applicable Law and Regulations

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 2018 FPL, which is \$12,140.00 for a one-person household (83 Federal Register 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).

Immigration Status

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 nonfinancial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance.

To be eligible for New York State Medicaid Programs, an individual must be a U.S. citizen, national, Native American, have satisfactory immigration status [either qualified alien or permanently residing in the U.S. under color of law (PRUCOL)] or be lawfully present in the U.S. AND a New York State resident (42 CFR § 435.403, NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2(j)).

The term "PRUCOL" stands for Permanent Residence Under Color of Law, and a PRUCOL alien is a person who is residing in the United States with the

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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)).

Whether a NYSOH applicant plans to take any steps to permanently remain in the United States after her visa expires is a higher standard than the ACA requires for her to qualify for Insurance Affordability Programs. On March 23, 2012, an amendment was made to 42 CFR § 435.403, which relates to state residence for the purposes of determining eligibility for Medicaid.

The regulation was amended to

strike the term “permanently and for an indefinite period” from the definition for adults in redesignated § 435.403(h)(1) and (h)(4), and replace the term “remain” with “reside.” An adult’s residency will be determined based upon where the individual is living and has intent to reside, including without a fixed address, or the State which the individual entered with a job commitment or seeking employment (whether or not currently employed). While proposing to remove the phrase “permanently or for an indefinite period” and use the term “reside,” we are maintaining existing policy that an individual must intend to remain living in the State in which he or she is seeking coverage.

(76 FR 51148, 51160, Aug. 17, 2011).

Under 42 CFR § 435.403 Medicaid must be provided to “eligible residents of the State, including residents who are absent from the State” (42 CFR § 435.403(a)). With regard to individuals age 21 and over, “the State of residence is the State where the individual is living and (i) Intends to reside, including without a fixed address; or (ii) Has entered the State with a job commitment or seeking employment (whether or not currently employed)” as long as the person is not residing in an institution or receiving a State supplementary payment (42 CFR § 435.403(h), (f)).

All that 42 CFR § 435.403 requires is a “present intent to reside in the State be claimed as the State of residence; a State would not be required to recognize an intent to reside at some future point in time” (76 FR 51148, 51160, Aug. 17, 2011).

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 to pass residency review (Office of Health Insurance Programs, GIS 16 MA/02).

Legal Analysis

The issue under review is whether NYSOH properly determined that you were eligible for emergency Medicaid through NYSOH as of January 1, 2018.

To be eligible for full Medicaid through NYSOH, you must have documents demonstrating your lawful citizenship or immigration status, be a New York State resident, and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size.

According to your January 31, 2018 application and your testimony, you are a student with no income and do not plan on filing taxes. You testified that no one else is claiming you as a dependent on their tax returns. As such, for purposes of these analyses, you are in a one-person household and your income is \$0.00.

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 that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$12,140.00 for a one-person household. Since \$0.00 is 0% of the 2018 FPL, and you would therefore meet the financial criteria to be eligible for Medicaid, the issue is further refined to whether you meet the nonfinancial criteria to be eligible for full state-based Medicaid eligibility.

As stated above, to be eligible for full state-based Medicaid through NYSOH, you must have documents demonstrating your lawful citizenship or immigration status and be a New York State resident.

According to your NYSOH account and pursuant to NYSOH's request, you submitted proof of citizenship on January 31, 2018. Specifically, you uploaded a copy of your Form I-797A Notice of Action and I-20 Certificate of Eligibility for Nonimmigrant Student Status with the status of F-1. The I-20 notice you submitted stated that your status was approved on [REDACTED] and that your approved status is expected to begin on [REDACTED] and end on [REDACTED] (see Document [REDACTED]).

A review of these documents shows that your status as a Nonimmigrant Student had been approved and is sufficient documentation to prove lawful status (*id.*). However, the record shows that NYSOH improperly verified your citizenship documents and determined you to be an unlawfully present immigrant. As such, it can be reasonably concluded that due to a NYSOH error, your account was updated and you were found eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective January 1, 2018.

Nonetheless, as a temporary nonimmigrant with a lawful presence, you must also be a New York State resident to be eligible for full state-based Medicaid benefits.

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Therefore, the issue turns to whether you meet the state residency requirements for Medicaid eligibility.

You are an F-1 visa holder, which makes your status that of a temporary nonimmigrant visa holder.

At the time of your January 31, 2018 application, you were [REDACTED]. For individuals over the age of 21, that individual is deemed to be a resident of the NYSOH service area in which or she lives and intends to reside, even without a fixed address. You testified that you a foreign student and that you reside with your parents in New York State while in school. As such, for purposes of these analyses, you are a New York State resident.

Since you are a New York State resident, have a documented lawful presence in the United States, and NYSOH denied you full state-based Medicaid based on your nonimmigrant status, the February 1, 2018, eligibility determination notice holds you to a higher standard than is required under the ACA and its associated regulations and must be RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for full state-based Medicaid as of January 1, 2018, based on your lawfully present non-immigrant status and being a New York State resident in a one-person household with no expected annual income.

Decision

The February 1, 2018 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for full state-based Medicaid as of January 1, 2018, based on your lawfully present non-immigrant status and being a New York State resident in a one-person household with no expected annual income.

Effective Date of this Decision: April 20, 2018

How this Decision Affects Your Eligibility

Your case is sent back to NYSOH to redetermine your eligibility for full state-based Medicaid based on the parameters noted above. NYSOH will notify you of its redetermination.

If You Disagree with this Decision (Appeal Rights)

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 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

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- By fax: 1-855-900-5557

Summary

The February 1, 2018 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for full state-based Medicaid as of January 1, 2018, based on your lawfully present non-immigrant status and being a New York State resident in a one-person household with no expected annual income.

Your case is sent back to NYSOH to redetermine your eligibility for full state-based Medicaid based on the parameters noted above. NYSOH will notify you of its redetermination.

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 srε wo, frε 1-855-355-5777. ye&εtumi 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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