



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

## Notice of Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017640

[REDACTED]

Dear [REDACTED],

On July 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 22, 2017 eligibility redetermination and disenrollment 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 NY State of Health 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  
P.O. Box 11729  
Albany, NY 12211

## Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017640



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health properly determine you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective March 1, 2017, because you were not a citizen, a qualified alien, or permanently residing in the United States under color of law?

## Procedural History

On February 23, 2017, the NYSOH Appeals Unit issued a Notice of Decision affirming the June 18, 2016 eligibility determination by NYSOH finding you ineligible for health insurance through NYSOH, because you failed to submit documentation verifying a satisfactory immigration status. Your case was returned to NYSOH to redetermine your eligibility based on your current immigration status.

On March 21, 2017, NYSOH systematically redetermined your January 6, 2017 application.

On March 22, 2017, NYSOH issued an eligibility determination notice stating you were eligible for Medicaid coverage for the treatment of emergency medical conditions only, effective March 1, 2017. The notice stated that you were only eligible for emergency medical care and services, because you were not a citizen, a qualified alien, or permanently residing in the United States under color of law (PRUCOL).

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Also on March 22, 2017, NYSOH issued a disenrollment notice stating your enrollment in an Essential Plan was terminated, effective March 31, 2017, because the type of Medicaid coverage you were eligible for did not allow you to enroll in a plan.

On April 3, 2017, you spoke to NYSOH's Account Review Unit and appealed the eligibility redetermination insofar as you were not eligible for full health coverage through NYSOH.

On July 24, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to August 7, 2017 to allow you to submit supporting documentation.

On July 24, 2017, NYSOH received your supporting documentation. Additional documentation was received on August 7, 2017. The documentation was incorporated into the record as Appellant's Exhibit #1. The record closed thereafter.

## **Findings of Fact**

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

- 1) You are seeking insurance for yourself.
- 2) According to your account, you initially applied for health insurance through NYSOH on January 19, 2016. That application listed your immigration status as "Non-Immigrant Visa Holder" and listed your immigration document type as "Machine Readable Visa."
- 3) According to your account, NYSOH was unable to verify your attested immigration status with federal data sources and you were determined conditionally eligible to enroll in the Essential Plan pending receipt of documentation confirming your immigration status.
- 4) According to your account, you were subsequently determined ineligible to enroll in health insurance through NYSOH, because you failed to submit proof of a satisfactory immigration status and you were disenrolled from your Essential Plan, effective June 30, 2016.
- 5) You appealed that eligibility determination and disenrollment from your Essential Plan. According to your account you were granted aid to continue in your Essential Plan pending the outcome of the appeal.
- 6) On February 23, 2017, the NYSOH Appeals Unit issued a Notice of Decision affirming the June 18, 2016 eligibility determination and

disenrollment notices on the grounds you failed to submit documentation to verify your attested immigration status. That decision returned your case to NYSOH to redetermine your eligibility for health insurance based on your current immigration status.

- 7) According to your account, on March 21, 2017, NYSOH systematically redetermined your January 6, 2017 application. That application indicated your annual expected income for 2017 was \$15,080.00. The application also indicated that you would file your 2017 tax return with a tax filing status of single and you would claim no dependents.
- 8) The January 6, 2017 application listed your immigration status as “Non-Immigrant Visa Holder” and listed your immigration document type as “Machine Readable Visa.”
- 9) According to your account, you were determined eligible for emergency Medicaid only, effective March 1, 2017.
- 10) You were disenrolled from your Essential Plan, effective March 31, 2017.
- 11) You appealed the March 22, 2017 eligibility determination insofar as you were not eligible for full coverage health insurance through NYSOH.
- 12) The following documentation has been posted to your account:
  - a. On July 24, 2017, a copy of a June 26, 2017 letter from the U.S. Citizenship and Immigration Services (USCIS) acknowledging your request for information relating to your immigration file (██████████).
  - b. On June 19, 2017, a copy of your passport from the ██████████ with an expiration date of May 23, 2027 (██████████).
  - c. On March 13, 2017 (██████████), a Form G-845 Document Verification Request from the Department of Homeland Security dated January 25, 2016 with the following notation: “DHS RECORDS DO NOT SHOW ANY CURRENT IMMIGRATION STATUS FOR THIS APPLICANT. APPLICANT CURRENTLY HAS NO IMMIGRATION STATUS.” Previously posted to your account on November 23, 2016 (██████████).
  - d. On March 7, 2017, a copy of your NYS driver’s license with an expiration date of September 28, 2024 (██████████).

- e. On January 6, 2017, a copy of a ( ) Form G-845 Document Verification Request from the Department of Homeland Security dated January 6, 2017 containing no information regarding your current immigration status.
  - f. On November 29, 2016, a letter from USCIS dated October 26, 2017 acknowledging your request for information under the Freedom of Information Act ( ).
  - g. On September 21, 2016, a copy of your I-94 Arrival/ Departure Record indicating it was valid from "12/2/2007 until 04/25/2009." ( ).
- 13) You submitted letters from various persons and entities requesting reconsideration of a 2009 decision of the USCIS to deny your request to extend your " ."
  - 14) On April 9, 2017, a copy of a letter from you dated April 8, 2017 was uploaded to your account contending that the March 22, 2017 eligibility determination was unconstitutional, and indicating that you were "doing [your] best to resolve [your] ongoing immigration status gap." The letter alleges that the October 16, 2016 letter from USCIS indicated the agency was working to "identify all the evidence related to" your immigration status which was evidence of your effort to resolve your immigration status that has been pending since 2009 ( ).
  - 15) At the hearing, you refused to respond to questions regarding your immigration status. You contended your immigration status was "privileged."
  - 16) You testified that NYSOH did not have jurisdiction to question your immigration status, because matters of immigration were exclusively within the jurisdiction of the federal government.
  - 17) You testified you were currently working on resolving your immigration status and that it could take years. You testified that it was unfair to deny you health coverage during the pendency of the matter.
  - 18) You testified you are seeking reinstatement in your Essential Plan or enrollment in full coverage health insurance through NYSOH.

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

## Applicable Law and Regulations

### Immigration Status and Eligibility

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 Social Services Law § 122(1); 18 NYCRR § 360-3.2(j)).

The term *qualified immigrant* includes the following categories of aliens:

- (a) refugees admitted under section 207 of the Immigration and Nationality Act;
- (b) asylees granted asylum under section 208 of the Immigration and Nationality Act;
- (c) aliens whose deportation was withheld under section 241(b)(3) or 243(h) of the Immigration and Nationality Act;
- (d) Cuban and Haitian entrants (as defined in section 501[e] of the Refugee Education Assistance Act of 1980), including all Cuban or Haitian parolees;
- (e) aliens admitted into the United States as Amerasian immigrants as described in section 402(a)(2)(A)(v) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. section 1612[a][2][A][v]);
- (f) aliens lawfully admitted for permanent residence in the United States;
- (g) aliens paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year, except Cuban or Haitian parolees;
- (h) aliens granted conditional entry into the United States under section 203(a)(7) of the Immigration and Nationality Act;
- (i) battered spouses and dependents meeting the criteria of section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. section 1641[c]);
- (j) aliens on active duty, other than active duty for training, in the United States Armed Forces or who are veterans who have received a discharge characterized as honorable and not on account of alienage, or the spouse, unremarried surviving spouse or unmarried dependent child of any such alien;
- (k) Canadian born Native Americans;
- (l) Native Americans belonging to a federally recognized tribe who were born outside the United States; and
- (m) victims of a severe form of trafficking under section 107(b) of the Trafficking Victims Protection Act of 2000 (P.L. 106-386).  
(18 NYCRR § 360-3.2(j)(1)(ii)).

The term PRUCOL means an alien who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the U.S. such agency does not contemplate enforcing. An alien will be considered as one whose departure the federal immigration agency does not contemplate enforcing if, based on all the facts and circumstances in a particular case, it appears that the federal immigration agency

is otherwise permitting the alien to reside in the United States indefinitely or it is the policy or practice of such agency not to enforce the departure of aliens in a particular category (18 NYCRR § 360-3.2(j)(1)(ii)).

### Emergency Medicaid

In some cases, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage (NY Social Services Law § 122(1)(e); 18 NYCRR § 360-3.2(j)(3)(ii)(a)).

The term “emergency medical condition” means:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment of bodily functions; or
- (c) Serious dysfunction of any bodily organ or part

(42 CFR § 435.930(c).

To get treatment for an emergency medical condition, an undocumented alien who is not a temporary non-immigrant must meet all of the other Medicaid eligibility requirements, including proof of identity, income, and State residence (GIS 13 MA/09: Changes to Medicaid Coverage for the Treatment of an Emergency Medical Condition, (2/25/2013)).

### Medicaid Eligibility

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 2017 FPL, which is \$12,060.00 for a one-person household (82 Fed. Reg. 8831).

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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).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined you were eligible only for Medicaid coverage for the treatment of emergency medical conditions, effective March 1, 2017, because you were not a citizen, qualified alien or PRUCOL.

According to your account, on June 18, 2016, NYSOH determined you ineligible to enroll in health insurance through NYSOH, because you failed to submit proof of a satisfactory immigration status and you were disenrolled from your Essential Plan, effective June 30, 2016. You appealed that determination. On February 23, 2017, the NYSOH Appeals Unit issued a Notice of Decision affirming the June 18, 2016 eligibility determination and disenrollment notices on the grounds you failed to submit documentation to verify your attested immigration status. That decision returned your case to NYSOH to redetermine your eligibility for health insurance based on your current immigration status.

On March 21, 2017, NYSOH systematically redetermined your January 6, 2017 application. That application indicated your annual expected income for 2017 was \$15,080.00. The application also indicated that you would file your 2017 tax return with a tax filing status of single and you would claim no dependents. The January 6, 2017 application listed your immigration status as “Non-Immigrant Visa Holder” and listed your immigration document type as “Machine Readable Visa.”

On March 22, 2017, NYSOH determined you eligible for emergency Medicaid only, effective March 1, 2017. The notice indicated you were not eligible to enroll in full coverage Medicaid through NYSOH, because you were not a citizen, qualified alien, or PRUCOL. You were disenrolled from your Essential Plan, effective March 31, 2017. You appealed the March 22, 2017 eligibility determination insofar as you were not eligible for full coverage health insurance through NYSOH.

Based on the information in your January 6, 2017 application, upon which the subject eligibility determination is based, which listed your annual expected income as \$15,080.00 and indicated you were in a one-person household, you were within the income limits for Medicaid, because your attested household income was 125.04% of the applicable FPL. However, pursuant to the above cited regulations, generally, no person except a United States citizen, a naturalized citizen, a qualified alien, or a PRUCOL, is eligible for medical

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assistance from the state. Accordingly, although your attested household income was within the Medicaid limits, you were still required to possess a sufficient immigration status in order to be eligible to receive full Medicaid benefits, pursuant to the applicable regulations.

The record establishes you are not a United States citizen nor a naturalized citizen. Additionally, there is no evidence to suggest you are a *qualified alien* as defined by the above cited regulations. Similarly, the documentation you submitted was insufficient to establish you are PRUCOL.

The term PRUCOL means an alien who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the U.S. such agency does not contemplate enforcing. The only immigration documentation in the record is a copy of your I-94 Arrival/Departure Record indicating it expired on April 25, 2009. You submitted letters from various persons and entities requesting reconsideration of a 2009 decision of the USCIS to deny your request to extend your "E-2 Treaty Investor Status." Accordingly, the evidence indicates that you once possessed a sufficient immigration status that has since expired.

Although you submitted documentation from the USCIS acknowledging your multiple requests for information relating to your immigration file and testified that you are currently working to resolve your immigration status, this is insufficient to establish that you are currently residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency, as required by the regulations. Furthermore, the documentation you submitted, specifically the Form G-845 Document Verification Request from the Department of Homeland Security dated January 25, 2016, states, explicitly, that you currently have no immigration status. Moreover, at the hearing, you refused to respond to questions regarding your immigration status alleging such information was "privileged." Thus, based on the evidence and the application regulations, NYSOH properly determined that you had not shown that you possessed a sufficient immigration status to qualify for full coverage Medicaid benefits.

However, in accordance with the regulations, Medicaid will pay for emergency medical treatment for a person who does not have evidence of citizenship or immigration status, even if the person cannot get full Medicaid coverage, if the applicant meets all the other Medicaid eligibility requirements. As discussed above, the attested income in your January 6, 2017 application, \$15,080.00, is 125.04% of the 2017 FPL for a one-person household, which is under the 138% threshold to qualify for Medicaid. You have submitted a current NYS driver's license which is sufficient proof of your identity and state residence. Accordingly, you satisfy the requirements to receive emergency Medicaid.

Therefore, the March 22, 2017 eligibility determination notice stating you were eligible for Medicaid for the treatment of emergency medical conditions only,

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effective March 1, 2017, because you were not a citizen, qualified alien or PRUCOL, is correct and is AFFIRMED.

Additionally, the March 22, 2017 disenrollment notice stating your Essential Plan coverage would end March 31, 2017, was correct as you were no longer eligible for the Essential Plan, based on the March 22, 2017 eligibility determination. Accordingly, that notice is AFFIRMED.

## **Decision**

The March 22, 2017 eligibility redetermination notice is AFFIRMED.

The March 22, 2017 disenrollment notice is AFFIRMED.

**Effective Date of this Decision:** September 6, 2017

## **How this Decision Affects Your Eligibility**

You remain eligible for Medicaid coverage for the treatment of emergency medical conditions only, because you are not a citizen, qualified alien or PRUCOL.

Your Essential Plan coverage ended on March 31, 2017.

## **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 March 22, 2017 eligibility redetermination notice is AFFIRMED.

The March 22, 2017 disenrollment notice is AFFIRMED.

You remain eligible for Medicaid coverage for the treatment of emergency medical conditions only, because you are not a citizen, qualified alien or PRUCOL.

Your Essential Plan coverage ended on March 31, 2017.

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).

## **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**

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 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)**

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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।

### **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 bɛtumi ama wo obi a okyerɛ 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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