



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

FILED

Nov 09, 2023, 12:41 pm

OFFICE OF FAIR HEARINGS

█,

PETITIONER,

AHCA Case No.: 23-FH1505
Plan ID No.: █

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

█,

PETITIONER,

AHCA Case No.: 23-FH1507
Plan ID No.: █

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 27, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

█.
Petitioner

For the Respondent:

Yanisy Cruz
Fair Hearing Liaison
Molina Health Care of Florida, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's personal care services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner, [REDACTED] appeared on [REDACTED] own behalf.

Yanisy Cruz ("Ms. Cruz"), Fair Hearing Liaison for Molina Health Care of Florida ("Molina"), appeared on behalf of Respondent. Dr. Katharyn Madiwale ("Dr. Madiwale"), Medical Director for Molina, appeared as a witness for Respondent. The following appeared on behalf of Respondent but did not give testimony: Caridad Bello, Government Contracts; Sandy Caiuuet, Case Manager with Long Term Care; Katia Matos, Utilization Management Director; Maria Nunez, Lead Appeals and Grievances; and Yanni Velez.

Enrique, translator number OS051 appeared to offer Spanish translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a one (1)-page evidence packet. The one (1)-page evidence packet appears in the Office of Fair Hearings' document management system as file title "23-FH1505 Mail Correspondence.pdf". Absent an objection from Respondent, the undersigned admitted the one (1)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one-hundred and seventeen (117)-page evidence packet. The one-hundred and seventeen (117)-page

evidence packet appears in the Office of Fair Hearings' document management system as file titles "MFH Package Office Packet_ 1.pdf," "MFH Package Office Packet_ 2.pdf," "MFH Package Office Packet_ 3.pdf," "MFH Package Office Packet_ 4.pdf," "MFH Package Office Packet_ 5.pdf," and "MFH Package Office Packet_ 6.pdf." Absent an objection from the Petitioner, the undersigned admitted the one-hundred and seventeen (117)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Molina's Long-Term Care ("LTC") plan. See pages 1, 3 of RCE 1. Molina is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.* at 43.

2. Petitioner is [REDACTED]. *Id.* at 63 -64.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 69-70.

4. According to the Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B Assessment"), dated May 10, 2023, Petitioner's needs for Activities of Daily Living ("ADLs") are as follows: [REDACTED]
[REDACTED] Petitioner needs total assistance (cannot do at all); and [REDACTED], Petitioner needs assistance (but not total help). *Id.* at 67.

5. According to the 701B Assessment, dated May 10, 2023, Petitioner's needs for Instrumental Activities of Daily Living ("IADLs") are as follows: [REDACTED]
[REDACTED], Petitioner needs total

assistance (cannot do at all); for [REDACTED] Petitioner needs assistance (but not total help); for [REDACTED], Petitioner needs no assistance. *Id.* at 68.

6. In a Notice of Adverse Benefit Determination (“NABD”), dated May 12, 2023, Molina reduced Petitioner’s homemaker services from 14 to 10 hours per week. *Id.* at 9. The NABD explained the basis of the reduction 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.

The facts that we used to make our decision are:

This decision was based on medical necessity (as defined by Agency for Health Care Administration’s Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332) [sic]. The reason why the request was not approved is: S5130- Homemaker Services are reduced from 14 hours per week to 10 hours per week effective 5/24/2023 by the Medical Director because the service is not medically necessary. You are already receiving other services that should meet your needs. You are going to receive 35 hours of home care assistance per week based on Care Plan [r]eviewed and your current needs. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare’s approved review criteria and guidelines.

Id. at 9-10.

7. In a Notice of Adverse Benefit Determination (“NABD”), dated May 12, 2023, Molina reduced Petitioner’s personal care services from 36 to 25 hours per week. *Id.* at 17-18. The NABD explained the basis of the reduction as follows in pertinent part:

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.

The facts that we used to make our decision are:

This decision was based on medical necessity (as defined by Agency for Health Care Administration’s Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332) [sic]. The reason why the request was not approved is: T1019- Personal Care Services are reduced from 36 hours per week to 25 hours per week effective 05/24/2023 by the Medical Director because the service is not medically necessary. You are already receiving other services that should meet your needs. You are going to receive 35 hours of home care assistance per week based on Care Plan [r]eviewed and your current needs. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare’s approved review criteria and guidelines.

Id. at 17-18.

8. Petitioner requested a plan appeal regarding the reduction of homemaker services and personal care services. Respondent issued a Notice of Plan Appeal Resolution (“NPAR”), dated June 13, 2023, upholding the reductions. *Id.* at 36-37. The NPAR explained as follows in pertinent part:

On June 8, 2023, after consideration of the information you provided to Molina Healthcare of Florida in support of your plan appeal, Molina Healthcare of Florida hereby denies your plan appeal. As a result, [Petitioner] will not receive the extra 11 hours a week of Personal Care Services and the 4 hours a week of Homemaker Services, effective June 8, 2023. The decision was made by a Molina Healthcare of Florida Medical Director, a Board-Certified Internal Medicine Physician.

We made our decision based on the Florida Agency for Health Care Administration’s Long-Term Care (LTC) Program Policy (Rule 59G-4.192) and the Molina Clinical Policy for Medically Necessary Services(332). It shows rules that you have to meet to show medical necessity (need). Part of the rules is having an evaluation (test) to find out what you need. These tests are done the first time a member needs a test. They are also done annually (every year), and when there is a significant (big) change in the member’s care. A significant (big) change may involve a change in the member’s state of health or the person taking care of them. Your recent test does not show a significant (big) change in your care. Your doctor has not told us of a significant (big) change in your care to show that you need a change to your plan of care. You are already receiving services that should meet your needs. For this reason, the request for the extra 11 hours a week of Personal Care Services and the 4 hours a week of Homemaker Services is not approved. Please talk to your doctor and/or Case Manager about your options.

Id. at 36.

9. On June 16, 2023, Petitioner requested a Fair Hearing to challenge the reductions of homemaker and personal care services. *Id.* at 4. On June 27, 2023, the undersigned issued an Order Consolidation. On July 7, 2023, the undersigned issued an Order Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), scheduling the hearing for July 27, 2023, at 1:00 p.m. EST. Petitioner did not appear, and the undersigned issued

an Order Show Cause. At the request of Petitioner, on July 12, 2023, the undersigned issued a second Scheduling Order, re-scheduling the hearing for September 27, 2023, at 1:00 p.m. EST.

10. At the Fair Hearing, Ms. Cruz testified as follows:

a. Petitioner suffers from the following medical conditions: [REDACTED]

[REDACTED]

b. Referring to page 67 of RCE 1, Petitioner requires “total assistance” with ADLs, which include [REDACTED].

[REDACTED] requires some assistance [REDACTED].

c. Referring to page 68 of RCE 1, Petitioner also requires “total assistance” with IALS:

[REDACTED]

[REDACTED].

d. Petitioner does not have any [REDACTED] and does not require supervision. *Id.* at 72.

e. According to Molina’s functional review tool, which assigns the appropriate amount of time that should be allotted to each ADL and IADL task, *Id.* at 94, and the Molina clinical care team review, Petitioner’s needs will be met with 25 hours of personal care services per week and 10 hours of homemaker services per week.

11. At the Fair Hearing, Dr. Madiwale testified to the following:

a. Petitioner has been a Molina Long Term Plan Care member since 2019.

b. Petitioner’s homemaker and personal care services were reduced based upon medical necessity criteria. Specifically, Dr. Madiwale asserted that the level of

services must not be “in excess of” Petitioner’s needs, and services must not be provided in a manner primarily intended for the convenience of the recipient.

- c. Based on the functional assessment of Petitioner’s ADLs and IADLs located in the 701B Assessment, sections D and E, Petitioner’s diagnoses and medical records, and Petitioner’s cognitive status, Dr. Madiwale opined that the currently approved level of services are sufficient to meet Petitioner’s needs.

12. At the Fair Hearing, Petitioner testified to the following:

- a. [REDACTED] believes [REDACTED] has worsened over the past 5 years.
- b. Petitioner reports having 10 specialists at [REDACTED] due to [REDACTED].

CONCLUSIONS OF LAW

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

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

15. Because Respondent is reducing existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. 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.)

16. The Florida Medicaid Statewide 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 Homemaker and Personal Care services:

1.1 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

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2. Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

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.

RCE1 at 43-44 and 46-49.

17. The LTC Policy also addresses 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.

RCE1 at 43.

18. The Florida Medicaid Definitions Policy (“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.

Homemaker Services

19. In this case, Respondent reduced Petitioner’s homemaker services from 14 to 10 hours per week based on medical necessity. See ¶ 6, 8. In an NPAR dated June 13, 2023, Respondent denied Petitioner’s plan appeal. Specifically, Respondent determined that the homemaker services at issue are “not medically necessary” because Petitioner is “already receiving other

services that should meet her needs.” Based on the record, Respondent reduced the services because they are in excess of Petitioner’s needs. See ¶ 6, 8, 10-11.

20. Florida Medicaid LTC plans cover services that meet all of the following: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the LTC Policy. See ¶ 15. Section 4.2.1.9 of the LTC Policy defines homemaker services as the “provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.” See ¶ 15.

21. The evidence presented in this case reflects that Respondent’s reduction of homemaker services is warranted under the circumstances of this case. Petitioner does [REDACTED], however, the combined services of 35 hours per week, or 5 hours per day should be sufficient to assist Petitioner with [REDACTED] daily needs. The undersigned found the testimony of Ms. Cruz and Dr. Madiwale to be credible and persuasive that Petitioner’s needs can be met with the reduced level of homemaker services. As Ms. Cruz and Dr. Madiwale testified, this reduction of homemaker services was based upon the functional assessment of Petitioner’s needs contained in the 701B Assessment of May 10, 2023, which indicated:

Petitioner’s needs for Activities of Daily Living (“ADLs”) are as follows: for [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help). Petitioner’s needs for Instrumental Activities of Daily Living (“IADLs”) are as follows: [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED], Petitioner needs no assistance.

See ¶ 4, 5, 10-11. Petitioner's age, medical conditions, and cognitive condition were also considered. As Ms. Cruz testified, Molina's functional review tool was used to assign the appropriate amount of time that should be allotted to each ADL and IADL task identified in the 701B Assessment. Ms. Cruz and Dr. Madiwale agreed with the assessment of the Molina clinical care team review, the Petitioner's needs will be met with the combined 35 hours per week of services Petitioner is authorized to receive: 25 hours of personal care services per week and 10 hours of homemaker services per week. See ¶10,11.

22. Section 1.3.14 of the LTC Policy requires that "LTC supportive services must . . . [b]e 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." Based on Petitioner's age, cognitive ability, medical condition, and current level of need for assistance with ADLs and IADLs, the record demonstrates that Petitioner's aforementioned homemaker needs are met with the reduced level of homemaker services. Thus, Respondent established by a preponderance of the evidence that Petitioner's previously authorized homemaker services are "in excess of [Petitioner's] needs." See ¶ 17. Accordingly, the services at issue no longer meet medical necessity criteria.

23. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of homemaker services was correct.

Personal Care Services

24. Respondent reduced Petitioner's personal care services from 36 hours per week to 25 hours per week based on medical necessity. In an NPAR dated June 13, 2023, Respondent denied

Petitioner's plan appeal. See ¶ 8. Specifically, Respondent determined that the personal care services at issue are "not medically necessary" because "Petitioner is already receiving other services that should meet [redacted] needs." Based on the record, Respondent reduced the services because they are in excess of Petitioner's needs. See ¶ 7, 8, 11.

25. Florida Medicaid LTC plans cover services that meet all of the following: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the LTC Policy. See ¶ 15. Section 4.2.2.6 of the LTC Policy defines personal care services as intended "[t]o 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 ¶ 15.

26. The evidence presented in this case reflects that Respondent's reduction of personal care services to 25 hours is warranted under the circumstances of this case because 36 hours is in excess of Petitioner's needs. Petitioner does [redacted], however, the combined services of 35 hours per week, or 5 hours per day should be sufficient to assist Petitioner with [redacted] daily needs.

27. As previously stated, the undersigned found the testimony of Ms. Cruz and Dr. Madiwale to be credible and persuasive and that Petitioner's needs can be met with the reduced level of 25 hours per week of personal care services. As Ms. Cruz and Dr. Madiwale testified, this reduction of personal care services was based upon the functional assessment of Petitioner's needs contained in the 701B Assessment of May 10, 2023, which indicated:

Petitioner's needs for Activities of Daily Living ("ADLs") are as follows: For [redacted], [redacted], Petitioner needs total assistance (cannot do at all); for [redacted], Petitioner needs assistance (but not total help).

Petitioner's needs for Instrumental Activities of Daily Living ("IADLs") are as follows: for [redacted], and

using [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED], Petitioner needs no assistance.

See ¶ 4, 5, 10-11.

28. This assessment was then analyzed with Molina’s functional review tool to determine the hours that would be medically necessary for Petitioner. This analysis concluded that a reduction of 11 hours per week was warranted. See ¶ 10. As a result, Petitioner has 35 hours per week of home health care.

29. The Definitions Policy requires that all five conditions of medical necessity must be met in order for personal care services to be medically necessary. Specifically, the services must “[b]e 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.” Based on Petitioner’s age, cognitive ability, medical condition, and current level of need for assistance with ADLs and IADLs, the record demonstrates that Petitioner’s aforementioned personal care needs are met with the reduced level of personal care services. Thus, Respondent established by a preponderance of the evidence that Petitioner’s previously authorized personal care services are “in excess of [Petitioner’s] needs.” See ¶ 18.

30. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent’s reduction of personal care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of Homemaker services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s reduction of Homemaker services is **DENIED**.

Respondent's reduction of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of Personal Care services is **DENIED**.

DONE and **ORDERED** this 9th day of November, 2023, in Tallahassee, Leon County, Florida.



Lynne Ringers
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LYNNE RINGERS, 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:



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