



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

May 22, 2023, 1:06 pm
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH0130

Plan ID No.: [Redacted]

vs.

SIMPLY HEALTH CARE PLANS, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 6, 2023, at 9:10 a.m. EST.

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner's Authorized Representative

For the Respondent:

Sharon Nealy
Fair Hearing Coordinator
Simply Health Care Plans, Inc.

STATEMENT OF ISSUE

The parties agreed on the record that the issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for and additional seventy (70) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] Petitioner's Authorized Representative and [REDACTED], appeared on Petitioner's behalf. Petitioner appeared at the hearing and provided testimony.

Sharon Nealy, Fair Hearing Coordinator for Simply Health Care Plans, Inc. ("Simply") appeared on behalf of Respondent. Dr. Susan Ledbetter, ("Dr. Ledbetter") Long Term Care Medical Director for Simply, attended as a witness for Respondent. The following employee of Simply attended as witnesses but did not testify at the Fair Hearing: Shelly Leachman, Registered Nurse with Simply.

Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Interpreter Tania, ID No. 401856, provided translation services for Petitioner.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-two (142)-page evidence packet. The evidence appears in the Office of Fair Hearings' case management system as "FL Simply Packet [Petitioner's name] (updated) Part 1.pdf" and "FL Simply Packet [Petitioner's name] (updated) Part 2.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Simply. See Respondent's Composite Exhibit 1 at page 1. Simply is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner was [REDACTED]. *Id.* at 8. [REDACTED] lives in [REDACTED]. *Id.* at 9. [REDACTED] is Petitioner's [REDACTED]. *Id.* at 29. Petitioner has [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 14-15. Petitioner receives [REDACTED]. *Id.* at 12, 15. Petitioner needs [REDACTED]. *Id.* at 41. She is [REDACTED]
[REDACTED]
[REDACTED]. *Id.*

3. As provided in the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated November 15, 2022, ("701B Assessment") Petitioner's needs for activities of daily living ("ADLs") are as follows: [REDACTED]
[REDACTED], Petitioner total needs assistance (cannot do at all). *Id.* at 12. Petitioner has a [REDACTED] *Id.* Petitioner always has assistance with all of her ADLs. *Id.*

4. Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: [REDACTED]
[REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all). *Id.* at 37. For [REDACTED]
[REDACTED] Petitioner needs supervision or prompt. *Id.* For [REDACTED], Petitioner needs no assistance. *Id.* Petitioner always has assistance with IADLs. *Id.*

5. Petitioner requested an additional seventy (70) hours per week of personal care services.

In the Notice of Adverse Benefit Determination (“NABD”), Respondent denied Petitioner’s request as of January 9, 2023. *Id.* at 62. The NABD explained the basis of the decision as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (See Rule)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

- Other Authority

...

The facts that we used to make our decision are: ¿We cannot cover your extra home care as you asked for it (S5135: COMPANION CARE- ADDITIONAL 70 HOURS/WEEK). You have problems with [REDACTED]. You cannot take care of [REDACTED]. You need help with [REDACTED]. You live [REDACTED]. [REDACTED] has been your main caregiver. You do have care hours in your home (PERSONAL CARE: 42 HOURS/WEEK; HOMEMAKER CARE 14 HOURS/WEEK; COMPANION CARE: 19 HOURS/WEEK). You are asking for more care hours. You do need a lot of help with your self-care. You weigh more than is healthy. You need 2 people to help you get in and out of bed. We were told [REDACTED] cannot help you as much as [REDACTED] used to. We were told [REDACTED] health had declined [REDACTED]. We approved some extra care while [REDACTED] got better. We were told [REDACTED] is looking for a new job at night. We were told [REDACTED]. We confirmed [REDACTED]. You are asking for many more hours of care.

We were told this is for overnight. We were told you wake up [REDACTED]. You have asked for specifically companion care. This is someone just to be with you and keep you company. This is not hands on care. They cannot help with your self-care needs. They cannot help you [REDACTED]. They cannot help with any [REDACTED]. They cannot [REDACTED]. They cannot help if [REDACTED]. We do not see where more hours to keep you company are needed. You have about 10 hours a day of help now. You have 6 hours a day of hands on self-care help (personal care). You have 2 hours a day of homemaker help. You have another 2-3 hours a day of companion care. Right now [REDACTED] is not working. We do not see that [REDACTED] could not just be with you if you wake at night. We do not know why [REDACTED] could not just [REDACTED]. You have said sometimes you need to [REDACTED] at night. Companion care could not help you with that. This would not be the right care for your needs. While [REDACTED] is still in the home [REDACTED] can be with you. This would let you use your self-care hours better throughout the whole day. The care hours you have can be arranged however works best during the week. We will not cover the extra companion care hours at this time. We based this on the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy section 1.3.14. A peer to peer reconsideration may be requested by your physician/health care provider within 2 days of the adverse determination. A formal appeal must be filed after this time frame. To request a peer to peer please call 833-414-3639.

Id. at 62-63.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 12, 2023, upholding the denial of additional personal care services. *Id.* at 96, 99-101. The NAPR states, in pertinent part:

On 01/11/2023 we received your timely plan appeal request regarding Simply Healthcare Plans, Inc.'s Notice of Adverse Benefit Determination dated 01/09/2023, NABD Number 112847801, DENYING, the additional care hours provided to [Petitioner]. The facts that we used to make our decision are: We cannot cover your extra home care as you asked for it (S5135: COMPANION CARE-ADDITIONAL 70 HOURS/WEEK). You have problems with [REDACTED]. You cannot [REDACTED]. You need help with your self-care. You live [REDACTED]. [REDACTED] has been your main caregiver. You do have care hours in your home (PERSONAL CARE: 42 HOURS/WEEK; HOMEMAKER CARE 14 HOURS/WEEK; COMPANION CARE: 19 HOURS/WEEK). You are asking for more care hours. You do need a lot of help with your self-care. You [REDACTED]. You need 2 people to help you get in and out of bed. We were told [REDACTED] cannot help you as much as [REDACTED] used to. We were told [REDACTED]. We approved some extra care [REDACTED]. We were told [REDACTED] is looking for

a new job at night. We were told [REDACTED]. We confirmed [REDACTED] You are asking for many more hours of care. We were told this is for overnight. We were told you wake up with [REDACTED]. You have asked for specifically companion care. This is someone just to be with you and keep you company. This is not hands on care. They cannot help with your self-care needs. They cannot help you [REDACTED]. They cannot help with any [REDACTED]. They cannot [REDACTED]. They cannot help [REDACTED]. We do not see where more hours to keep you company are needed. You have about 10 hours a day of help now. You have 6 hours a day of hands on self-care help (personal care). You have 2 hours a day of homemaker help. You have another 2-3 hours a day of companion care. Right now [REDACTED] is not working. We do not see that [REDACTED] could not just be with you if you [REDACTED]. We do not know why he could not [REDACTED]. You have said sometimes you need to go to the [REDACTED]. Companion care could not help you with that. This would not be the right care for your needs. While [REDACTED] is still in the home [REDACTED] can be with you. This would let you use your self-care hours better throughout the whole day. The care hours you have can be arranged however works best during the week. We will not cover the extra companion care hours at this time. We based this on the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy section 1.3.14

On 01/12/2023, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby DENIES, your additional care hours plan appeal. Based on the records and the Florida Medicaid Statewide Managed Care Long Term Care Program Coverage Policy, 6.2 the denial of 70 hours of personal care is upheld. We know you need total care. Your needs have not changed. The extra care you asked for is not needed to meet your needs. That is why this is still denied. Your case was looked at by a Medical Director Marc Kaprow, DO, MHA Board Certified in Internal Medicine, Hospice & Palliative Medicine for Simply.

Id. at 99-100.

7. On January 18, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On March 7, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 7, 2023, at 9:00 a.m. EST.

8. Apart from the services at issue, Petitioner has approximately ten (10) hours per day of assistance as follows: forty-two (42) hours per week of personal care services; fourteen (14)

hours per week of homemaker services; and nineteen (19) hours per week of companion care services. *Id* at 63.

9. Petitioner testified that [REDACTED] asked for the additional personal care hours because [REDACTED] condition has deteriorated in the last two years. [REDACTED] stated that [REDACTED] is unable to do anything for herself. Petitioner testified that [REDACTED] would use the additional personal care services at night. Petitioner's home aide leaves at 6:00 p.m., and [REDACTED] testified that [REDACTED] is alone until the home health aide returns at 10:00 a.m. Petitioner asserted that [REDACTED] needs the additional services in case something happens to [REDACTED] or if [REDACTED] needs [REDACTED] or for assistance with [REDACTED]. Petitioner stated that [REDACTED] so that the neighbor can assist [REDACTED].

10. [REDACTED] testified that [REDACTED] lives with Petitioner; however [REDACTED] is a remote, full-time college student who relies on sources outside of the home for internet access. Petitioner works as an Uber driver and is looking for additional work. [REDACTED] did not provide a schedule of [REDACTED] school and work activity, but [REDACTED] described [REDACTED] schedule as "hectic and sporadic." [REDACTED] testified that [REDACTED] is rarely home at night and does not have time to stay with Petitioner overnight to care for [REDACTED]. [REDACTED] has [REDACTED] and [REDACTED]. [REDACTED] testified that Petitioner's condition has deteriorated since [REDACTED] and [REDACTED] believes [REDACTED] is no longer physically able or competent to care for [REDACTED]. [REDACTED] stated that Petitioner uses a [REDACTED]. [REDACTED] testified that Petitioner's home health aide refuses to re-fill the concentrator with distilled water for Petitioner or to manage Petitioner's medication. Finally, [REDACTED] clarified that Petitioner is a fall risk at night

because [redacted] bed does not have any safety rails. The home health aide uses pillows to keep Petitioner from falling out of bed. [redacted] added that because Petitioner is bedbound, [redacted] needs to be adjusted every few hours to prevent bed sores.

11. Dr. Ledbetter testified that Simply's denial of seventy (70) additional hours of personal care services per week was correct based on the information available at the time of the denial. She asserted that Simply considered the Petitioner's living arrangement, physical condition, and functional needs. Simply made a determination, in this case, that a gap in need was not identified justifying an additional seventy (70) hours per week of personal care services. Therefore, the services were determined to be in excess of the Petitioner's needs. Dr. Ledbetter testified that after listening to the testimony at the Fair Hearing, she believes that Petitioner may need more services, but that it is not clear that Petitioner needs and additional seventy (70) hours of personal care services. Dr. Ledbetter asserted that Petitioner may be a candidate for a PERS device that [redacted] can use at night in the event of an emergency. Further, Simply will need to obtain clarification from the home health agency as to whether the home health aides are unable to fill Petitioner's oxygen concentrator with distilled water or assist with medication management. Finally, Dr. Ledbetter testified that Petitioner may need bed rails. Dr. Ledbetter testified that Simply is committed to identifying and providing the services that are needed to make Petitioner safe and meet her functional needs. Dr. Ledbetter maintained that it is not clear that seventy (70) additional hours are needed without looking into the above services first and that Petitioner may need companion care services rather than personal care services.

CONCLUSIONS OF LAW

12. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

13. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.100(17)(b).

14. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

15. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and homemakers:

1. Description and Program Goal

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

4.1 General Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. [emphasis supplied]

LTC Policy at pages 1 – 8.

16. The LTC Policy also provides the following regarding medical necessity:

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

LTC Policy at pages 2 – 3.

17. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational

- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

18. Petitioner requested an additional seventy (70) hours per week of personal care services.

See supra ¶ 5. The additional personal care services were denied based on medical necessity. *See*

supra ¶ 5, 6. Specifically, Respondent determined that the services were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and are "in excess of the patient's needs." *See supra* ¶ 5, 6, 11, 17.

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that:

(a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 15. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. *See supra* ¶ 15.

20. The evidence presented reflects that Respondent's denial of an additional seventy (70) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LTC Policy, personal care is to provide "assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care

furnished or are essential to the health and welfare of the enrollee.” See supra ¶ 15. The record reflects that Petitioner lives [REDACTED] who is a remote, full-time student with no set academic or work schedule. See supra ¶ 10. With regard to ADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]. See supra ¶ 3. Petitioner uses a Hoyer lift for transfers. See supra ¶ 3. The 701B Assessment states that Petitioner currently “always has assistance” with her ADLs. See supra ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]. See supra ¶ 4. For [REDACTED], Petitioner needs supervision or prompt, and Petitioner needs [REDACTED]. See supra ¶ 4. The 701B Assessment states that Petitioner currently “always has assistance” with IADLs. See supra ¶ 4. Petitioner currently has approximately ten (10) hours per day of assistance as follows: forty-two (42) hours per week of personal care services; fourteen (14) hours per week of homemaker services; and nineteen (19) hours per week of companion care services. See supra ¶ 8.

21. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides general guidance concerning the time allotted for personal care tasks. The time allotted for tasks applicable for Petitioner would be as follows: a full body bath is allotted up to 30 minutes; dressing is allotted up to 15 minutes; grooming and skin care is allotted between 30 and 45 minutes; eating is allotted up to 30 minutes per meal; transferring (15 minutes/every 2 hours); and toileting is allotted up between 15 – 45 minutes. As Dr. Ledbetter testified, according to Petitioner’s documented needs in the 701B Assessment, Petitioner needs total assistance with

her ADLs. Neither Petitioner nor [REDACTED] provided a schedule of ALDs and/or any estimate of the time it takes to complete each ADL task. Allotting thirty (30) minutes of time for each of Petitioner's ADLs ([REDACTED]) and taking into account Petitioner's medical conditions, the current forty-two (42) hours of personal care services appears to be reasonable. Petitioner also has fourteen (14) hours per week of homemaker services, which closely align with the documented IADL tasks that Petitioner needs assistance with. Dr. Ledbetter provided credible and persuasive testimony that the approved services are adequate to meet Petitioner's needs. She testified that additional services such as PERS and bed rails would be explored, and she committed that Simply would follow-up with Petitioner's home health agency for clarification regarding filling Petitioner's oxygen concentrator with water and the availability of medication management.

22. Petitioner [REDACTED] testified that, for safety reasons, Petitioner requires supervision and should not be left alone at night. [REDACTED] lives with Petitioner but was not able to provide a schedule concerning [REDACTED] availability at night. Petitioner raised the concern that something could happen at night when [REDACTED] is alone. This request for supervision corresponds more to adult companion care services, which are defined as the "provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee."

23. Therefore, upon consideration of the testimony provided, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional seventy (70) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of an additional seventy (70) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE and **ORDERED** this 22nd day of May 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
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LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:

[Redacted]

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