

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 2014-5204  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: March 5, 2014  
County: Wayne (15)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on March 5, 2014, from Detroit, Michigan. Participants included the above-named Claimant, ██████████ testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included ██████████, Medical Contact Worker.

**ISSUE**

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

**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 4/25/13, Claimant applied for MA benefits, including retroactive MA benefits from 3/2013.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 9/18/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).

4. On 9/19/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 10/7/13, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On 11/22/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.18.
7. As of the date of the administrative hearing, Claimant was a ■ year old male with a height of 6'0 ½ " and weight of 198 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12<sup>th</sup> grade.
10. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since 5/2013 or 6/2013.
11. Claimant alleged disability based on impairments and issues including back pain and shoulder pain.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not

eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims."

*McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant was in a work-related motor vehicle accident on 8/█/12 (see Exhibit 84). Claimant testified that he sought treatment for back pain for several months before further treatment was stalled by an infection. Claimant testified that the infection caused him to wear a colostomy bag from 4/█ through 11/█. Claimant testified that he has insurance through DHS, but it does not cover spinal injection treatments.

An MRI report (Exhibit 63) of Claimant's lumbar dated 11/█/12 was presented. An impression of broad disc bulging and focal central disc protrusion was noted at L4-L5; foraminal stenosis was also noted at L4-L5. Moderate bilateral neural foraminal narrowing was noted at L5-S1.

A physician letter (Exhibits 75-80) dated █ was presented. It was noted that Claimant reported several months of treatment for his back but no improvement. Right wrist pain was also noted. It was noted that an MRI dated █ showed a grade 1 acromioclavicular joint sprain. It was noted that a CT dated █ suggested degenerative joint disease. It was noted that Claimant's lower back showed no atrophy or spasm; straight leg raising test was noted as negative though pain was noted on the left lower back. It was noted that Claimant had good strength in flexion and extension at the knees. Recommendation to see a hand specialist for potential surgery was noted. A restriction to 10-15 pounds was noted for Claimant's right hand and wrist. It was noted that Claimant had no restrictions on his left shoulder and that the sprain usually resolves on its own within one year. No neck restrictions were also noted. Claimant was advised to follow-up with an orthopedic surgeon concerning his lumbar pain.

Spine specialist documents (Exhibits 26-39; 102) dated █ were presented. It was noted that Claimant presented with complaints of lost feeling in his left leg and severe lower back pain. It was noted that Claimant had a pending worker's compensation claim. Physical therapy for six weeks, three times per weeks, was noted.

A Disability Certificate (Exhibit 87) dated 1/23/13 was presented. The certificate was signed by Claimant's treating spine physician. It was noted that Claimant was unable to work from 1/23/13-4/15/13. It was also noted that Claimant needed assistance with some housework.

On █ an MRI report (Exhibits 57-58) of Claimant's right shoulder was performed. An impression of rotator cuff tendinosis and a mild partial insertional tear of the anterior infrapinatus was noted.

On [REDACTED], an MRI report (Exhibits 59-60) of Claimant's left shoulder was performed. An impression of sequelae of low-grade AC joint injury was noted. Partial tearing of the capsuloligamentous complex and coracoclavicular ligament sprain were noted.

An MRI report (Exhibits 61-62) of Claimant's cervical spine (Exhibit 61-62) dated [REDACTED] was presented. Mild to moderate central canal narrowing was noted at C3-C4. Mild to moderate foraminal stenosis was noted at C4-C5 and C5-C6. Mild to moderate left foraminal stenosis was noted at C6-C7.

Hospital documents (Exhibits 14-19) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of weakness and light-headedness. It was noted that a stress echocardiogram revealed no ischemia. Claimant's ejection fraction was noted to be 60%. It was noted that Claimant's blood sugar was not well controlled. It was noted that Claimant was issued prescriptions for Glucophage and Glipizide. It was noted that Claimant ran out of medications two weeks before hospitalization and that Claimant had no health insurance. It was noted that the hospital gave Claimant resources for medication. A discharge date of [REDACTED] was noted. It was noted that Claimant was to receive home care from a visiting nurse.

Physician documents (Exhibits 51-52; 95-100) dated [REDACTED] was presented. It was noted that Claimant underwent lumbar injections.

A physician letter (Exhibit 85-86) dated [REDACTED] was presented. It was noted that Claimant presented with complaints of left shoulder pain, stiffness and loss of range of motion. It was noted that imaging verified acromion, type II. Imaging also verified a lack of arthritis, AC pathology or fractures. A plan of continuing conservative treatment was noted. Surgery was a noted to be an option if conservative treatment failed.

Physician documents (Exhibits 49-50; 92-94) dated [REDACTED] was presented. It was noted that Claimant underwent lumbar injections.

Hospital documents (Exhibits 110-112) dated [REDACTED] were presented. It was noted that Claimant presented with a constant mild abdominal pain. It was noted that Claimant had a history of post-op diverting ostomy 8 days prior. A diagnosis of necrotizing ascites was noted. It was noted that Claimant felt much better after receiving new meds and that he was discharged in stable condition.

A Disability Certificate (Exhibit 84) dated [REDACTED] was presented. The certificate was signed by Claimant's treating spine physician. It was noted that Claimant was unable to work from [REDACTED]. It was also noted that Claimant needed assistance with some housework.

A treating physician letter (Exhibits 117-119) dated [REDACTED] was presented. Claimant's physician noted a recommendation of physical/occupational therapy for six weeks.

Claimant's physician noted that Claimant has not reached maximum medical improvement.

Physician documents (Exhibits 40-42) dated [REDACTED] were presented. The following diagnoses were noted: cervical strain, cervical facet syndrome, cervical disc herniation, lumbar facet syndrome, lumbar disc herniation and bilateral rotator cuff tears. Claimant's gait was noted as normal. Neurological exam showed 5/5 in all extremities.

Physician documents (Exhibits 20-24) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with left shoulder pain. It was noted that Claimant underwent left shoulder arthroscopy. It was noted that the physician performed extensive debridement.

A Visit Summary (Exhibits 120-121) dated 6/26/13 from a treating physician was presented. The treating physician chastised Claimant for obtaining pain medication from multiple physicians. A plan of increasing Vicodin to 4 per day was noted.

Claimant testified that he used to bench press 525 pounds but now he is unable to lift even 10 pounds with his shoulder. Claimant also testified that he has walking and sitting restrictions due to back pain. Claimant's testimony was consistent with the presented evidence which verified lower back and shoulder restrictions. It should be noted that the diagnosis of a shoulder sprain from [REDACTED] was trumped by a subsequent diagnosis following radiology. The radiology verified multiple tears and tendinosis, a condition known to cause chronic pain. It is found that Claimant established significant work restrictions from [REDACTED]

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder pain. It was verified that Claimant has right wrist and left shoulder restrictions. The degree of restrictions was not verified by medical evidence though Claimant testified that he is unable to even lift 10 pounds. Though some restrictions were inferred at step 2, the restrictions are not found to be severe enough to prevent Claimant from effectively performing fine and gross movements.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. Presented radiography verified moderate stenosis and nerve impingement.

The radiography was somewhat consistent with meeting the listing for 1.04 though “severe” stenosis would be a more persuasive diagnosis.

Claimant testified that he does not require use of a walking-assistance device. Ambulation without use of a cane or a walker is consistent with an ability to ambulate effectively. This evidence is suggestive that Claimant does not meet a listing for spinal disorders.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

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 it is determined that a claimant can perform past relevant work. *Id.*

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). 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.

Claimant testified that he performed past employment as a substance abuse intake counselor. Claimant testified that his job required lengthy periods of standing which he can no longer perform.

Claimant testified that he performed past employment as a transportation driver. Claimant testified that he cannot sit for lengthy periods. Though Claimant may have exaggerated his inability to sit, it is probable that Claimant could not perform sitting in a car for extended periods. Sitting in a vehicle is distinctive because drivers do not have the luxury relieving pain by standing.

Claimant testified that he also performed past employment as a lead houseman and direct care worker. Claimant testified that both jobs required long period of standing which he can no longer perform.

Claimant’s testimony was consistent with the presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

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 are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning 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 using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

It was verified that Claimant has lifting and standing restrictions due to back pain. It is also reasonable that Claimant has some degree of sitting and concentration restrictions due to back pain. In step 3 of the analysis, these restrictions were not found to be disabling. When the restrictions are factored with Claimant's right wrist, left shoulder and now resolved abdominal pain, Claimant is unrealistically capable of finding and maintaining any type of employment. Consideration was given to Claimant's inability to relieve pain through steroid spinal injections due to a lack of insurance. Claimant's pain level tended to be verified based on the relatively high amount of prescribed medication. Claimant is found to be a disabled individual. Accordingly, it is found that DHS properly denied Claimant's MA benefit application.

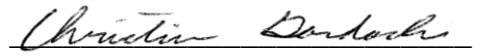
### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 4/25/13, including retroactive MA benefits from 3/2013;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and

- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are **REVERSED**.

  
Christian Gardocki  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: March 28, 2014

Date Mailed: March 28, 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.

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

CG/cl

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]