



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

Notice of Decision

Decision Date: August 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017999

[REDACTED]

Dear [REDACTED]

On July 27, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination notice and September 18, 2016 disenrollment 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: August 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017999

[REDACTED]

Issues

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

Was your appeal of NY State of Health's September 18, 2016 eligibility determination notice and September 18, 2016 disenrollment notice timely?

Did NY State of Health properly determine that your eligibility for and enrollment in the Essential Plan ended effective October 31, 2016?

Procedural History

On March 30, 2016, NY State of Health (NYSOH) received your updated application for financial assistance.

Also on March 30, 2016, you uploaded income documentation to your NYSOH account.

On March 31, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective May 1, 2016. The notice further directed you to provide documentation confirming your income before June 28, 2016.

On April 3, 2016, NYSOH issued a notice confirming your enrollment in an Essential Plan, effective May 1, 2016.

On September 17, 2016, NYSOH redetermined your eligibility for financial assistance.

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On September 18, 2016, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost. The notice stated that you were not eligible to enroll in the Essential Plan because NYSOH did not receive the income documentation needed to verify the income listed in your application. This eligibility was effective November 1, 2016.

On September 18, 2016, NYSOH issued a disenrollment notice stating that your enrollment in the Essential Plan would end as of October 31, 2016, because you were no longer eligible to remain in your plan.

On February 15, 2017, you updated your application for financial assistance.

On February 16, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan, effective March 1, 2017.

Also on February 16, 2017, NYSOH issued a notice of enrollment confirmation, based on your plan selection on February 15, 2017, stating that you were enrolled in an Essential Plan effective March 1, 2017.

On April 13, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were without coverage for February 2017.

On July 27, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, Mandarin Interpreter # [REDACTED] interpreted. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you believe you should not have been disenrolled from your Essential Plan. You testified that you are particularly concerned about the month of February 2017. This is because you have outstanding medical bills for that month.
- 2) The record reflects that your account was updated by a certified application counselor on March 30, 2016. The reported annual income at that time was \$20,500.00.
- 3) You testified that when you met with a certified application counselor, you uploaded a copy of your tax return.
- 4) On March 30, 2016, a copy of your 2015 tax return was uploaded to your NYSOH account. This tax return reflects that your total income for 2015

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was \$22,111.00, that you claimed a deduction for the deductible part of self-employment tax of \$1,562.00, and that your adjusted gross income was \$20,549.00.

- 5) As a result of the March 30, 2016 application, you were found eligible for the Essential Plan for a limited time with an effective date of May 1, 2016.
- 6) Your NYSOH account is devoid of any indication that NYSOH reviewed the income documentation you uploaded to your NYSOH account on March 30, 2016.
- 7) You testified, and your application indicates, that you receive all of your notices from NYSOH via regular mail.
- 8) You testified that you did not receive the September 18, 2016 eligibility determination advising you that you were no longer eligible for the Essential Plan or the September 18, 2016 disenrollment notice advising you that your enrollment in your Essential Plan would end on October 31, 2016.
- 9) You testified that you did not know that you had been disenrolled from your Essential Plan until February 2017. You testified that you contacted NYSOH in February 2017 because you normally renew your coverage around that time. It was at that time that you were advised that you had been disenrolled from your Essential Plan.
- 10) You testified that you did not have any medical treatment until February 2017, when you [REDACTED].
- 11) You testified that you continued to pay premiums to your Essential Plan, and it was not until recently that these premiums were refunded to you.
- 12) The application that you submitted on February 15, 2017 listed annual income of \$22,885.00.
- 13) You reenrolled into an Essential Plan on February 15, 2017 with an effective date of March 1, 2017.

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

Applicable Law and Regulations

Valid Appeal Requests

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An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

Verification of 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).

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)).

To enroll in the Essential Plan through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States (42 CFR §600.305(a)(5)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in the Essential Plan. If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to

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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. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5-day period (42 CFR § 600.345, 45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

An applicant is required to attest to their household's projected annual income. (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant in order to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any updates in eligibility to the Essential Plan effective the first day of the following month for changes received by NYSOH from the first to the fifteenth of any month (45 CFR § 155.420(b)(1)(i); *see also* 42 CFR § 600.320(c)). For updates 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 § 155.420(b)(1)(ii); *see also* 42 CFR § 600.320(c)).

Timely Notice of Essential Plan Eligibility

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH uses the same timeliness standards for eligibility determinations for the Essential Plan as for Medicaid (42 CFR §600.320(b)). NYSOH must provide Medicaid applicants, and therefore Essential Plan applications, notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

Essential Plan Coverage Period

New York State has elected to adopt the Medicaid policy regarding continuous enrollment throughout the year (42 CFR § 600.320(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>).

This means that an individual may apply and enroll for coverage at any point in time throughout the year, including outside the open enrollment period and without needing a special enrollment period (NY Social Services Law § 369-gg(4)(d)).

New York State has also elected to redetermine Essential Plan enrollees every 12 months from the effective date of eligibility as long as enrollees are under age 65, are not enrolled in minimum essential coverage, and remain state residents. 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(f); NY Social Services Law § 369-gg(3) and (4)(d)). Enrollees are required to report changes in circumstances within 30 days, which NYSOH will assess and act upon accordingly (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>).

Essential Plan Effective Date

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

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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)).

Legal Analysis

The first issue under review is whether your appeal of NYSOH's September 18, 2016 eligibility determination notice and September 18, 2016 disenrollment notice was timely.

The record reflects that you first contacted NYSOH to file a formal appeal regarding your disenrollment from your Essential Plan on April 13, 2017.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of your disenrollment from your Essential Plan, an appeal should have been filed by November 17, 2016. The record reflects that you filed your appeal on April 13, 2017, which is beyond the 60-day deadline.

Although your appeal was untimely on its face, you credibly testified that you did not receive the September 18, 2016 eligibility determination or the September 18, 2016 disenrollment notice. You further testified that you continued to pay your Essential Plan premiums even after your disenrollment, and it was not until recently that you received a refund of those payments. You also testified that you did not seek medical treatment in the months you were without coverage until February 2017. You additionally testified that you only became aware that you had been disenrolled from your Essential Plan when you contacted NYSOH to update your application.

In light of the above facts, your failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal.

The second issue is whether NYSOH properly determined that your eligibility for and enrollment in the Essential Plan ended effective October 31, 2016.

On March 30, 2016, you updated your application for financial assistance. As a result of this application, you were found eligible for the Essential Plan as of May 1, 2016, and you were enrolled into a plan.

In the eligibility determination issued on March 31, 2016, you were advised that you were eligible for the Essential Plan for a limited time, and that you needed to confirm your household's income before June 28, 2016.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected annual income. For individuals seeking enrollment in the Essential Plan, NYSOH must request income data from federal data sources in order to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

On March 30, 2016, you uploaded income documentation to your NYSOH account. Therefore, your application was considered complete as of March 30, 2016.

NYSOH must provide Essential Plan applicants notice of their eligibility determination within 45 days from the date of the completed application. To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of the completed application to the date NYSOH notifies the applicant of its decision.

NYSOH has never reviewed the income documentation you submitted to your account on March 30, 2016.

However, had NYSOH reviewed the income documentation and issued a timely eligibility determination, it would have confirmed your eligibility for the Essential Plan.

New York State has elected to redetermine Essential Plan enrollees only every 12 months from the effective date of eligibility as long as enrollees are under age 65, are not enrolled in minimum essential coverage, remain state residents. 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.

Your NYSOH account reflects that you are under the age of 65, are not enrolled in other minimum essential coverage, and have remained a state resident.

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Furthermore, the update you made to the income information in your account on February 15, 2017 reflects that you remained income eligible for the Essential Plan during the period in question.

Had NYSOH issued a timely eligibility determination, you would have remained eligible for and enrolled in the Essential Plan for 12 months. As you were found eligible for the Essential Plan as of May 1, 2016, your coverage should have continued until April 30, 2017.

Therefore, the September 18, 2016 eligibility determination notice and September 18, 2016 disenrollment notice are **RESCINDED**.

Your case is **RETURNED** to NYSOH to reenroll you in your Essential Plan, effective November 1, 2016.

Decision

The September 18, 2016 eligibility determination notice is **RESCINDED**.

The September 18, 2016 disenrollment notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to reenroll you in your Essential Plan, effective November 1, 2016.

Effective Date of this Decision: August 7, 2017

How this Decision Affects Your Eligibility

You should not have been disenrolled from your Essential Plan as of October 31, 2016.

Your case is being sent back to NYSOH to reenroll you in your Essential Plan as of November 1, 2016.

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 September 18, 2016 eligibility determination notice is RESCINDED.

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The September 18, 2016 disenrollment notice is RESCINDED.

You should not have been disenrolled from your Essential Plan as of October 31, 2016.

Your case is RETURNED to NYSOH to reenroll you in your Essential Plan, effective November 1, 2016.

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 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. ye&btumi 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.

אַײַדיש (Yiddish)

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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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