



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

Notice of Decision

Decision Date: December 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022874

[REDACTED]

[REDACTED]

On December 8, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's July 26, 2017 eligibility determination notice, October 1, 2017 eligibility determination notice, and October 1, 2017 enrollment confirmation 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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DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: December 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022874



Issues

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

Did NY State of Health (NYSOH) properly determine that you were not eligible to enroll in coverage through NY State of Health as of September 2, 2017?

Did NYSOH properly determine that your reenrollment in an Essential Plan for a limited time, was effective November 1, 2017?

Procedural History

On July 24, 2017, NYSOH received your updated application for health insurance.

On July 25, 2017, NYSOH issued an eligibility determination notice, based on your July 24, 2017 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective September 1, 2017. The notice stated that you were not eligible for Medicaid because your income was over the allowable income limit for that program. The notice further stated that you needed to submit documentation of your immigration status and documentation of your income by October 22, 2017 so that your eligibility could be confirmed.

Also on July 25, 2017, NYSOH received a copy of your I-776 Employment Authorization Card reflecting a category code of "C33." This document was reviewed and verified that day as valid proof of your immigration status.

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On July 26, 2017, NYSOH issued an eligibility redetermination notice based on information verified on July 25, 2017. The notice stated that you were not eligible for Medicaid because the household income you provided was over the allowable income limit for that program. The notice also stated that you were ineligible for the Essential Plan, advance payment of the premium tax credit and cost-sharing reductions, or to enroll in a qualified health plan at full cost. This was effective as of September 2, 2017.

On September 27, 2017, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was prepared stating that you were eligible to enroll in the Essential Plan for a limited time, effective November 1, 2017.

Also on September 27, 2017, you spoke to NYSOH's Account Review Unit and appealed the preliminary eligibility determination, insofar as your reenrollment in your Essential Plan was not effective as of September 1, 2017.

On September 28, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in an Essential Plan with a plan enrollment start date of November 1, 2017.

On October 1, 2017, NYSOH issued an eligibility determination notice, based on your September 27, 2017 application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective November 1, 2017. The notice stated that you were not eligible for Medicaid because your income was over the allowable income limit for that program. The notice further stated that you needed to submit documentation of your immigration status by December 26, 2017 so that your eligibility could be confirmed.

On October 3, 2017, you updated your application for financial assistance, specifically, you updated your household's annual expected income.

On October 4, 2017, NYSOH issued a notice stating that the income information in your application did not match what NYSOH had received from state and federal data sources and that additional information was needed in order to determine your eligibility for financial assistance. This notice directed you to submit proof of your household's income by October 18, 2017.

On October 4, 2017, NYSOH issued a disenrollment notice stating that your coverage with your Essential Plan would end on November 1, 2017. This was because you were no longer eligible to enroll in the Essential Plan.

On October 5, 2017, NYSOH received documentation of your household income. That day, NYSOH reviewed the documentation you submitted and determined that this was sufficient proof of your household income.

On October 6, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid, effective October 1, 2017.

Also on October 6, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid for September 1, 2017 through September 30, 2017.

On October 10, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in a Medicaid Managed Care plan with a plan enrollment start date of November 1, 2017.

On November 21, 2017, you were scheduled for a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You requested that day that the hearing be adjourned to a later date.

On December 8, 2017, you had an adjourned telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to formal notice of the hearing. 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) You testified that you expect to file your 2017 tax return with a status of married filing jointly and you will claim one dependent on that tax return.
- 2) You are seeking insurance for yourself.
- 3) Your application states you are an immigrant non-citizen.
- 4) You uploaded a copy of your Employment Authorization card on July 25, 2017 with the status of C-33, which was verified that day.
- 5) The status of C-33, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as Deferred Action on Childhood Arrivals.
- 6) The application that was submitted on July 24, 2017, which requested financial assistance, listed annual household income of \$32,000.00.

- 7) The application that was submitted on September 27, 2017, listed annual household income of \$40,000.00. You testified that this was correct at that time.
- 8) Your NYSOH account reflects that you selected an Essential Plan for reenrollment on September 27, 2017.
- 9) You testified that at the end of September 2017, you were terminated from your employment.
- 10) You updated your application for financial assistance on October 2, 2017 to reflect that your income had changed.
- 11) Your NYSOH account reflects that you were found eligible for fee-for service Medicaid as of October 1, 2017 and enrolled in a Medicaid Managed Care plan as of November 1, 2017. You were also found eligible for retroactive fee-for service Medicaid for September 1, 2017 through September 30, 2017.
- 12) You testified that you are seeking to have the Essential Plan for September 2017 and October 2017 because you have outstanding medical bills for those months that are not covered by your fee-for service Medicaid.
- 13) Your application states, and you confirmed, that you live in [REDACTED]
[REDACTED]

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

Applicable Law and Regulations

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

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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 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)).

Qualified Immigrants Transitioned to the Essential Plan

In New York State, qualified immigrants who were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016 (New York's Basic Health Plan Blueprint, p. 19, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>). This category of qualified immigrants includes individuals lawfully admitted for permanent residence in the United States who are still in their first five years of permanent residency (18 NYCRR § 349.3, 8 USC § 1613).

Medicaid

A person who meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard is eligible for Medicaid benefits (45 CFR § 155.305(c)). One of the non-financial criteria for Medicaid eligibility is the immigration status of the person applying for health insurance. A person is eligible for Medicaid when his or her immigration status is satisfactory and he or she meets all other requirements for Medicaid.

Medicaid can be provided through NYSOH to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the

applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2017 FPL, which is \$20,420.00 for a three-person household (82 Fed. Reg. 8831).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Qualified Health Plan

To enroll in a qualified health plan (QHP) through the Marketplace, an applicant must be a citizen or national of the United States or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

Immigration Status

Generally, no person except a United States citizen, a naturalized citizen, a qualified alien, and persons permanently residing in the United States under color of law (PRUCOL), is eligible for medical assistance from the state (NY Soc. Serv. Law § 122(1); 18 NYCRR § 360-3.2(j)).

A PRUCOL alien is a person who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the United States such agency does not contemplate enforcing (18 NYCRR §360-3.2(j)). The New York Department of Health regards aliens who have been issued an Employment Authorization Document (I-688B or I-766), and have the requisite category code, to be PRUCOL (08 OHIP/INF-4, dated August 4, 2008)).

The guide, “Key to I-766/I-688B, Employment Authorization Documents (EADs)”, defines certain codes on the USCIS Employment Authorization Documents” (08 MA/033, dated December 1, 2008, and as amended). It confirms that a person who has category code of “(c)(33)” has PRUCOL status for Medicaid and Child Health Plus only (*id.*).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were not eligible to enroll in coverage through NYSOH as of September 2, 2017.

On July 24, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan for a limited time, effective September 1, 2017. Your eligibility was contingent on you providing documentation of your immigration status and household income.

On July 25, 2017, you provided to NYSOH a copy of your I-766 EAC. Also on July 25, 2017 this information was verified and an application was submitted to NYSOH on your behalf. That application listed an annual household income of \$32,000.00 and reflected that you were an immigrant non-citizen.

As a result, NYSOH issued an eligibility determination notice stating that you were not qualified to enroll in coverage through NYSOH because the documentation you provided showed that you were not lawfully present and that your household income was over the allowable income limit for Medicaid.

Your employment authorization documentation states you are an immigrant non-citizen with a C-33 status. The status of C-33, according to the United States Customs and Immigration Services (USCIS) and Social Security Administration (SSA) is in reference to a status classified as Deferred Action on Childhood Arrivals. Individuals who have obtained an Employment Authorization card with the status of C-33 category are persons considered not “lawfully present” for purposes of the federal definition, and are therefore not recognized as eligible to receive federal funding under those programs.

In addition, while individuals who have been determined to be qualified aliens and were formerly eligible for Medicaid through the state, but not eligible for Medicaid under federal law, were transitioned to the Essential Plan as of January 1, 2016, this is not the case for persons who received Deferred Action status.

Therefore, NYSOH was correct in finding you ineligible for coverage under the Essential Plan.

However, NY State has consistently recognized persons with Deferred Action status within the accepted meaning of “*PRUCOL alien*”; even though the federal government has not. The New York Court of Appeals ruled, in *Aliessa, et al. v. Novello* (96 NY 2d 418 [2001]), that New York must provide state-funded Medicaid to the lawfully residing immigrants who had been excluded from access to the federal Medicaid program.

Since your current Deferred Action status does confer PRUCOL status for individuals seeking Medicaid eligibility, we may review whether you met the financial criteria for Medicaid.

You are in a three-person household. You expect to file your 2017 income taxes as married filing jointly and will claim one dependent on that tax return.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size. On the date of your applications, the relevant FPL was \$20,420.00 for a three-person household. Since \$32,000.00 is 156.71% of the 2017 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Finally, federal regulations require that a person seeking enrollment in a qualified health plan through NYSOH have United States citizenship or satisfactory or immigration status. Under the federal regulations, individuals with Deferred Action for Childhood Arrivals status are not considered to be lawfully present for the purposes of obtaining coverage in a qualified health plan through NYSOH.

Accordingly, the July 26, 2017 eligibility determination notice properly found you to be ineligible for the Essential Plan or qualified health plan based on you not being lawfully present. However, your ineligibility for Medicaid is properly based on your annual household income being over the limit for that program, not your legal presence.

Therefore, the July 26, 2017 eligibility determination notice is AFFIRMED.

The second issue is whether NYSOH properly determined that your reenrollment in the Essential Plan for a limited time was effective November 1, 2017.

The record indicates, that you updated your NYSOH application on September 27, 2017. As a result, you were found eligible for the Essential Plan for a limited time as of November 1, 2017 and enrolled into a plan that day.

The date on which enrollment in an Essential 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 from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

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).

On September 27, 2017, you selected an Essential Plan, so your reenrollment properly took effect on the first day of the second month following September 2017; that is, on November 1, 2017.

Therefore, the October 1, 2017 eligibility determination notice and the September 28, 2017 enrollment confirmation notice stating that your eligibility for and reenrollment in the Essential Plan for a limited time was effective November 1, 2017, is correct and must be AFFIRMED.

Decision

The July 25, 2017 eligibility determination notice is AFFIRMED.

The October 1, 2017 eligibility determination notice is AFFIRMED.

The September 28, 2017 enrollment confirmation notice is AFFIRMED.

Effective Date of this Decision: December 13, 2017

How this Decision Affects Your Eligibility

You are not eligible for the Essential Plan or enrollment in a QHP because you are not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you were previously ineligible for Medicaid at the time of the July 24, 2017 application because your household income was over the maximum allowable income limit.

Your eligibility for and reenrollment in the Essential Plan would have been effective as of November 1, 2017, however, the record reflects that you were subsequently found eligible for Medicaid and enrolled in a Medicaid Managed Care plan as of November 1, 2017.

This decision does not affect subsequent eligibility determinations.

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.

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).

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
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:

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- By mail at:
NY State of Health Appeals
P.O. Box 11729
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- By fax: 1-855-900-5557

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Summary

The July 25, 2017 eligibility determination notice is AFFIRMED.

You are not eligible for the Essential Plan or enrollment in a QHP because you are not lawfully present.

Although you qualify as a PRUCOL alien for state-based Medicaid, you were previously ineligible for Medicaid at the time of the July 24, 2017 application because your household income was over the maximum allowable income limit.

The October 1, 2017 eligibility determination notice is AFFIRMED.

The September 28, 2017 enrollment confirmation notice is AFFIRMED.

Your eligibility for and reenrollment in the Essential Plan would have been effective as of November 1, 2017, however, the record reflects that you were subsequently found eligible for Medicaid and enrolled in a Medicaid Managed Care plan as of November 1, 2017.

This decision does not affect subsequent eligibility determinations.

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 मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a 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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