

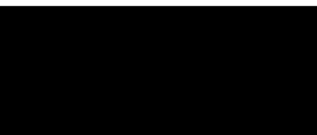


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: May 3, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029631



Dear [REDACTED]

On May 1, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's March 2, 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 3, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029631



Issues

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

Did NY State of Health properly determine that your spouse was eligible to receive up to \$173.00 per month in advance payments of the premium tax credit, effective April 1, 2018?

Did NY State of Health properly determine that your spouse was ineligible for cost-sharing reductions?

Did NY State of Health properly determine that your spouse was ineligible for the Essential Plan?

Did NY State of Health properly determine that your spouse was ineligible for Medicaid?

Procedural History

On December 13, 2017, you applied for health insurance and financial assistance through NYSOH for yourself and your spouse.

On December 14, 2017, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you and your spouse were eligible for up to \$623.00 per month in advance payments of the premium tax credit (APTC), effective January 1, 2018.

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On December 14, 2017, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in a silver level qualified health plan with a plan premium of \$867.99 per month effective January 1, 2018 and that your APTC of \$623.00 would be applied to your monthly premium starting on January 1, 2018, resulting in a premium responsibility of \$244.99 per month.

On March 1, 2018, you updated your application for health insurance and financial assistance to reflect that you were no longer seeking coverage through NYSOH as you were going to be enrolled in Medicare.

That day, a preliminary eligibility determination was prepared stating that your spouse was eligible to receive up to \$173.00 per month in APTC, effective April 1, 2018.

Also on March 1, 2018, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination notice insofar as your spouse was not eligible for an increased amount of financial assistance.

On March 2, 2018, NYSOH issued an eligibility determination notice stating that your spouse was eligible to receive up to \$173.00 per month in APTC, effective April 1, 2018. That notice also stated that your spouse was not eligible for cost-sharing reductions, the Essential Plan, or Medicaid because your annual household income was over the allowable income limits for those programs.

On March 13, 2018, NYSOH issued a notice of enrollment confirmation stating that your spouse was enrolled in a silver level qualified health plan with a plan premium of \$433.99 per month and that her APTC of \$173.00 would be applied to her monthly premium starting on April 1, 2018 resulting in a premium responsibility of \$260.99

On May 1, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. 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 and your spouse expect to file your tax return for 2018 with a tax filing status of married filing jointly. You will not claim any dependents on that tax return.
- 2) You are seeking insurance for your spouse.

- 3) The application that was submitted on March 1, 2018 listed annual household income of \$40,732.00, consisting of \$19,692.00 you receive in Social Security benefits and \$21,039.00 you receive from a pension. You testified that this was correct, however, there has been a change in your Social Security benefit.
- 4) You testified that you receive \$1,753.30 per month from your pension and \$1,673.00 per month in Social Security benefits as of January 2018.
- 5) You testified that you have no other sources of income at this time, although you are exploring the possibility of returning to work, you have not yet done so.
- 6) You testified that your household's only source of income in March 2018 was your pension and your Social Security benefit.
- 7) Your application states, and you confirmed, that you will not be taking any deductions on your 2018 tax return.
- 8) Your application states that you and your spouse live in Monroe County. You confirmed that this is correct.
- 9) You testified that you became eligible for Medicare on April 1, 2018, for which you pay \$181.00 per month.
- 10) You testified that you and your spouse have had significant out of pocket costs for health insurance in 2018.
- 11) The second lowest cost silver plan available for an individual through NYSOH in Monroe County costs \$449.12 per month.
- 12) The second lowest cost silver plan available for a couple through NYSOH in Monroe County costs \$898.23.

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

Applicable Law and Regulations

Advance Payments of Premium Tax Credit

APTC are generally available to a person who is eligible to enroll in a qualified health plan and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (FPL), (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility

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requirements to enroll in a qualified health plan, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 26 CFR § 1.36B-2, 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2018 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3, IRS Rev. Proc. 2017-36).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2017 FPL, which is \$16,240.00 for a two-person household (82 Federal Register 8831).

For annual household income in the range of at least 250% but less than 300% of the 2017 FPL, the expected contribution is between 8.10% and 9.56% of the household income (26 CFR § 1.36B-3(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2017-36).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Cost-Sharing Reductions

Cost-sharing reductions are available to a person who (1) is eligible to enroll in a qualified health plan through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed

250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level qualified health plan (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

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 FPL or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application that was the 2017 FPL, which is \$16,240.00 for a two-person household (82 Fed. Reg. 8831).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/downloads/ny-blueprint.pdf>).

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

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

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)).

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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 2018 FPL, which is \$16,460.00 for a two-person household (83 Fed. Reg. 2642).

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).

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.*).

Medical expenses and dental expenses may be itemized on a Form 1040 Schedule A; however, these expenses are not used to compute adjusted gross income (26 USC § 213(a); Internal Revenue Service (IRS) Publication 502 (2016)).

Legal Analysis

The first issue is whether NYSOH properly determined that your spouse was eligible for up to \$173.00 per month in APTC.

The application that was submitted on March 1, 2018 listed an annual household income of \$40,732.00 and the eligibility determination relied upon that information.

During the hearing, you testified that your Social Security benefit amount has increased, however, your pension remains the same. You also noted that you

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must now pay Medicare premiums for yourself and that you and your spouse have significant out of pocket medical expenses.

Although the Internal Revenue Service rules allow certain medical and dental expenses to be itemized on Form 1040 Schedule A, these rules do not permit Medicare premiums or other medical expenses to be deducted from the calculation of your household's adjusted gross income. Therefore, Medicare premiums and medical expenses cannot be deducted when NYSOH computes your household's modified adjusted gross income for the purpose of determining eligibility for financial assistance. Therefore, NYSOH correctly determined your household income to be \$40,732.00 based on the information in your application.

You and your spouse expect to file your 2018 income tax return as married filing jointly and will not claim any dependents on that tax return. Therefore, your spouse is in a two-person household.

Your spouse resides in Monroe County, where the second lowest cost silver plan available for an individual through NYSOH costs \$449.12 per month.

An annual income of \$40,732.00 is 250.81% of the 2017 FPL for a two-person household. At 250.81% of the FPL, the expected contribution to the cost of the health insurance premium is 8.12% of income, or \$275.75 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for an individual in your county (\$449.12 per month) minus your expected contribution (\$275.75 per month), which equals \$173.37 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined your spouse to be eligible for up to \$173.00 per month in APTC.

The second issue is whether your spouse was properly determined ineligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$40,732.00 is 250.81% of the applicable FPL, NYSOH correctly found your spouse to be ineligible for cost sharing reductions.

The third issue under review is whether NYSOH properly determined your spouse was ineligible for the Essential Plan.

The Essential Plan is generally provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,240.00 for a two-person household. Since an annual household income of \$40,732.00 is 250.81% of the 2017 FPL, NYSOH correctly found your spouse to be ineligible for the Essential Plan.

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).

The fourth issue is whether NYSOH properly determined that your spouse was ineligible for Medicaid.

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 that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,460.00 for a two-person household. Since \$40,732.00 is 247.46% of the 2018 FPL, NYSOH properly found your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

Based on your testimony, your household income in March 2018 was \$3,426.30.

To be eligible for Medicaid, your spouse would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,893.00 per month. Since the testimony you provided shows that your household received \$3,426.30 in March 2018, your spouse does not qualify for Medicaid based on monthly income as of the date of your application.

Since the March 1, 2018 eligibility determination notice properly stated that, based on the information you provided, your spouse was eligible for up to \$173.00 per month in APTC, ineligible for cost-sharing reductions, ineligible for the Essential Plan and ineligible for Medicaid, it is correct and is AFFIRMED.

During the hearing, you testified that your Social Security benefit has increased to \$1,673.00 per month. Therefore, your case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance based on a household of two residing in Monroe County with an annual expected income of \$41,115.00.

Decision

The March 1, 2018 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance based on a household of two residing in Monroe County with an annual expected income of \$41,115.00.

Effective Date of this Decision: May 3, 2018

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).

How this Decision Affects Your Eligibility

NYSOH properly determined that your spouse was eligible for up to \$173.00 per month in APTC, based on the information in your March 1, 2018 application.

Your spouse is ineligible for cost-sharing reductions.

Your spouse is ineligible for the Essential Plan.

Your spouse is ineligible for Medicaid.

During the hearing, you testified that your Social Security benefit has increase for 2018. Therefore, your case is being sent back to NYSOH to redetermine your spouse's eligibility for financial assistance based on information provided during the hearing.

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 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 1, 2018 eligibility determination notice is **AFFIRMED**.

NYSOH properly determined that your spouse was eligible for up to \$173.00 per month in APTC, based on the information in your March 1, 2018 application.

Your spouse is ineligible for cost-sharing reductions.

Your spouse is ineligible for the Essential Plan.

Your spouse is ineligible for Medicaid.

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During the hearing, you testified that your Social Security benefit has increase for 2018. Therefore, your case is being sent back to NYSOH to redetermine your spouse's eligibility for financial assistance based on information provided during the hearing.

Your case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance based on a household of two residing in Monroe County with an annual expected income of \$41,115.00.

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।

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).

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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