

**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.: 2013-47312
Issue Nos.: 2009, 4009
Case No.: ██████████
Hearing Date: December 11, 2013
DHS County: Wayne County (19)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 11, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

ISSUE

Whether the Department properly determined that the 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. On December 19, 2013, the Claimant submitted an application for public assistance seeking MA-P and SDA benefits.
2. On May 1, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on May 8, 2013.

4. On May 15, 2013, the Department received the Claimant's written request for hearing.
5. On July 31, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued December 12, 2013. The new evidence was submitted to the State Hearing Review Team on March 18, 2014.
7. On May 14, 2014, the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to sarcoidosis, with fatigue, lower back pain, chronic arthritis, knee pain, and double hip replacement secondary to long term steroid use.
9. The Claimant has not alleged any mental disabling impairments.
10. At the time of hearing, the Claimant was ■ years old with a ■ birth date. Claimant is 5'10.5" in height; and weighed 150 pounds.
11. The Claimant completed the 11th grade. The Claimant's past work was performing work as a stock clerk and doing returns of merchandise. Claimant last worked in 2012.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code,

Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (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.

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 (e.g., 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 to 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 impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 4 and 5. 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).

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 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).

The Claimant alleges physical disabling impairments due to sarcoidosis, with fatigue, lower back pain, chronic arthritis, knee pain, and double hip replacement secondary to long term steroid use. No mental impairment was alleged. A summary of the medical evidence follows.

A consultative medical examination was completed on December 27, 2013. A doctor of internal medicine completed a DHS 49. The diagnosis was chronic lumbar pain, steroid therapy with history of sarcoidosis and bilateral hip replacements. At the time, the clinical impression was that Claimant was deteriorating. The doctor imposed limitations that were expected to last more than 90 days. The Claimant could lift up to 20 pounds frequently and could stand and or walk at least 2 hours in an 8-hour workday and could sit less than 6 hours in an 8-hour workday. The Claimant's ability to perform pushing/pulling with his hands or arms was limited. The examiner based his imposed limitations on a pulmonary function report. The report also notes that the Claimant's range of motion in his lower back are restricted to 65% of normal range of motion. The report concludes, chronic lumbar pain, patient is on steroids, status post bilateral hip replacement following chronic steroid therapy, recurrent pain affecting both knees, history of shortness of breath, mild dyspnea and pulmonary insufficiency. Based on pulmonary function test, patient has mild obstructive lung disease, not very significant.

He does not take any medication for breathing. He does not have any specific complaints referable to his breathing. History of sarcoidosis affecting both lungs and he takes steroids for that. In general, please refer to the pulmonary function test. Currently there is no wheezing or asthma. He has multiple medical problems. He is not able to do any job involving heavy lifting, pushing pulling, frequent climbing, prolonged standing or carrying weigh over 20 pounds. Prognosis was fair.

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The Claimant was seen in the ER for Acute exacerbation of chronic low back pain on November 9, 2013. The Claimant was prescribed pain pills and advised to follow up with further treatment. The Claimant was given injections of medications for the pain. At that time, a note on the discharge papers advised you may need an MRI of shoulder and an EMG test done. You also need a follow up chest x-ray or CT of your chest to reevaluate the masses in your lungs.

The Claimant was seen at the pulmonary clinic at the [REDACTED] for treatment of his sarcoidosis on August 12, 2013. At the time, he was given an inhaler to use 2 times daily.

The Claimant had bone density testing on November 15, 2013 that indicated the Claimant had drug induced osteoporosis due to steroid use.

On July 2, 2013, the Claimant had two chest x-rays for sarcoidosis. The examination found that bilateral hilar fullness and reticular opacities are compatible with sarcoidosis. The Claimant was seen on June 24, 2013 due to left arm pain and tingling sensation. The Claimant was given an electromyography which concluded that prolonged left median and ulnar F-waves are suggestive of pf nerve root irritation VS brachial plexopathy. An MRI of C spine was recommended.

A pulmonary function test for Sarcoidosis was performed on June 27, 2013. The exam noted dyspnea walking less than 100 yards.

On March 20, 2013, the Claimant was seen by a pulmonary physician for an examination. At the time of the exam, the Claimant had been off prednisone because he could not afford medication. At the time of the exam, the examiner reviewed all primary care physician progress notes and hospital consultation. The assessment was sarcoidosis.

A medical examination report was completed on January 16, 2013. The Claimant's treating doctor who had seen him since 2010 completed the form. The current diagnosis was sarcoidosis with pulmonary involvement. History of extensive lymph adenopathy, parotid gland involvement with avascular necrosis of both hips. At the time of the exam, the lymph nodes of parotid glands were enlarged. The laboratory findings note a pulmonary function test in 2011 was reviewed. The Claimant's condition was stable. The doctor declined to complete the limitations section noting an orthopedic physician would be required to assess limitations.

The Claimant was seen on November 21, 2012 and a progress note was completed. At that time, the Impression was sarcoidosis with pulmonary involvement, history of extensive lymph adenopathy, parotid gland involvement, granulomatous infiltrate of right

thumb. History of avascular necrosis of both hips, prior episode of ITP (idiopathic thrombocytopenic purpura). The long term hazards of prednisone use was reviewed and Claimant was urged to initiate a regimen of prednisone tapering.

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 objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, 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 Claimant asserts disabling impairments due to Sarcoidosis, with fatigue, lower back pain, chronic arthritis, Knee pain, and double hip replacement secondary to long term steroid use.

Listing 3.02 Chronic Pulmonary Insufficiency and 3.03 Asthma were considered in light of the objective medical evidence. Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of a listing. The listing requires an FEV1 of 1.55 or less which was not demonstrated on the pulmonary function tests available. As regards asthma, the necessary emergency room visits or admissions were not met. Although lumbar pain was alleged, the medical evidence did not support a review of any of the Listings in 1.00 Musculoskeletal System. A careful review of the medical evidence was made and it was found that the listing was not met. Therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

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 are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 (e.g., 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.*

The Claimant's prior work history consists of employment performing stocking of goods and doing returns for merchandise returned. The job required standing for a majority of the day and also required hi-lo operation. Based upon the consultative examination, it is determined that the Claimant can no longer perform any such work due to the standing requirement. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled medium work.

The Claimant testified that he is able to stand about 10 minutes, and sit about 1 to 2 hours. The Claimant estimated he could walk about 5 minutes or the equivalent of 2 blocks. The Claimant could shower and dress himself, and could not squat. Due to weakness in his legs and hips, the Claimant had difficulty with bending motions at the waist. The Claimant testified that he has knee problems, and leg weakness. The Claimant further testified that the heaviest weight he could carry was 15 pounds. The Claimant can cook simple meals. The Claimant's then treating doctor completed a DHS 49. and declined to complete the restrictions. The Consultative examination referenced above did impose the following restrictions. The Claimant could lift up to 20 pounds frequently. The Claimant could stand or walk about 2 hours in an 8-hour workday. The Claimant could sit less than 6 hours in an 8-hour workday. The Claimant had no limitations with regard to use of his hand, arms legs and feet except for pushing pulling repetitive actions. It was determined that the Claimant could meet his needs in the home. The doctor noted no job involving heavy lifting, pushing, pulling, frequent climbing and prolonged standing or carrying weight over 20 pounds. The objective medical evidence places the Claimant at sedentary work activity.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant

work, due in large part to the standing requirements and being on ones feet much of the day. Thus, the fifth step in the sequential analysis is required.

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). The Claimant is 47 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant completed the 11th grade. 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 reveals that the Claimant has a medical impairment due to sarcoidosis, with fatigue, lower back pain, chronic arthritis, knee pain, and double hip replacement secondary to long term steroid use.

Based upon the foregoing objective medical evidence completed by his doctor and the consultative examination completed, the Claimant could sit for extended periods of time, or at least 2 hours in an 8-hour workday, which also is confirmed by his testimony and that Claimant does so most days and is able to walk around his home as necessary and testified he could lift up to 15 pounds. Other medical records were ordered and were sought by the Department from a more recent treating doctor, but were not made available by the Doctor. Additionally the most recent pulmonary function test results were considered which were interpreted to demonstrate mild obstructive lung disease deemed not very significant.

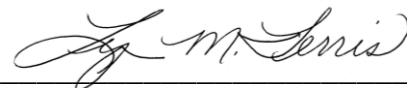
In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.18, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5. The Claimant should apply for My Healthy Michigan if he has not already done so to assist him with obtaining medical treatment.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: June 10, 2014

Date Mailed: June 11, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

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The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc:

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