

**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.: 2013-96
Case No.: ██████████
-and-
Reg. No.: 2013-2833
Case No.: ██████████

Issue No.: 2009
Hearing Date: January 7, 2013
County: Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter consolidates two separate requests for hearing covering the same medical evidence and medical conditions, the same claimant, with different Authorized Hearing Representatives for each hearing, as two separate applications for Medical Assistance based upon disability were filed. The Medical Evidence from both cases was sent to the State Hearing Review Team for its review on April 30, 2013. The Medical Evidence submitted consisted of Exhibit 1, pp. 1-302, and included newly submitted evidence Claimant Exhibit 1, consisting of 9 pages received in the hearing conducted with ██████████ Case No. 101974152.

The Medical evidence submitted to the State Hearing Review Team also included the evidence from Exhibit 1, pp.1-215, admitted for hearing conducted with ██████████ Case No. 115633706.

2013-96 Case No. 115633706

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on January 7, 2013 from Madison Heights, Michigan. Participants on behalf of Claimant included the Claimant and ██████████

██████████, the Claimant's Authorized Hearing Representative ("AHR"). Participants on behalf of the Department of Human Services (Department) included ██████████ der, FIS.

2013-2833 Case No. 101974152

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on January 7, 2013 from Madison Heights, Michigan. Participants on behalf of Claimant included the Claimant and ██████████ ██████████ the Claimant's Authorized Hearing Representative ("AHR"). Participants on behalf of the Department of Human Services (Department) included ██████████, ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

What follows are separate Findings of Fact for both cases.

FINDINGS OF FACT

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

2013-96 Case No. 115633706 –ADVOMAS

1. On April 17, 2012, Claimant applied for MA-P and retro MA-P (March 2012).
2. On July 30, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR a notice of the Notice of Case Action dated July 30, 2012 denying the Claimant's MA-P application. Exhibit 1
4. On September 19, 2012 Claimant's AHR submitted to the Department a timely hearing request.
5. On November 15, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on March 13, 2013 accepting new evidence submitted on the Claimant's behalf at the hearing and additional evidence to be obtained by the Claimant's AHR.

7. The new evidence was provided to the State Hearing Review Team (SHRT) on April 30, 2013 and the SHRT denied disability on July 3, 2013.

2013-2833 Case No. 101974152 - INDEPENDENT MEDICAL NETWORKS

1. On May 24, 2012 the Claimant applied for MA-P.
2. On July 19, 2012 the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR a notice of the Notice of Case Action dated August 23, 2012 denying the Claimant MA-P application.
4. On October 9, 2012 Claimant's AHR submitted to the Department a timely hearing request. Exhibit 2
5. On November 26, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on January 10, 2013 accepting new evidence submitted on the Claimant's behalf at the hearing and additional evidence to be obtained by the Claimant's AHR.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on April 30, 2013 and the SHRT denied disability on July 3, 2013.

FINDINGS OF FACT APPLICABLE TO BOTH CASES IN COMMON

8. Claimant at the time of the hearing was ■ years old with a birth date of ■■■■■. The Claimant is now ■ years of age. Claimant was 6'2" and weighed 325 pounds.
9. Claimant completed a high school education.
10. Claimant has employment experience as a sous chef working in restaurants doing food prep and short order cooking as well as catering.
11. Claimant alleges physical disabling impairments due to high blood pressure, chronic heart failure, obesity, sleep apnea and leg and foot swelling.
12. Claimant has alleged mental disabling impairments of depression but has not received treatment.

CONCLUSIONS OF LAW

As a preliminary matter, the State Hearing Review Team (SHRT) decision dated July 3, 2013 was issued for case number [REDACTED]. Due to administrative error, a notation was not made to indicate on the SHRT submission form that the medical evidence being sent for SHRT review was for two cases ([REDACTED]) AND case ([REDACTED]). Because all the medical evidence which was sent and reviewed by SHRT was medical evidence from both files admitted at the hearing, and new evidence submitted by [REDACTED] [REDACTED] the SHRT decision is considered applicable to both cases and this Decision covers both requests for hearing in this matter.

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P 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 Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph

(B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work

activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

The Claimant alleges physical disabling impairments due to high blood pressure, chronic heart failure, obesity, ankle and foot swelling and sleep apnea. The Claimant has alleged mental disabling impairments due to depression but has not submitted any objective medical evidence to support depression and does not receive and has not sought treatment. A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

A DHS 49 and DHS 54 and a New York Heart Classification were ordered to be submitted by the Claimant's treating cardiologist, [REDACTED], and were not received from either of Claimant's Authorized Hearing Representatives.

The Claimant was seen by his treating cardiologist on [REDACTED] at the [REDACTED]. The report references diagnosis of sleep apnea due to testing received. The Claimant was first seen by his cardiologist beginning 3 years ago for non-ischemic dilated cardiomyopathy and suffered respiratory failure. A summary of the report of the office visit follows. The report notes that the Claimant's bronchospasm, is driven by volume overload. The Claimant was prescribed a BiPAP machine for his sleep apnea which his insurance will not cover. The report notes that the Claimant continues to walk 1-1/2 to 2 miles three times per week. Energy level is poor because he sleeps so poorly. He can ascend a flight of stairs without stopping and walk 100 yards at the pace of a younger adult. No chest pain or orthopnea. The Claimant is trying to follow a 2000 milligram sodium restriction and 2 liter fluid restriction. He is medication compliant. The doctor noted that during the exam the Claimant fell asleep twice during the few minutes it took the doctor to examine the patient. The Diagnoses and Plan noted systolic Chronic Heart Failure EF 25-30%. LVEF 35%, he is NYHA class 1, his symptoms are due to his sleep apnea. Non-ischemic dilated cardiomyopathy and hypertension as well as severe sleep apnea were diagnosed. As regards the severe sleep apnea, the sleep medicine physician was contacted to see if a BIPAP machine could be obtained as use

of the machine is critical. The quality of the Claimant's life was deemed severely impaired and he is more likely to develop pulmonary hypertension if he is not treated.

A sleep study was performed on [REDACTED] and resulted in a diagnosis of sleep apnea, hypertension and congestive heart failure. A baseline polysomnogram and CPAP titration study was to be performed but no medical records were available.

The Claimant was seen on [REDACTED] by his cardiologist. It was noted due to medications the Claimant experienced wheezing which inhibited his ability to walk further than 3 blocks due to fatigue. At that time the Claimant was assessed as having NYHA Class 2 symptoms with non-ischemic dilated cardiomyopathy with moderate left ventricular dysfunction. The medication was changed and the wheezing subsided.

On [REDACTED] the Claimant was seen by his cardiologist. The Claimant was noted as feeling better and walking 2.3 miles each day. The Claimant noted no limitations at all to his activities. He can ascend stairs from basement and then up to second floor without problem unless he goes quickly and then gets light headed. The doctor discussed the necessity to lose weight particularly if heart transplant would be necessary which would be impacted due to his morbid obesity.

The Claimant was seen by his cardiologist on [REDACTED] and he was improving with increased activity but noted legs were weak and fatigue with activity. At that time the Claimant could climb a flight of stairs and shower and dress without difficulty. The exam revealed no lower extremity edema.

The Claimant was admitted to the hospital on [REDACTED] 2012 due to bronchospasm and hypoxia. Claimant required intubation due to acidosis. He was transferred to [REDACTED] or treatment and improved and was taken off the ventilator. The Claimant was discharge home on [REDACTED]

An echocardiogram was performed on [REDACTED] and notes an EF of 25% to 30% and conclusions moderate to severe global hypokinesis of the left ventricle, mildly decreased right ventricular systolic function.

On admission to the hospital on [REDACTED] the Claimant was kept for 3 days then moved to [REDACTED]. Discharge diagnosis was acute respiratory failure with hypercarbia and hypoxemia, severe bronchospasm, morbid obesity, obstructive sleep apnea, obesity hypoventilation syndrome, hypertension and congestive heart failure with EF of 30%.

The Discharge Summary for Claimant's hospital stay notes principal diagnoses from current hospital stay, acute chronic systolic congestive heart failure, acute respiratory failure s/p intubation. Secondary diagnosis was MRSA colonization, Systolic Chronic Heart Failure, Chronic EF 25-30% estimated by TTE 4/2/12 (chronic). Comorbidities, Anemia, Hypertension and Obesity, BMI 39.9. Pertinent procedures and abnormal studies [REDACTED] stress spect (Regadenoson) myocardial perfusion is normal, EF

36%. 4/2/12 LVEF 20 to 30%. Moderate to severe global hypokinesis of the left ventricle, mildly decreased right ventricular systolic function, globally hypokinetic left ventricle. Could not assess left ventricular diastolic function (tachycardic). No deep vein thrombosis upper extremities. Use of ICD placement was deferred (implantable cardioverter defibrillator). Claimant was discharged home in stable condition.

Here, Claimant has satisfied requirements as set forth in steps one, two of the sequential evaluation as he is not employed and his impairments have met the Step 2 severity requirements.

In addition, at Step 3, it is determined that the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 4.02 Chronic Heart Failure was considered and although the Claimant's objective testing did demonstrate that it met the ejection fraction of 30% requirement all contained in Section A, subparagraphs 1 and 2 of the listing, however, Part B requirements were not met nor demonstrated by the objective medical evidence, specifically persistent symptoms of heart failure such that activities of daily living are severely limited, or 3 episodes of acute congestive heart failure within a consecutive 12 month period, or inability to perform an exercise tolerance test at a workload equivalent of 5 mets. Listing 3.09 COR Pulmonale Secondary to Chronic Pulmonary Vascular Hypertension and 3.10 Sleep Related Breathing Disorders were also considered and based on the objective medical evidence were not met. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work and a Step 4 analysis is required. Listing 12.04 Affective Disorders (Depression) was reviewed but in light of the fact that no medical evidence was submitted regarding depression and the Claimant has never been in treatment, it is determined that the listing is not met.

In the present case, Claimant has alleged physical disabling impairments due to high blood pressure, chronic heart failure, obesity, sleep apnea and leg and foot swelling.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was as a cook and chef standing most of the day and often lifting food boxes weighting 50 to 60 pounds. The Claimant's hours were cut back and his employment ended. The Claimant's prior work would be categorized as semi-skilled light to medium work.

Claimant's treating physician did not complete a DHS 49, DHS 54 and New York Heart Classification although requested to be obtained by Interim Order; however, it is noted in the record as of the most recent visit in [REDACTED] that the Claimant was classified by his treating doctor as meeting the NY Heart Classification 1, which is defined as cardiac disease, but no symptoms and no limitation in ordinary physical activity, e.g. shortness of breath when walking, climbing stairs etc. The report further notes that the Claimant has been able to exercise several time a week, walking 1-1/2 to 2 miles three times a week and is following a sodium restricted diet. During the hearing the Claimant

testified that he can stand about 20 minutes and sit for an hour. The Claimant indicated he could walk on half block and could shower and dress himself. The Claimant testified that he could carry up to 25 pounds, and then when changed his answer to 5 pounds after further explanation of the requirement by his AHR. In addition, the Claimant is obese with a body mass index of 39.9. The latest medical report from the Claimant's treating doctor paints a different picture of the Claimant's abilities and states: The report notes that the Claimant continues to walk 1-1/2 to 2 miles three times per week. Energy level is poor because he sleeps so poorly. He can ascend a flight of stairs without stopping and walk 100 yards at the pace of a younger adult. No chest pain, or orthopnea. It is also noted that the Claimant fell asleep two times during his examination and categorized his sleep apnea as severe and noted need for a BiPap machine.

This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations specifically testified to by the Claimant and confirmed by his treating physician's assessment that Claimant suffers from severe sleep apnea and the requirement that the work as a chef would require standing for long periods and lifting boxes of food, it is determined that the Claimant is not capable of the physical activities required to perform any such position and cannot perform past relevant work, and thus a Step 5 analysis is required 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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, the Claimant was ■ years of age and is now ■ years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has the equivalent of a high school education. 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).

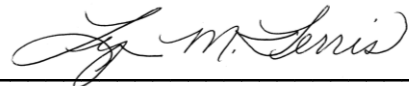
While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines 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 Claimant's skills are not transferable as the majority of his work was as a cook and short order chef.

After a review of the entire record, including the Claimant's testimony and medical evidence presented, and in consideration of the Claimant's physical impairments including high blood pressure, chronic heart failure, obesity, and sleep apnea and leg and foot swelling, it is determined that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). This determination is based in part on evidence contained in the medical records that recites the Claimant has some limitations, but is able to undertake walking several times per week of significant distance and can walk 100 yards at the pace of a younger individual and climb stairs, and thus has at least the physical capacity to perform sedentary work which requires longer periods of sitting. Based upon the Claimant's exercise capacity in [REDACTED] it would appear that Claimant's physical abilities are such that he is capable of sedentary work. Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.28, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not disabled.

Accordingly, the Department's decision is hereby AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2013

Date Mailed: July 30, 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.

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

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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