

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES SUZANNE SONNEBORN EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA DIRECTOR



Date Mailed: August 8, 2024 MOAHR Docket No.: 24-007355

Agency No.: Petitioner:

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

HEARING DECISION

Following Petitioner'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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held by telephone on July 29, 2024. Petitioner was represented by their spouse and household member, (Spouse). The Department of Health and Human Services (Department) was represented by Marcella Towns, Assistance Payments Worker and Assistant Coordinator of Hearings.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits?

Did the Department properly determine Petitioner's Medicaid (MA) coverage?

Did the Department properly determine Spouse's Medicaid (MA) coverage?

Did the Department properly deny Spouse Medicare Savings Program (MSP) benefits?

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 2024, Petitioner submitted an application to the Department for FAP and MA for herself, Spouse, and their child (2024) and MSP for Spouse. (Exhibit B, pp. 9 – 17).

- 2. Petitioner and Spouse were ongoing recipients of MA. (Exhibit A, p. 1).
- 3. On March 27, 2024, the Department sent Petitioner a Verification Checklist (VCL) for FAP, requesting verification of the household's mortgage and lot rent, Spouse's medical expenses, and Petitioner's income and residency by April 8, 2024. (Exhibit A, pp. 15 17).
- 4. On April 11, 2024, the Department interviewed Spouse, who reported that Petitioner is employed 6 hours per day, 3 days per week, and all members of the household receive Retirement, Survivors, and Disability Insurance (RSDI) in the total amount of \$2,200 per month. (Exhibit A, p. 1).
- 5. On April 15, 2024, the Department obtained a Work Number report through Equifax to verify Petitioner's income and budgeted Petitioner's weekly gross pay for the period of February 25, 2024 through March 25, 2024, disregarding Petitioner's pay dated March 4, 2024 because it was only 9.1 hours. (Exhibit A, pp. 1, 9).
- 6. The Department did not receive a mortgage statement or proof of Spouse's medical expenses. (Exhibit A, p. 1).
- 7. On April 23, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) denying Petitioner's application for FAP benefits due to failure to provide requested verifications and due to excess income. (Exhibit B, pp. 2-3).
- 8. On April 23, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN), effective June 1, 2024, approving Petitioner for Group 2 MA, subject to a monthly deductible of \$1,878, and Plan First Family Planning (PFFP); and Spouse for MSP. (Exhibit A, 32 38).
- 9. On May 9, 2024, the Department sent Petitioner a HCCDN, finding Spouse ineligible for MSP effective June 1, 2024, for failure to provide requested verifications. (Exhibit A, pp. 25 27).
- 10. On June 21, 2024, the Department sent Petitioner a HCCDN, changing Petitioner and Spouse's coverage to PFFP effective July 1, 2024. (Exhibit A, pp. 28 31).
- 11. On June 21, 2024, the Department received a request for hearing from Petitioner disputing the Department's decisions regarding FAP and MA. (Exhibit A, pp. 3 5).

CONCLUSIONS OF LAW

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

FAP

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Petitioner requested a hearing to dispute the Department's denial of Petitioner's application for FAP. The Department denied Petitioner's request for FAP for failure to provide requested verifications and excess income.

In this case, Petitioner applied for FAP benefits for herself, Spouse, and JB on March 25, 2024. (Exhibit B, pp. 2-8). On her application, Petitioner reported that Spouse is disabled and pays Medicare premiums plus \$1,020 per month for prescriptions. (Exhibit B, pp. 10, 13, 15, 16). Petitioner also reported a mortgage of \$666.57 per month and lot rent of \$620 per month. (Exhibit B, p. 16).

The Department introduced a net income budget at the hearing to show how it concluded that Petitioner was ineligible for FAP due to excess net income. (Exhibit A, pp. 20 – 21). The budget showed that Petitioner's FAP group had earned income of per month and unearned income of per month, for total gross countable income of (Exhibit A, p. 20). Spouse did not dispute the Department's calculation of income. Because Petitioner is employed, and Spouse, who receives RSDI due to a disability, is a senior/disabled/disabled veteran (SDV) member of the FAP group, the household is entitled to the following deductions:

- A 20% earned income deduction.
- Standard deduction based on group size.
- Dependent care expense.
- Medical expense deduction for medical expenses of the SDV member in excess of \$35.
- Court ordered child support and arrearages paid to non-household members.
- Excess shelter deduction.

BEM 554 (January 2024) p. 1; BEM 556 (January 2023) pp. 3 – 6.

No evidence was introduced that Petitioner had any dependent care expenses or court ordered child support expenses and therefore, no deduction for either of those expenses are reflected on the budget. (Exhibit A, pp. 20 - 23). SDV groups who verify one-time or ongoing medical expenses in excess of \$35 for the SDV member will

receive a standard medical deduction of \$165 unless the group has actual medical expenses in a higher amount and verify those actual expenses. BEM 554, p. 9.

The Department must verify the responsibility to pay and the amount of certain expenses and may not budget those expenses in a client's FAP budget until the verification is provided. BEM 554, p. 3. Among expenses that the Department must verify before it can deduct the amount on a client's FAP budget are the current, non-reimbursed, medical expenses of a SDV of the group, and shelter expenses, if the expense is questionable. BEM 554, pp. 9-16.

On March 27, 2024, the Department sent Petitioner a VCL requesting that Petitioner provide, among other things, verification of the mortgage and Spouse's medical expenses by April 8, 2024. At the hearing, the Department testified that it received a mortgage payment receipt but explained that it had no identifying information on it to satisfy the Department's request and had not received verification of Spouse's medical expenses. The Department testified that proof of the mortgage payment was necessary to verify Petitioner's residential address. During the hearing, the Department agreed that Petitioner's residential address was verified through the Work Number report obtained by the Department. (Exhibit A, p. 8). Spouse testified that he was preparing to provide verification of his medical expenses but acknowledged that he had not yet done so as of the instant hearing. Failure to provide verification of Spouse's medical expenses results in the expense not being allowed. BEM 554, p. 1.

Because Spouse was approved for MSP at the time the Department completed the budget to determine the group's FAP eligibility, and Petitioner did not provide verification of any additional medical expenses for Spouse, they were not allowed. the Department properly did not include a deduction for that expense. (Exhibit A, pp. 20 – 23). Therefore, based on the group's total monthly income of \$ and deducting only the 20% earned income deduction of \$211 and a standard deduction of \$198 for a FAP group of three, the Department properly determined Petitioner's adjusted gross income (AGI) was \$ and the complete of the budget of the

Next, the Department determines if the client is eligible for an excess shelter expense deduction. To complete the excess shelter deduction calculation, the Department reviews Petitioner's housing and utility expenses, if any. Petitioner reported a housing expense of \$666.57 per month for a mortgage and \$620 per month for lot rent and that she pays for heat and other utilities. (Exhibit B, p. 16). When a FAP group has heating and other utility expenses, separate from the mortgage payment, it is entitled to a heat and utility (h/u) standard amount to be included in the calculation of the excess shelter deduction, which is the highest amount available to FAP groups who pay utilities. BEM 554, p. 17. The h/u standard amount is \$680.00 (RFT 255) and the Department properly budgeted Petitioner's housing expense and used the h/u standard amount when calculating Petitioner's excess shelter expense. (Exhibit A, p. 18).

Once Petitioner's housing and utility expenses have been determined, the Department must add those amounts together for a total shelter amount and then subtract 50% of

Petitioner's AGI from the total shelter amount. BEM 556, pp. 5 – 6. This determines Petitioner's excess shelter deduction. The total of Petitioner's monthly housing of \$1,285.41 and the h/u standard of \$680 was \$1,965 (dropping cents). (Exhibit A, p. 18). When 50% of Petitioner's \$400 AGI, in the amount of \$1,544, is subtracted from the total shelter amount of \$1,965, Petitioner's excess shelter deduction was \$421. And when \$421 is subtracted from Petitioner's AGI of \$400 Petitioner's net monthly income, for purposes of FAP, was \$400

Based on Petitioner's three person FAP group size and net income of \$ Petitioner had excess net income and was ineligible for benefits. RFT 260 (October 2023), p. 37; see also RFT 250 (October 2023). Therefore, the Department properly denied Petitioner's application for FAP benefits due to excess net income.

MA

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner requested a hearing to dispute the Department's determinations regarding Petitioner and Spouse's MA eligibility and denial of Spouse's MSP. The Department determined Petitioner and Spouse were each eligible for PFFP only and Spouse was not eligible for MSP.

When an individual applies for MA coverage, they are not applying for a specific type of MA coverage, but for the MA category that is most beneficial for them. The most beneficial category is the one that results in eligibility, the least amount of excess income, or the lowest cost share. BEM 105 (January 2024), p. 3. Individuals may qualify under more than one MA category and Federal law gives them the right to the most beneficial category. BEM 105, p. 3. All MA category options must be considered in order for the Petitioner's right of choice to be meaningful. BEM 105, p. 3. MA is available (i) under SSI-related categories to individuals who are aged (65 or older), blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105, p. 1; BEM 137 (January 2024), p. 1; BEM 124 (July 2023), p. 1.

In this case, Petitioner and Spouse are married to each other, file taxes together, and have one dependent. (Exhibit B, p. 11). Spouse is disabled, receives RSDI, and has Medicare. (Exhibit B, pp. 13 - 15). Petitioner is employed and she and JB also receive RSDI due to Spouse's disability. (Exhibit A, pp. 1, 8 - 9; Exhibit B, p. 15).

Petitioner

Initially, the Department sent Petitioner a HCCDN on April 23, 2024 that reflected she was approved for MA coverage with a deductible of \$1,878 per month and PFFP effective June 1, 2024. (Exhibit A, pp. 32 – 38). However, on June 21, 2024, the Department sent Petitioner a new HCCDN that reflected that she was approved for PFFP only effective July 1, 2024. (Exhibit A, pp. 28 – 31). There was no evidence offered as to what constituted a change in Petitioner's coverage on June 21, 2024.

Petitioner is \blacksquare years old and not pregnant. (Exhibit B, pp. 10 – 11, 13). There was no evidence that Petitioner was receiving Medicare. Therefore, Petitioner is potentially eligible for HMP, Group 2 Caretaker (G2C), and/or PFFP MA coverage.

HMP and PFFP are MAGI-related MA programs, with HMP providing full coverage and PFFP (BEM 124, p. 1) providing limited coverage. G2C is not SSI-related or MAGI-related MA and is a Group 2 program for parents and other caretaker relatives of dependent children, and subject to an individual monthly deductible for each eligible recipient when the group has excess income. BEM 135 (October 2015), p. 1-2.

While Petitioner may qualify for coverage under three MA programs, because HMP offers full coverage and does not have a deductible, it is a more beneficial coverage for Petitioner than the others.

To qualify for health care coverage under HMP, the individual must:

- be 19 64 years of age,
- not qualify for or be enrolled in Medicare,
- not qualify for or be enrolled in other Medicaid programs,
- not be pregnant at the time of application,
- meet Michigan residency requirements,
- meet Medicaid citizenship requirements, and
- have income at or below 133 percent Federal Poverty Level (FPL).

BEM 137, p. 1.

An individual is eligible for HMP if their MAGI-income does not exceed 133% of the FPL applicable to the individual's group size. An individual's group size for MAGI purposes requires consideration of the client's tax filing status. Here, Petitioner filed taxes with Spouse and has one dependent. (Exhibit B, p. 11). Therefore, for HMP purposes, Petitioner has a household size of three. BEM 211 (October 2023), pp. 1 – 2.

Beginning in January 2024, the annual FPL for a household size of three is \$25,820.89 FR 2961 (January 2024). The HMP income limit, 133% of the FPL, is \$34,340.60 annually, or \$2,861.72 per month. For HMP, a 5% disregard is available to make those individuals eligible who would otherwise not be eligible. BEM 500, p. 5. The 5% disregard increases the income limit by an amount equal to 5% of the FPL for the group size. BEM 500, p. 5. 5% of the FPL of \$25,820 is \$1,291. Therefore, the total income limit, with the disregard, was \$35,631.60, or \$2,969.30 per month.

To determine Petitioner's MAGI-income, the Department must calculate the countable income of the fiscal group. BEM 500, p. 1. To determine financial eligibility for MAGI-related MA, income must be calculated in accordance with MAGI under federal tax law. 42 CFR 435.603(e); BEM 500, pp. 3-4. MAGI is based on Internal Revenue Service rules and relies on federal tax information from current income sources. BEM 500, pp. 3-4; see also 42 CFR 435.603(h)(1),(2).

The Department uses current monthly income, and reasonably predictable changes in income, to calculate a client's MAGI-income. (MAGI-Based Income Methodologies (SPA 17-0100), eff. 11/01/2017, app. 03/13/2018)¹; 42 CFR 435.603(h). MAGI-income is calculated for each income earner in the household by using the "federal taxable wages" reported on earner's paystubs or, if federal taxable wages are not reported on the paystub, by using "gross income" minus amounts deducted by the employer for child care, health coverage, and retirement plans. Under both the federal and Michigan methodology, a client's tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest, if any, are added to the client's adjusted gross income (AGI) from the client's tax return. See https://www.healthcare.gov/income-and-household-information/how-to-report/.

On her 2024 FAP and MA application, Petitioner reported the sources of household income to be from Petitioner's employment of an average of 15 hours per week at \$ per hour and Spouse's RSDI in the amount of \$2,000 per month. (Exhibit B, p. 15). Although the Department did not present a MAGI budget for Petitioner at the hearing and did not explain if or how it determined Petitioner's income or that it consider Petitioner's eligibility for HMP, a review of the Work Number report reflects that, depending on which four weeks the Department determined current monthly income to be, Petitioner had current monthly employment income of between \$ and \$ for MA purposes. (Exhibit A, p. 9). Those amounts added to the household's total RSDI income of at least \$2,200 (Exhibit A, p. 1), results in Petitioner having total current household income of between \$ and \$ and

Because Petitioner and Spouses's minor child, lives in the home, Petitioner may be eligible for G2C, which is the next most beneficial MA coverage available to her based on her circumstances. While the Department initially determined Petitioner was eligible for PFFP and for G2C with a deductible of \$1,878 per month effective June 1, 2024 (Exhibit A, pp. 32 – 38), it did not explain how it determined that deductible or why it issued a subsequent HCCDN on June 21, 2024 changing Petitioner's coverage to PFFP only (Exhibit A, pp. 28 – 31). At the hearing, the Department introduced a G2C budget for the benefit period beginning August 1, 2024, but did not explain how it determined the monthly earned income for purposes of MA.

¹ https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder3/Folder80/Folder2/Folder180/Folder1/Folder280/SPA_17-0100_Approved.pdf?rev=223500fb0cf44dd78fd995e635fbaec8&hash=6A39 DE5525422009644221A5E57513D7, p. 7.

However, without more information, Petitioner's eligibility for G2C, and her deductible amount, cannot be determined. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it: a) determined Petitioner's monthly G2C deductible effective June 1, 2024; and b) that Petitioner was not eligible for MA under G2C, effective July 1, 2024 ongoing.

Spouse

On June 21, 2024, the Department sent Petitioner a HCCDN that reflected that Spouse was approved for PFFP only effective July 1, 2024. (Exhibit A, pp. 28-31). No additional evidence was offered during the hearing regarding how Spouse's MA eligibility was determined.

Spouse is years old, disabled, receives RSDI, and has Medicare. (Exhibit B, pp. 13 – 15). Therefore, Spouse is potentially eligible for AD-Care, G2C, Group 2 Aged, Blind, and Disabled (G2S), and/or PFFP. AD-Care and G2S are SSI-related MA programs, with AD-Care providing full coverage while G2S is an SSI-related Group 2 MA category available to a person who is aged (65 or older), blind, or disabled, and provides MA coverage to individuals after a monthly deductible is met. BEM 166 (April 2017), p. 1. Between G2C and G2S, G2C results in a lower monthly deductible amount and is, therefore, a more beneficial MA category for those who may be eligible under either program.

Based on Spouse's circumstances as a disabled individual, he was potentially eligible for SSI-related MA. The AD-Care program is a Group 1, full-coverage, SSI-related MA program for disabled individuals who are income-eligible based on their MA fiscal group size. BEM 163 (July 2017), p. 1. Net income for this program cannot exceed 100% of the Federal Poverty Level (FPL) for the fiscal group size. BEM 163, p. 1. For SSI-related MA purposes, married adults are a fiscal group size of two. BEM 211, p. 8. Because Spouse is married, he is a fiscal group size of two and to be income eligible for this program, Petitioner's monthly income would have had to be \$1,723.50 or less. RFT 242 (April 2024). In this case, Petitioner receives RSDI in the amount of at least \$2,200 per month. (Exhibit A, p. 1). The gross amount of RSDI is counted as unearned income but, for purposes of SSI-related MA, is reduced by \$20 to determine the net unearned income. BEM 503 (April 2024), pp. 30 – 31; BEM 541 (January 2024), p. 3; see also BEM 163. Because Petitioner's countable net unearned income alone was at least \$2,180, which is more than the \$1,723.50 limit for AD-Care MA, Petitioner was not eligible for AD-Care MA.

Because Petitioner and Spouses's minor child, lives in the home, Spouse may be eligible for G2C, which is the next most beneficial MA coverage available to him based on his circumstances. Here, the Department did not explain whether it considered Spouse's eligibility for MA under G2C. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to determine if Spouse was eligible for MA under G2C.

Spouse - MSP

Spouse also disputed the Department's denial of MSP for him. In this case, the Department sent Petitioner a HCCDN on April 23, 2024, approving Spouse for NMB, effective June 1, 2024. (Exhibit A, pp. 32-38). However, the Department then sent Petitioner a second HCCDN regarding Spouse's MSP on May 9, 2024, that denied Spouse for MSP, effective June 1, 2024, because Spouse's income exceeded program limits, and he failed to provide requested verifications. (Exhibit A, pp. 25-27). However, no evidence was presented that a VCL was sent to Petitioner for MA and eligibility for NMB is not determined based on income. Therefore, the reason for denial of MSP stated on the HCCDN was incorrect.

MSP is an SSI-related MA program that pays for certain Medicare expenses. BEM 165 (June 2024), p. 1. Individuals who are entitled to Medicare Part A and B but have income in excess of the limits for the MSP categories of Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or QI Additional Low-Income Medicare Beneficiaries (ALMB), may be eligible for Non-Categorically Eligible Michigan Beneficiaries (NMB) if they have full coverage Medicaid. BEM 165, p. 1.

For purposes of MSP, married individuals are a fiscal group of two. BEM 211, p. 8. ALMB has the highest income limit of the MSP categories, and that limit is \$2,319.50 for a two-person group. RFT 242. Because Petitioner had monthly employment income of at least \$877.63 for MA purposes and Spouse had self-attested RSDI income of \$2,000 per month (Exhibit A, p. 9; Exhibit B, p. 15), Spouse had excess income for ALMB, even before Petitioner's RSDI income was considered. Therefore, the only MSP Spouse may have been eligible for was NMB.

NMB pays the Medicare Part B premiums (and the part A premiums for the few who have them) for full coverage Medicaid beneficiaries not otherwise eligible for MSP. BEM 165, p. 2.

However, to be eligible for NMB, individuals must be full coverage Medicaid beneficiaries. Here, because AD-Care was the only full coverage MA program Spouse may have been eligible for given his specific circumstances, and as explained previously, he is not eligible for that MA coverage, Spouse is not eligible for NMB. Therefore, the Department properly determined Spouse is not eligible for MSP under any of the four categories available.

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 that the Department acted in accordance with Department policy when it determined Petitioner had excess net income for purposes of FAP and when it determined Spouse was ineligible for MSP. However, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to consider Petitioner's and Spouse's eligibility for MA under G2C.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP and **REVERSED IN PART** with respect to Petitioner's and Spouse's individual MA eligibility.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

- 1. Redetermine Petitioner's and Spouse's individual eligibility for MA for June 2024 ongoing;
- 2. If eligible, provide Petitioner and Spouse with the most beneficial MA coverage they are eligible to receive for June 2024 ongoing; and
- 3. Notify Petitioner of its decision in writing.

CML/nr

Caralyce M. Lassner Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

Michigan Office of Administrative Hearings and Rules Reconsideration/Rehearing Request P.O. Box 30639
Lansing, Michigan 48909-8139

<u>Via-Electronic Mail</u>: DHHS

Susan Noel

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Interested Parties

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<u>Via-First Class Mail : Petitioner</u>

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