



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

Notice of Decision

Decision Date: May 18, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029483



Dear [REDACTED]

On April 30, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 27, 2018 discontinuance and disenrollment notices, February 21, 2018 denial notice, and February 22, 2018 denial 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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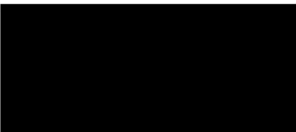


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Decision

Decision Date: May 18, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029483



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 for health insurance through NYSOH, effective February 1, 2018.

Procedural History

On January 6, 2018, NYSOH issued an eligibility determination notice, based on your January 5, 2018 application, stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective February 1, 2018. You were directed to provide proof of household income by April 5, 2018.

Also on January 6, 2018, NYSOH issued a plan enrollment notice, based on your plan selection on January 5, 2018, stating that you and your spouse were enrolled in an Essential Plan, and that your coverage would start February 1, 2018.

On January 7, 2018, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible for the Essential Plan for a limited time, effective February 1, 2018. You were directed to provide proof of household income by April 5, 2018, and proof of your citizenship status by April 6, 2018.

On January 26, 2018, you submitted documentation and an application was run on your and your spouse's behalf.

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Also on January 27, 2018, NYSOH issued a discontinuance notice stating that you were no longer eligible for health insurance through NYSOH. The notice stated you were not eligible for the Essential Plan because verification documents showed that you are not lawfully present.

Also on January 27, 2018, NYSOH issued a disenrollment notice stating that your enrollment in the Essential Plan would end on February 1, 2018.

On February 20, 2018, you submitted an updated application for financial assistance with health insurance.

Also on February 21, 2018, NYSOH issued a denial notice stating that you did not qualify for health coverage through NYSOH. The notice further stated that you were not eligible for the Essential Plan, APTC, or enrollment in a qualified health plan because verification documents showed you were not lawfully present.

On February 21, 2018, you submitted an updated application for financial assistance with health insurance.

Also on February 22, 2018, NYSOH issued a denial notice stating that you did not qualify for health coverage through NYSOH. The notice further stated that you were not eligible for the Essential Plan, APTC, or enrollment in a qualified health plan because verification documents showed you were not lawfully present.

On February 26, 2018, an application for financial assistance was submitted on your behalf.

On February 27, 2018, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible for the Essential Plan for a limited time, effective April 1, 2018. You were directed to provide proof of your spouse's income by May 22, 2018, and proof of your income by May 27, 2018.

Also on February 27, 2018, NYSOH issued a plan enrollment notice stating that you and your spouse were enrolled in the Essential Plan, effective April 1, 2018.

Also on February 27, 2018, you spoke to NYSOH's Account Review Unit and appealed the start date of your enrollment in the Essential Plan insofar as it did not begin February 1, 2018.

On March 7, 2018, you submitted an updated application for financial assistance with health insurance.

On March 8, 2018, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive up to \$698.00 in APTC, effective April 1, 2018.

Also on March 8, 2018, NYSOH issued a disenrollment notice stating that your and your spouse's enrollment in the Essential Plan would end effective April 1, 2018.

Also on March 8, 2018, NYSOH issued a plan enrollment notice stating that you and your spouse were enrolled in a qualified health plan, effective April 1, 2018.

On March 16, 2018, you submitted additional documentation.

On April 30, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit, with the assistance of Polish Interpreter [REDACTED]. 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) The January 3, 2018 application states that you are an immigrant non-citizen.
- 2) You testified, and your NYSOH account indicates, that you and your spouse were enrolled in an Essential Plan effective February 1, 2018.
- 3) Your NYSOH account indicates that you were disenrolled from coverage effective February 1, 2017 because verification documents show that you were not lawfully present.
- 4) Your NYSOH account contains a photocopy of your Employment Authorization card, which was valid from [REDACTED] through [REDACTED] and states that your category is C09 (see Document [REDACTED]).
- 5) You testified that you have a new Employment Authorization card, and that your request for an extension had been approved. You testified that you do not have the card yet.
- 6) You testified during the hearing that you are currently waiting for your green card, and that you submitted your application [REDACTED].
- 7) You submitted a letter from US Citizenship and Immigration Services (USCIS), dated January 19, 2018, stating that your I485 Adjustment

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application is currently pending. The letter confirms a filing date of [REDACTED]
[REDACTED] (see Document [REDACTED])

- 8) You also submitted a copy of Form I-797C, Notice of Action from USCIS, dated January 11, 2018, which states that your Application for Employment Authorization was received on [REDACTED], and is in process (see Document [REDACTED])
- 9) You testified that you are seeking coverage through the Essential Plan as of February 1, 2018, because you have outstanding bills for medical services rendered.

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

Applicable Law and Regulations

Eligibility for the 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).

The federal regulations state that the following non-citizens are lawfully present:

- (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. 1641);
- (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;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) An alien who belongs to one of the following classes:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. 1160 or 1255a, respectively);

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status;

(vii) Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;

(5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention Against Torture; or

(7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J));

(8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition.

(42 CFR § 600.5; 45 CFR § 152.2).

Verification of Eligibility – Citizenship/Immigration

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

For individuals who attest to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant (42 CFR § 600.345, 45 CFR § 155.315(c)(3), (f)(2)(i)).

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)(9)” is an applicant for adjustment to lawful permanent resident.

Legal Analysis

The issue under review is whether NYSOH properly determined that you were not eligible for health insurance through NYSOH, effective February 1, 2018.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH and must confirm, among other things, that they have a valid citizenship or immigration status.

In the notices issued on January 7, 2018, NYSOH stated that your eligibility was conditional, and additional immigration status documentation was needed before April 6, 2018.

If NYSOH cannot verify an individual's citizenship or immigration status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice to resolve the inconsistency. In this case, NYSOH gave you until April 6, 2018, which is 90 days from your January 6, 2018 application.

On January 26, 2018, you submitted a copy of your Employment Authorization card, which was valid from [REDACTED] through [REDACTED] and states that your category is C09.

Due to the expiration date on your Employment Authorization Card, on January 27, 2018, NYSOH issued a discontinuance notice, stating that you were no longer eligible for health insurance through NYSOH. The notice stated you were not eligible for the Essential Plan because verification documents showed you are not lawfully present.

However, you also submitted a letter from USCIS, dated January 19, 2018, stating that your I485 Adjustment application is currently pending and confirms a filing date of [REDACTED]. Additionally, you submitted a copy of Form I-797C, Notice of Action by USCIS, dated January 11, 2018, which states that your Application for Employment Authorization was received on [REDACTED], and is in process.

Citizens or non-citizens, who are lawfully present are eligible to enroll in the Essential Plan. An individual whose visa petition has been approved and has a pending application for adjustment of status is a lawfully present non-citizen.

The record reflects that you had a pending application for adjustment of status since [REDACTED], as stated on the USCIS letter dated January 19, 2018. Therefore, you have maintained the status of a lawfully present non-citizen since October 1, 2016. In addition, the Notice of Action by USCIS, dated January 11, 2018, supports that you have a pending petition before the federal agency. Your current pending status also confers lawful presence.

As such, NYSOH improperly relied on the expiration date of your Employment Authorization Card in determining that you were not eligible for coverage through NYSOH on the basis that you were not lawfully present, which was error such that your coverage with the Essential Plan should not have been terminated effective February 1, 2018.

Therefore, the January 6 and 7, 2018 eligibility determinations REMAIN IN EFFECT, as does the January 6, 2018 plan enrollment notice confirming in relevant part that you are enrolled in an Essential Plan along with your spouse as of February 1, 2018.

January 27, 2018 discontinuance and disenrollment notices, the February 21, 2018 denial notice, and February 22, 2018 denial notice are RESCINDED.

Your case is RETURNED to NYSOH to reinstate your Essential Plan coverage for February 2018 and March 2018. This Decision does not affect subsequent eligibility determination or enrollment notices issued by NYSOH.

Decision

The January 6 and 7, 2018 eligibility determinations REMAIN IN EFFECT, as does the January 6, 2018 plan enrollment notice confirming in relevant part that you are enrolled in an Essential Plan along with your spouse as of February 1, 2018.

The January 27, 2018 discontinuance notice is RESCINDED.

The January 27, 2018 disenrollment notice is RESCINDED.

The February 21, 2018 denial notice is RESCINDED.

The February 22, 2018 denial notice is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your Essential Plan coverage for February 2018 and March 2018, and to notify you accordingly.

This Decision does not affect subsequent eligibility determination or enrollment notices issued by NYSOH.

Effective Date of this Decision: May 18, 2018

How this Decision Affects Your Eligibility

Your Essential Plan coverage should not have ended as of February 1, 2018, because you have maintained lawful presence since October 1, 2016.

Your case is being sent back to NYSOH to reinstate your Essential Plan coverage for February 2018 and March 2018. NYSOH will notify you once this has been done.

You will be responsible to pay the monthly premiums to the health plan directly and timely for coverage to resume in February 2018 and March 2018.

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

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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
- By fax: 1-855-900-5557

Summary

The January 6 and 7, 2018 eligibility determinations REMAIN IN EFFECT, as does the January 6, 2018 plan enrollment notice confirming in relevant part that

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you are enrolled in an Essential Plan along with your spouse as of February 1, 2018.

The January 27, 2018 discontinuance notice is RESCINDED.

The January 27, 2018 disenrollment notice is RESCINDED.

The February 21, 2018 denial notice is RESCINDED.

The February 22, 2018 denial notice is RESCINDED.

Your Essential Plan coverage should not have ended as of February 1, 2018, because you have maintained lawful presence since October 1, 2016.

Your case is RETURNED to NYSOH to reinstate your Essential Plan coverage for February 2018 and March 2018, and to notify you accordingly.

Your case is being sent back to NYSOH to reinstate your Essential Plan coverage for February 2018 and March 2018. NYSOH will notify you once this has been done.

You will be responsible to pay the monthly premiums to the health plan directly and timely for coverage to resume in February 2018 and March 2018. This Decision does not affect subsequent eligibility determination or enrollment notices issued by 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 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 मदद 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. y&b&tumi ama wo obi a okyer& 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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