

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

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Reg No.: 2012-72820
Issue No.: 2009, 4031
Case No.: ██████████
Hearing Date: December 6, 2012
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Thursday, December 6, 2012. Claimant appeared, along with ██████████ and ██████████, and testified. Participating on behalf of the Department of Human Services ("Department") was T ██████████

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant submitted an application for public assistance seeking MA-P and SDA benefits in June 2012.

2. On July 10, 2012, the Medical Review Team (“MRT”) found Claimant not disabled. (Exhibit 1, pp. 4, 5)
3. On July 17, 2012, the Department notified Claimant of the MRT determination. (Exhibit 1, p. 2)
4. On August 21, 2012, the Department received Claimant’s timely written request for hearing. (Exhibit 1, p. 3)
5. On October 5, 2012 and March 11, 2013, the SHRT found Claimant not disabled. (Exhibit 2)
6. Claimant alleged physical disabling impairments due to arthritis, back pain, knee pain, feet pain, acid reflux, high blood pressure, and diabetes with neuropathy.
7. Claimant alleged mental disabling impairments due to learning disability, paranoid schizophrenia, anxiety, adjustment disorder, and intermittent explosive disorder.
8. At the time of hearing, Claimant was 53 years old with an [REDACTED], birth date; was 5’6” in height; and weighed 244 pounds.
9. Claimant has a marginal education and has not been employed over the last 15 years.
10. Claimant’s impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory

findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to

provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c).

Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges disability due arthritis, back pain, knee pain, feet pain, acid reflux, high blood pressure, diabetes with neuropathy, learning disability, paranoid schizophrenia, anxiety, adjustment disorder, and intermittent explosive disorder.

On March 23, 2012, an initial psychiatric evaluation was performed. The diagnoses were schizophrenia and nicotine dependence. The Global Assessment Functioning ("GAF") was 60.

On April 17, 2012, Claimant attended a follow-up appointment for his diabetes mellitus. The diagnoses were hypertension, diabetes, bronchitis, and schizophrenia.

On May 15, 2012, Claimant was treated for and diagnosed with hypertension, diabetes, and bronchitis.

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On May 30, 2012, Claimant was treated for and diagnosed with hypertension, diabetes, and right eye vision loss.

On May 30, 2012, a Medical Examination Report was completed on behalf of Claimant. The current diagnoses were diabetes, arthritis, hand pain, hypertension, and bipolar disorder. The physical examination was within normal limits. Claimant was found able to frequently lift/carry 10 pounds with occasional lifting/carrying of 50 pounds or more; able to stand and/or walk about 6 hours in an 8-hour workday; and able to perform repetitive actions with all extremities.

On June 1, 2012, Claimant attended a consultative evaluation. Claimant was found able to work an 8 hour work day, noting he was able to sit, stand, walk, bend, and lift at least 20 pounds without difficulty. The diagnoses were hypertension, diabetes type II, Hepatitis C, low back pain possible due to degenerative joint disease, and chronic alcohol and drug abuse history. Range of motion testing was unremarkable.

On June 4, 2012, Claimant attended a follow-up appointment with the mental health services.

On June 26, 2012, Claimant was treated for his hypertension and diabetes.

On July 24, 2012, Claimant attended a follow-up appointment where he was treated for and diagnosed with hypertension, diabetes, and schizophrenia. Blood work confirmed high cholesterol, and an A1c of 6.5

On September 21, 2012, Claimant sought treatment for his hypertension noting he had no had his medication for one month. Claimant was diagnosed with hypertension, arthropathy, diabetes, and hepatitis. Mentally, Claimant was diagnosed with paranoid schizophrenia, polysubstance dependence, and borderline intellectual functioning. The current GAF was 61.

On October 11, 2012, Claimant attended a scheduled appointment where he was treated for and diagnosed with hypertension, diabetes, allergies, probable sleep apnea, and schizophrenia.

On November 29, 2012, Claimant attended a follow-up examination where he was treated for and diagnosed with hypertension, diabetes, allergies, and GERD.

On December 17, 2012, Claimant attended a consultative mental status evaluation with IQ testing. Claimant's full scale IQ was 61. Claimant was found able to comprehend and carry out simple instructions with no difficulty performing repetitive, routine, and simple tasks. Claimant has moderate difficulty getting along with supervisors, creating and maintaining good working relationships, and getting along appropriately with the

public. The diagnoses were paranoid schizophrenia, polysubstance abuse in remission, and mild cognitive impairment. The GAF was 58.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The degree of functional limitation on the Claimant's activities, social function, concentration, persistence, or pace is moderate. The degree of functional limitation in the fourth area (episodes of decompensation) is a 2. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnose of paranoid schizophrenia, hypertension, diabetes mellitus, bronchitis, vision loss, bipolar I disorder, arthritis, Hepatitis C, low back pain, polysubstance dependence, probable sleep apnea, GERD, and borderline intellectual functioning with a full scale IQ of 61.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive disorders), Listing 11.00 (neurological), and Listing 12.00 (mental disorders), were considered in light of the objective evidence. The objective medical records establish serious physical and mental impairments; however, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant can not be found disabled, or not disabled, at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs

are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, the evidence confirms treatment/diagnose of paranoid schizophrenia, hypertension, diabetes mellitus, bronchitis, vision loss, bipolar I disorder, arthritis, Hepatitis C, low back pain, polysubstance dependence, probable sleep apnea, GERD, and borderline intellectual functioning with a full scale IQ of 61. Claimant testified that he is able to walk ½ mile with a cane; grip/grasp with some difficulties with fine manipulation; sit for less than 2 hours; lift/carry approximately 40 pounds, not frequently; stand less than 2 hours; and has difficulties bending and/or squatting. The objective medical findings note that Claimant is able to frequently lift/carry 10 pounds with occasional lifting/carrying of 50 pounds or more; able to stand and/or walk about 6 hours in a 8 hour workday; and able to perform repetitive actions with all extremities. The consultative evaluation found Claimant able to work 8 hours a day finding him capable of sitting, standing, walking, bending, and lifting at least 20 pounds. Mentally, there was no evidence of marked limitations in any functional area; however, Claimant has a marginal education and is functionally illiterate. As such the degree of limitation is moderate to marked. In the area of concentration, persistence, or pace, the evidence does indicate some limitations such that the degree of limitation is also moderate to marked. And finally, the record reflects GAF scores between 58 and 61 without evidence or repeated episodes of decompensation. Applying the four point scale, the Claimant's degree of limitation in the fourth functional area is a 1. After review of the entire record to include the Claimant's testimony, it is found that the Claimant maintains the residual functional capacity to perform unskilled, light work as defined by 20 CFR 416.967(b).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant has not worked over the last 15 years. As such, a determination of whether Claimant is able to return to past relevant work cannot be made. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 53 years old thus considered to be closely approaching advanced age for MA-P purposes. Claimant has a marginal education with a full scale IQ of 61 and a 2nd grade reading level. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to

present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, the evidence confirms treatment/diagnose of paranoid schizophrenia, hypertension, diabetes mellitus, bronchitis, vision loss, bipolar I disorder, arthritis, Hepatitis C, low back pain, polysubstance dependence, probable sleep apnea, GERD, and borderline intellectual functioning with a full scale IQ of 61. Claimant is functionally illiterate with a reading equivalent of second grade. After review of the entire record, and in consideration of the Claimant's age, education, work experience, and RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.09, it is found that Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the June 2012 application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for any lost lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review Claimant's continued eligibility in accordance with Department policy in July 2014.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 24, 2013

Date Mailed: June 24, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/tm

cc: [REDACTED]
[REDACTED]
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