



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

Notice of Decision

Decision Date: May 30, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000027627

[REDACTED]

Dear [REDACTED]

On March 26, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 23, 2018 eligibility determination 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 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: May 30, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000027627



Issue

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

Did NY State of Health (NYSOH) properly determine your oldest child was eligible for Child Health Plus with a \$45.00 monthly premium and your youngest child was eligible to enroll in Child Health Plus at full cost, effective March 1, 2018?

Procedural History

On January 16, 2018, NYSOH received an updated application for financial assistance with health insurance submitted on behalf of your children.

On January 17, 2018, NYSOH issued an eligibility determination notice stating your youngest child was eligible for Child Health Plus (CHP) with a \$30.00 monthly premium, for a limited time, effective March 1, 2018. The notice further stated your oldest child was eligible for CHP with a \$9.00 monthly premium, for a limited time, effective March 1, 2018. The notice directed you to submit proof of income by March 17, 2018 to confirm your children's eligibility, or they might lose their insurance or receive less help paying for their coverage.

Also on January 17, 2018, NYSOH issued an enrollment notice confirming your children's enrollment in a CHP plan with \$30.00 and \$9.00 monthly premiums, respectively.

On January 22, 2018, NYSOH redetermined your children's eligibility.

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On January 23, 2018, NYSOH issued an eligibility determination notice stating your younger child was eligible to enroll in CHP at full cost and your older child was eligible for CHP with a \$45.00 monthly premium, effective March 1, 2018. The notice indicated different household incomes for your two children; your youngest child was not eligible for a CHP subsidy, because her household income was over the allowable limit for that program.

Also on January 23, 2018, you spoke to NYSOH's Account Review Unit and appealed insofar as your children were not eligible to enroll in a CHP plan with a lower premium payment.

On January 24, 2018, NYSOH issued an enrollment notice, confirming your youngest child was enrolled in a full cost CHP plan and your oldest child was enrolled in a CHP plan with a \$45.00 monthly premium, effective March 1, 2018.

On February 15, 2018, NYSOH issued an eligibility determination notice indicating your children had been granted "Aid to Continue" in their previous CHP enrollments until a decision on your appeal was made. They were reenrolled in their CHP plans with \$30.00 and \$9.00 monthly premiums, respectively, effective March 1, 2018.

On March 26, 2018, 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 allow you to submit supporting documentation. On April 6, 2018, your documentation was received by the Appeals Unit and it was subsequently 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 your children only.
- 2) On January 16, 2018, you submitted an updated application on behalf of your children to renew their health coverage for the 2018 coverage year. That application listed your expected annual income for 2018 as \$44,200.01, consisting of \$1,700.00 in earned income. You testified you were not sure if that amount was accurate.
- 3) Your application indicated that you would file your 2018 tax return with a tax filing status of single and you would claim your youngest child as a dependent on that tax return. The application indicated that your oldest child would be claimed as a tax dependent by his other parent. You testified that information was accurate.

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- 4) You testified that both of your children reside with you only.
- 5) According to your account, both of your children are under the age of 19.
- 6) According to your account, NYSOH was unable to verify the income information in your application and your children were determined conditionally eligible to enroll in CHP with \$30.00 and \$9.00 monthly premiums, respectively. You were directed to submit proof of your income to confirm your children's eligibility.
- 7) On January 20, 2018, you submitted the following two biweekly paystubs:
 - a. Pay date of December 29, 2017 showing biweekly federal taxable wages of \$2,421.86 and year-to-date gross income of \$62,874.25.
 - b. Pay date of January 12, 2018 showing federal taxable wages of \$2,421.86.
- 8) According to your account, NYSOH verified your income documentation on January 22, 2018 and recalculated your annual income as \$66,560.00 based on your paystubs.
- 9) NYSOH redetermined your children's eligibility, based on the recalculated household income amount, utilizing a two-person household calculation for your youngest child and a three-person household calculation for your oldest child.
- 10) NYSOH found your youngest child eligible to enroll in a full cost CHP plan, and ineligible for a subsidy, and your oldest child eligible for CHP with a \$45.00 monthly premium, effective March 1, 2018.
- 11) You appealed insofar as your children were not eligible to enroll in CHP with a lower monthly premium.
- 12) Your children were granted Aid to Continue in their prior CHP plans and reenrolled at the previous rates, pending the decision on the appeal.
- 13) You testified that the paystubs submitted in January 2018 did not represent your current income, because you were working more hours at that time.
- 14) You testified that you have worked for your current employer for [REDACTED]. You testified that you receive an hourly rate of \$30.00 and that your hours vary.

- 15) You testified that you are currently working approximately 10-12 hours less per week, so you expect your income in 2018 to be less than it was in 2017.
- 16) You were direct to submit documentation of your current income consisting of your last 30 days of paystubs.
- 17) You testified your current paystubs may not be reflective of your expected income for 2018, because they contained income received as a result of cashing out your vacation time.
- 18) On April 6, 2018, the Appeals Unit received the following two biweekly paystubs:
 - a. Pay date of March 23, 2018 showing federal taxable wages of \$1,704.24.
 - b. Pay date of April 6, 2018 showing federal taxable wages of \$2,224.74 including \$1,110.00 in "vacation" and \$17,008.50 in year-to-date earnings.
 - c. Both paystubs show a \$167.76 deduction for "health insurance" deducted from the federal taxable wages calculation.
- 19) Your January 19, 2018 application indicates you will not take any deductions on your 2018 tax return.
- 20) Your application indicates you reside in Nassau County.
- 21) The prior applications submitted on behalf of your children in December 2016 and January 2017 attested to annual expected income for 2017 of \$41,600.01.

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

Applicable Law and Regulations

Verification Process

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income (45 CFR § 155.320(c)(1)(i), 42 CFR § 435.945).

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If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f) 42 CFR § 435.952).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income (*id.*).

Child Health Plus - Household Income and Composition

Generally, financial eligibility for Medicaid and CHP is based on “household income,” defined as the sum of the MAGI-based income of every individual included in the individual's household (see 42 CFR § 435.603(c) and 42 CFR § 435.603(d)).

Generally, an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent.

The household of following individuals will be determined by “non-tax filer” rules:

- (i) Individuals other than a spouse or child who expect to be claimed as a tax dependent by another taxpayer; and
- (ii) Individuals under the age of 19 or, in the case of full-time students, age 21, who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and
- (iii) Individuals under the age of 19 or, in the case of full-time students, age 21, who expect to be claimed as a tax dependent by a non-custodial parent.

In the case of individuals who are claimed as a dependent by a noncustodial parent, the household consists of the individual and, if living with the individual (emphasis added), the individual's spouse; the individual's children under the age of 19 or, in the case of full-time students, age 21; and in the case of individuals under the age of 19 or, in the case of full-time students, age 21, the individual's parents and siblings under the age of 19 or, in the case of full-time students, age 21 (see 42 CFR § 435.603(f)(2) and (f)(3)).

Child Health Plus - Eligibility

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

A child who meets the eligibility requirements for CHP may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (NY PHL § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY PHL § 2511(2)(b)).

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in a CHP plan depends upon the child's family household income (NY PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL (NY PHL § 2510(9)(d)(1)). If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (NY PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL, but no more than \$27.00 per month per family (NY PHL § 2510(9)(d)(ii)).

The CHP premium is \$15.00 per month for a child whose family household income is between 223% and 250% of the FPL, but no more than \$54.00 per month per family (NY PHL § 2510(9)(d)(iii)).

The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL, but no more than \$90.00 per month per family (NY PHL § 2510(9)(d)(iv)).

The CHP premium is \$45.00 per month for a child whose family household income is between 301% and 350% of the FPL, but no more than \$135.00 per month per family (NY PHL § 2510(9)(d)(v)).

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The CHP premium is \$60.00 per month for a child whose family household income is between 351% and 400% of the FPL, but no more than \$180.00 per family (NY PHL § 2510(9)(d)(vi)).

In an analysis of Child Health Plus 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 2018 FPL, which is \$16,460.00 for a two-person household and \$20,780.00 for a three-person household (83 Federal Register 2642, 2643).

Legal Analysis

The issue is whether NYSOH properly determined your oldest child was eligible for Child Health Plus with a \$45.00 monthly premium and your youngest child was eligible to enroll in Child Health Plus at full cost, effective March 1, 2018.

On January 16, 2018 you submitted an updated application on behalf of your children to renew their health coverage for the 2018 coverage year. That application listed your expected annual income for 2018 as \$44,200.01, consisting of earned income. According to your account, NYSOH was unable to verify the income information in your application.

Pursuant to the above cited regulations, for all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income. If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence.

The January 17, 2018 eligibility determination notice indicated your youngest child's eligibility to enroll in CHP with a \$30.00 monthly premium and your oldest child's eligibility to enroll in CHP with a \$9.00 monthly premium was only conditional and you were required to submit proof of your income to confirm their eligibility. On January 20, 2018 you submitted two biweekly paystubs, both showing biweekly federal taxable wages of \$2,421.86. According to your account, NYSOH recalculated your annual income as \$66,560.00, based on the gross biweekly income in your paystubs, not deducting the amount paid for your health insurance premiums, and found your youngest child eligible to enroll in a full cost CHP plan, and ineligible for a subsidy, and your oldest child eligible for CHP with a \$45.00 monthly premium. You appealed insofar as your children were not eligible to enroll in CHP with a lower monthly premium.

At the hearing, you testified that the paystubs submitted in January 2018 did not represent your current income, because you were working more hours at that time. You testified that you are currently working approximately 10-12 hours less

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per week, so you expect your income in 2018 to be less than it was in 2017. You were directed to submit documentation of your current income.

It is noted that, at the hearing, you testified that your current paystubs were also not reflective of your expected income for 2018, because they contained income received from “cashing out” your vacation time. However, it is noted that income received from cashing out vacation time is properly included in your household’s annual income calculation. Furthermore, it is noted that your account confirms you had previously attested to an annual income for 2017 of \$41,600.01; however, the December 29, 2017 paystub submitted showed that you actually earned \$62,874.25 in 2017, over a \$20,000.00 difference. Based on that evidence, it is concluded that your application attestations and testimony regarding your expected annual income are not reliable. Therefore, it is concluded that the paystubs submitted are the best evidence of your income.

On April 6, 2018, NYSOH received your updated income documentation including a paystub for a pay date of April 6, 2018 showing federal taxable wages of \$2,224.74 for that pay period and \$17,008.50 in year-to-date earnings. It is noted that both pay stubs submitted showed a \$167.76 deduction for “health insurance.” Based on your testimony that your biweekly pay varies with the number of hours you work, and that your hours have recently changed, it is concluded that your year-to-date income is the best indicator of your annual expected income for 2018.

As discussed above the paystubs submitted showed that you received \$17,008.50 in gross income through the first seven pay checks of 2018. That documentation also shows that you have \$167.76 deducted from each of those pay checks for health insurance premiums. Thus, the evidence shows that your gross federal taxable earnings through the first seven paychecks of 2018 is \$15,834.18. Based on that evidence, your average gross federal taxable biweekly earnings would be \$2,262.03 which results in an annual expected income of \$58,812.67. Based on the foregoing, it is concluded that the credible evidence of record supports a finding that your income for 2018 will be \$58,812.67. Thus, your children’s eligibility should be redetermined based, in part, on that income amount.

It is noted that, based on the evidence, your children have two different households for CHP eligibility purposes. Pursuant to the above regulations, your youngest child is in a two-person household, because the evidence establishes that you will claim her as a tax dependent in 2018 and you will file your tax return as single. Thus, both you and your dependent child are in a two-person household. However, because the evidence establishes your oldest child will be claimed a tax dependent by a non-custodial parent, his household includes the parents and siblings, under the age of 19, with whom he resides. Since the record establishes that he resides with you and his sister, who is under the age of 19, he is in a three-person household.

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Therefore, based on the above, your case is RETURNED to NYSOH to redetermine your children's eligibility for financial assistance, based on the evidence establishing your youngest child is in a two-person household and your oldest child is in a three-person household, and the expected annual household income for both children, based on the evidence, is \$58,812.67.

Decision

Your case is RETURNED to NYSOH to redetermine your children's eligibility for financial assistance, based on an annual household income of \$58,812.67 and a two-person household for your youngest child and a three-person household for your oldest child.

Effective Date of this Decision: May 30, 2018

How this Decision Affects Your Eligibility

This is not a final determination of our children's eligibility.

Your case is being sent back to NYSOH to redetermine your children's eligibility based on the new evidence, in accordance with this decision.

You will receive an updated determination of your children's eligibility.

If You Disagree with this Decision (Appeal Rights)

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the 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

Your case is RETURNED to NYSOH to redetermine your children's eligibility for financial assistance, based on an annual household income of \$58,812.67 and a

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two-person household for your youngest child and a three-person household for your oldest child.

This is not a final determination of our children's eligibility.

Your case is being sent back to NYSOH to redetermine your children's eligibility based on the new evidence, in accordance with this decision.

You will receive an updated determination of your children's eligibility.

Legal Authority

We are sending you this notice 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)

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. y&b&tumi ama wo obi a okyer& kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

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