



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

Notice of Decision

Decision Date: April 13, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028892

[REDACTED]

[REDACTED]

On April 10, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 10, 2018 and February 1, 2018 eligibility determination notices.

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 13, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028892



Issues

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

Did NY State of Health (NYSOH) properly determine 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 February 1, 2018, because you are not considered lawfully present?

Did NYSOH properly determine you were ineligible for Medicaid?

Procedural History

On January 4, 2018, NYSOH issued an eligibility determination notice, based on your January 3, 2018 application, stating you were eligible to receive up to \$348.00 in advanced payments of the premium tax credit (APTC), for a limited time, effective February 1, 2018. The notice directed you to submit proof of your immigration status by April 3, 2018 to confirm your eligibility or you might lose your insurance or receive less help paying or your coverage.

On January 6, 2018, NYSOH issued an enrollment notice, based on your January 5, 2018 plan selection, confirming your enrollment in a qualified health plan with APTC applied to your monthly premium, effective February 1, 2018.

On January 9, 2018, NYSOH systematically redetermined your eligibility.

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On January 10, 2018, NYSOH issued an eligibility determination notice stating you were no longer eligible for health insurance through NYSOH, effective February 1, 2018. The notice indicated you were not eligible for Medicaid because your income was over the allowable income limit for that program. The notice further stated 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, because your verification documents showed you were not lawfully present.

Also on January 10, 2018, NYSOH issued a disenrollment notice stating your qualified health plan enrollment would end on February 1, 2018, because you were no longer eligible to enroll in health insurance through NYSOH.

On January 31, 2018, NYSOH received an updated application for financial assistance with health insurance submitted on your behalf.

On February 1, 2018, NYSOH issued an eligibility determination notice stating you did not qualify for health coverage through NYSOH. The notice indicated you were not eligible for Medicaid because your income was over the allowable income limit for that program. The notice further stated 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, because your verification documents showed you were not lawfully present.

On February 13, 2018, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to enroll in health insurance through NYSOH.

On April 10, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed thereafter.

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 initial application, received by NYSOH on January 3, 2018, listed your immigration status as "immigrant non-citizen" and listed your immigration documentation as an I-766 Employment Authorization Card.

- 4) Your application listed your annual expected income for 2018 as \$27,000.00. You testified that you are salaried and the income information in your applications is accurate.
- 5) NYSOH determined you conditionally eligible to receive APTC pending receipt of documentation to verify your immigration status.
- 6) You enrolled in a qualified health plan with APTC applied, effective February 1, 2018.
- 7) On January 8, 2018, NYSOH receive a copy of you Employment Authorization card, listing the "category" as C-33.
- 8) The status of C-33, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA), refers a status classified as Deferred Action on Childhood Arrivals (DACA).
- 9) You testified that you are presently in the United States under with a DACA status.
- 10) According to your account, NYSOH verified your immigration documentation on January 9, 2018 and systematically redetermined your eligibility the same day.
- 11) NYSOH determined you ineligible to enroll in health coverage thorough NYSOH based on your income and immigration status and your qualified health plan enrollment was terminated.
- 12) On January 31, 2018 you updated your application with the same information.
- 13) On February 1, 2018, you uploaded a September 21, 2017 notice from the [REDACTED] confirming its decision to "[REDACTED]" in your case for two years from the date of the notice. The notice specified that "deferred action does not confer or alter any immigration status."
- 14) NYSOH redetermined your eligibility based on the updated applications and, again, found you ineligible for health insurance through NYSOH based on your income and immigration status.
- 15) You appealed insofar as you are not eligible to enroll in health coverage through NYSOH.

- 16) You testified that the [REDACTED] notice you provided establishes that you have been granted permission to remain in the country, so you are legally present.
- 17) According to your application, you will not take any deductions on your 2018 tax return.
- 18) Your applications indicate that you reside Kings 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 www.medicaid.gov/basic-health-program/downloads/ny-blueprint.pdf). 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

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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 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).

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)).

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 (QHP) and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (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 QHP, 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 QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250%

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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 QHP (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 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 first issue under review is whether NYSOH properly determined you were not eligible to enroll in the Essential Plan, to receive tax credits or cost-sharing reductions, or to enroll in a qualified health plan at full cost through NYSOH, effective February 1, 2018, because you are not considered lawfully present.

On January 4, 2018, NYSOH determined you conditionally eligible to receive APTC pending receipt of documentation to verify your immigration status. You enrolled in a qualified health plan with APTC applied, effective February 1, 2018.

On January 8, 2018, NYSOH receive a copy of you Employment Authorization card, listing the “category” as C-33. According to your account, NYSOH verified your immigration documentation on January 9, 2018 and systematically redetermined your eligibility the same day. NYSOH determined you ineligible to enroll in health coverage thorough NYSOH based on your income and immigration status and your qualified health plan enrollment was terminated.

On January 31, 2018, you submitted an updated application to NYSOH with the same information as your prior application. You also submitted a September 21,

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2017 notice from the [REDACTED] confirming its decision to [REDACTED]” in your case for two years from the date of the notice.

NYSOH again determined you were ineligible for health insurance through NYSOH based on your immigration status. You appealed insofar you were not eligible to enroll in health coverage through NYSOH.

The evidence establishes that you have a “DACA” immigration status. Your employment authorization documentation states you are an immigrant non-citizen with a C-33 status. The status of C-33, according to the USCIS and the SSA, refers to a status classified as Deferred Action on Childhood Arrivals. Individuals with a DACA status are considered not “lawfully present” under the federal definition, and are therefore not eligible to receive federal funding under those programs.

Although you testified that the September 21, 2017 notice from the [REDACTED] indicating that [REDACTED] in your case has been deferred establishes that you are legally allowed to remain in the country, that notice does not establish your lawful presence for immigration classification purposes. The notice itself states that “deferred action does not confer or alter any immigration status.” The notice confirms your DACA status which, as discussed above, is not federally recognized as a legal immigration status.

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 ineligible 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 a satisfactory immigration status. Under the federal regulations, individuals with DACA status are not considered to be lawfully present, thus, do not possess a satisfactory immigration status necessary to enroll in a qualified health plan through NYSOH. Therefore, NYSOH properly found you ineligible to enroll in a qualified health plan.

Moreover, to be found eligible for APTC or cost-sharing reductions, an individual must be eligible to enroll in a qualified health plan. As you are ineligible to enroll in a qualified health plan as noted above, NYSOH properly found you ineligible for APTC and cost-sharing reductions.

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

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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 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, because you expect to file your 2018 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 applications, the relevant FPL was \$12,140.00 for a one-person household. Since \$27,000.00 is 222.41% 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.

Based on your testimony that you are salaried and the \$27,000.00 annual amount listed in your applications was accurate, it is concluded that the system calculated monthly income average of \$2,250.00 was accurate for January 2018.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,397.00 per month. Since the evidence establishes you earn \$2,250.00 per month you do not qualify for Medicaid based on monthly income as of the dates of your applications.

Since NYSOH properly found you ineligible to enroll in the Essential Plan, to receive tax credits or cost-sharing reductions, 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 10, 2018 and February 1, 2018 eligibility determination notices are correct and are AFFIRMED.

Decision

The January 10, 2018 and February 1, 2018 eligibility determination notices are AFFIRMED.

Effective Date of this Decision: April 13, 2018

How this Decision Affects Your Eligibility

You are not eligible for the Essential Plan, to receive tax credits or cost-sharing reductions, 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)

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.

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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):

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- By mail at:
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- By fax: 1-855-900-5557

Summary

The January 10, 2018 and February 1, 2018 eligibility determination notices are **AFFIRMED**.

You are not eligible for the Essential Plan, to receive tax credits or cost-sharing reductions, 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.

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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&etumi 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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