



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

Notice of Decision

Decision Date: September 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000000001

[REDACTED]

Dear [REDACTED],

On September 15, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 17, 2017 eligibility determination notice and August 18, 2017 disenrollment notice, and your inability to re-enroll in the Essential Plan on August 24, 2017.

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

Decision

Decision Date: September 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000000001

[REDACTED]

Issues

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

Did NY State of Health properly determine that your eligibility for financial assistance and enrollment in health insurance ended effective August 31, 2017?

Did NY State of Health properly determine that you were not eligible to enroll in the Essential Plan as of August 24, 2017?

Procedural History

According to your NYSOH account, on August 6, 2016, you were determined eligible for the Essential Plan with a premium of \$20.00 per month and enrolled in an Essential Plan, effective September 1, 2016.

On July 2, 2017, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage and that you needed to update your account between July 16, 2017 and August 15, 2017, or you might lose the financial assistance you were currently receiving.

No updates were received by August 15, 2017 and NYSOH systematically redetermined your eligibility for financial assistance with health insurance.

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On August 17, 2017, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective September 1, 2017. The notice stated that you were not eligible for financial assistance because you did not respond to the renewal notice and update your NYSOH account.

On August 18, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your Essential Plan was terminated, effective August 31, 2017.

On August 24, 2017, you attempted to update your application for financial assistance with health insurance through NYSOH, but were unable to do so.

On September 6, 2017, you spoke to NYSOH's Account Review Unit and appealed the August 17, 2017 eligibility determination notice insofar as you lost your financial assistance, effective September 1, 2017, and were unable to re-enroll in the Essential Plan as of August 24, 2017. You also requested Aid to Continue throughout the appeal process.

On September 12, 2017, an override on your NYSOH account was conducted and you were granted Aid to Continue throughout the appeal process in your Essential Plan with a \$20.00 monthly premium, effective September 1, 2017. On September 13, 2017, NYSOH issued corresponding eligibility determination and plan enrollment notices.

On September 15, 2017, you had an expedited telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to September 18, 2017, to allow you to submit supporting documents.

On September 15, 2017, you submitted a copy of your Social Security Benefit statement. This document was made part of the record as "Appellant's Exhibit A." The record closed that day.

Findings of Fact

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

- 1) You were determined eligible for the Essential Plan on August 6, 2016, with an effective start date of September 1, 2016.
- 2) You testified that you did receive the July 2, 2017 notice in the mail telling you that you needed to update your application in order to renew your Essential Plan eligibility.

- 3) You further testified that you called in late July 2017 to update your account but the call was dropped and, because you were told by the NYSOH representative that he would call you back if the call was dropped, you believed that the application was completed when that NYSOH representative did not call you back.
- 4) You testified that you did not know that you were disenrolled from your Essential Plan until you received notice from NYSOH in the mail that your coverage was to end August 31, 2017.
- 5) According to the Appeal Summary, dated September 13, 2017, on August 24, 2017, you attempted to update your application for health insurance, but an error message kept appearing so you were unable to complete your application (Appeal Summary, Evidence Packet, p.2).
- 6) Also, according to the September 13, 2017 Appeal Summary, on August 24, 2017, NYSOH filed a system defect ([REDACTED]) on your behalf, which stated that, "Defect on file (Open) – We Are Sorry – Income Information – Household Income Summary – Consumer called to update her application so that she can reinstate her health insurance, Error Message keeps appearing" (*id.*).
- 7) Also, the September 13, 2017 Appeal Summary includes an entry regarding a telephone call record, dated September 6, 2017, which states, "On 8/24/17, the appellant...contacted the Marketplace to update the application. A We Are Sorry Defect arose...there has been no resolution...Therefore, no eligibility determination has been made and enrollment is not possible. The appellant...is disputing her disenrollment...and the inability to enroll in coverage..." This same Appeal Summary also includes a telephone call record, dated September 7, 2017, which states "Consumer called to check status of appeal" (*id.*, pp. 2-3).
- 8) According to the Notes tab in your NYSOH account, on September 11, 2017, the following note was entered: "Unable to reinstate coverage, LSC was not completed – The account has been left in "In Progress."
- 9) According to your NYSOH account, no eligibility determination was issued.
- 10) You testified that you called NYSOH every day after August 24, 2017, and you were advised repeatedly that there was a glitch in the system and they were still working on it.
- 11) You have been unable to enroll in health coverage because of this glitch.
- 12) You testified that you expect to file your 2017 taxes with a tax filing status of single. You will claim no dependents on that tax return.

- 13) You testified, and provided a copy of your Social Security Administration Benefit Awards letter showing, that your gross annual household income for 2017 is expected to be \$20,592.00, based on 12 monthly survivor's benefits payments of \$1,716.00 (see Appellant's Exhibit A).
- 14) According to your NYSOH account, and your testimony, you will not take any deductions on your 2017 income tax return.
- 15) According to your NYSOH account and your testimony, you live in [REDACTED], New York.
- 16) You testified that you are seeking coverage in the Essential Plan for September 1, 2017 because you have urgent medical needs.

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

Applicable Law and Regulations

Essential Plan Renewal

In general, NYSOH will review Essential Plan eligibility no more frequently than once every 12 months from the effective date of eligibility as long as enrollees are under age 65, not enrolled in minimum essential coverage, remain state residents, and do not have any changes in circumstances. An individual enrolled in the Essential Plan shall have his or her coverage continued until the end of the 12 month period, provided he or she does not lose eligibility by reason of citizenship status, lack of state residence, failure to provide a valid social security number, providing inaccurate information that would affect eligibility when requesting or renewing health coverage, failure to make the applicable premium payment, or changes in circumstances (42 CFR § 600.340(a); 42 CFR § 600.320(d); NY Social Services Law § 369-gg(3) and (4)(d)); New York's Basic Health Plan Blueprint, pp. 8 and 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

NYSOH must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (42 CFR § 600.340(e)). Once the 30-day period has lapsed, NYSOH must issue a redetermination as provided by the notice, with consideration given to any updates that may have been provided by the individual (42 CFR § 600.345; (NY Social Services Law § 369-gg(4)(c); 45 CFR § 155.335(g); New York's Basic Health Plan Blueprint, p. 17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

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For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see also 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

De Novo Review

The NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as

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approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your financial assistance ended August 31, 2017.

You were originally found eligible for the Essential Plan effective September 1, 2016.

Generally, NYSOH will redetermine a qualified individual's eligibility for the Essential Plan once every 12 months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's July 2, 2017 renewal notice stated that there was not enough information to determine whether you were eligible to continue your financial assistance for health insurance, and that you needed to supply additional information by August 15, 2017, or your financial assistance might end.

Because there was no timely response to this notice, you were terminated from your Essential Plan effective August 31, 2017, when 12 months of coverage from September 1, 2016 ended.

You testified that you did receive the July 2, 2017 notice in the mail telling you that you needed to update your application in order to renew your Essential Plan eligibility.

Therefore, the record reflects that NYSOH properly notified you of your annual renewal and that information in your NYSOH account needed to be updated to ensure your enrollment in your health plan and eligibility for financial assistance would continue.

You further testified that you called in late July 2017 to update your account but the call was dropped and, because you were told by the NYSOH representative that he would call you back if the call was dropped, you believed that the application was completed when that NYSOH representative did not call you

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back. However, you not making an additional phone call to NYSOH to verify that your application was completed is not an error or mistake that is attributable to NYSOH, its agents or instrumentalities.

As such, it is reasonable to conclude that you did not complete your renewal application before the August 15, 2017 renewal deadline.

Since you were properly notified of your need to update your account by August 15, 2017 and you failed to complete your application by that date, NYSOH properly terminated your eligibility for financial assistance and enrollment in health insurance as of August 31, 2017. Therefore, the August 17, 2017 eligibility determination and August 18, 2017 disenrollment notices are correct and must be AFFIRMED.

The second issue under review is whether NYSOH properly determined that you were not eligible to enroll in the Essential Plan as of August 24, 2017.

On August 24, 2017, you spoke with NYSOH's Account Review Unit and requested to re-enroll in health coverage. You testified that you are seeking to re-enroll in the Essential Plan. The record does not contain a notice of eligibility determination or a notice in which the NYSOH acknowledges receipt of an appeal request. It does contain a September 13, 2017 Appeal Summary which includes telephone call record dated September 6, 2017, which states, "On 8/24/17, the appellant...contacted the Marketplace to update the application. A We Are Sorry Defect arose...there has been no resolution...Therefore, no eligibility determination has been made and enrollment is not possible. The appellant...is disputing her dis-enrollment...and the inability to enroll in coverage..." This same Appeal Summary also includes a telephone call record dated September 7, 2017, which states "Consumer called to check status of appeal."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your testimony, along with the text of the September 13, 2017 Appeal Summary, which acknowledges the appeal on the issue of enrollment denial, permits an inference that the NYSOH did deny your request to re-enroll in the Essential Plan.

Since the Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is refined to whether you were properly denied enrollment in the Essential Plan or were

prevented from doing so because of a defect on your NYSOH account that was not resolved.

You testified, and provided documentation, that your gross annual household income for 2017 is expected to be \$20,592.00, based on 12 monthly survivor's benefits payments of \$1,716.00.

You expect to file your 2017 income taxes as single and will claim no dependents on that tax return. Therefore, for purposes of these analyses, you are in a one-person household.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,880.00 for a one-person household. Since an annual household income of \$20,592.00 is 173.33% of the 2016 FPL, NYSOH could have found you to be eligible for the Essential Plan as of August 24, 2017.

Since the record now contains a more accurate representation of your 2017 expected adjusted gross annual household income of \$20,592.00, your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance for the remainder of 2017, based on a household income of \$20,592.00 per year and a household size of one, for an individual residing in [REDACTED], New York.

Generally, the date on which a health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected after the fifteenth day of a month goes into effect on the first day of the second following month.

The record shows that on August 24, 2017, you first attempted to complete the information in your NYSOH account and, due to a system error, you were unable to complete your application for health insurance and an eligibility determination was never issued. Had you been able to select an Essential Plan on August 24, 2017, it could have taken effect on the first day of the second month following August 2017; that is, on October 1, 2017.

Notwithstanding, it is noted that you were granted Aid to Continue during the appeal process and your Essential Plan coverage was backdated to September 1, 2017.

Decision

The August 17, 2017 eligibility determination notice is AFFIRMED.

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The August 18, 2017 disenrollment notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance for the remainder of 2017, based on an annual household income of \$20,592.00 per year and a household size of one, for an individual residing in Queens County.

NYSOH is directed to notify you of its redetermination and what further action may be required on your part, if applicable.

Effective Date of this Decision: September 20, 2017

How this Decision Affects Your Eligibility

This is not a final determination of your eligibility.

While your ineligibility for financial assistance was based on your failure to renew your health insurance in a timely manner, and therefore; your disenrollment from your Essential Plan as of August 31, 2017 was correct, your case is being sent back to NYSOH to redetermine your eligibility for financial assistance for the remainder of 2017 based on the above-noted information.

At present, you have Essential Plan coverage as of September 1, 2017 as Aid to Continue during the appeal process. Your enrollment will not be disturbed until your eligibility is redetermined by NYSOH. NYSOH will notify you once this has been done and what further action may be required on your part, if applicable.

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)).

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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 August 17, 2017 eligibility determination notice is AFFIRMED.

The August 18, 2017 disenrollment notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance for the remainder of 2017, based on an annual household income of \$20,592.00 per year and a household size of one, for an individual residing in Queens County.

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).

NYSOH is directed to notify you of its redetermination and what further action may be required on your part, if applicable.

This is not a final determination of your eligibility.

While your ineligibility for financial assistance was based on your failure to renew your health insurance in a timely manner, and therefore; your disenrollment from your Essential Plan as of August 31, 2017 was correct, your case is being sent back to NYSOH to redetermine your eligibility for financial assistance for the remainder of 2017 based on the above-noted information.

At present, you have Essential Plan coverage as of September 1, 2017 as Aid to Continue during the appeal process. Your enrollment will not be disturbed until your eligibility is redetermined by NYSOH. NYSOH will notify you once this has been done and what further action may be required on your part, if applicable.

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)

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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. y&b&tumi 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.

שׂוֹדֵיִשׁ (Yiddish)

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