

NO. 331008

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

BRIANA WAKEFIELD,

Appellant,

v.

CITY OF RICHLAND AND CITY OF KENNEWICK,

Respondents.

AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL

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I. INTRODUCTION

The federal government and Washington State both operate public assistance programs designed to ensure a minimum standard of living for low-income people. Some of these public assistance programs provide cash grants to help people pay for basic needs like food, clothing, and shelter.

Anti-attachment laws apply to federal and state cash assistance. 42 U.S.C. § 407(a); RCW 74.04.280; RCW 74.08.210. With limited exceptions, these laws prohibit the transfer of cash assistance through “execution, levy, attachment, garnishment, or other legal process.” *Id.* The anti-attachment restrictions help ensure that cash assistance remains available for beneficiaries’ basic needs and is not diverted for other purposes.

In this case, the Benton County District Court used formal contempt proceedings to require an indigent criminal defendant to pay court costs and fines. The court declined to remit the debt, despite undisputed evidence that the only available source of payment would be the defendant’s federal cash assistance. The contempt proceeding constituted a “legal process” that violated the Social Security Act’s anti-attachment restriction.

II. IDENTITY AND INTEREST OF AMICUS

Amicus Curiae is the Attorney General of Washington. The Attorney General submits this amicus brief to urge this Court to hold that the practices employed by the Benton County District Court below violate the anti-attachment provision of the Social Security Act.

State-granted public benefits carry anti-attachment restrictions that are materially identical to the one contained in the Social Security Act. The Attorney General is directed to “[e]nforce the proper application of funds appropriated for the public institutions of the state,” including funds appropriated for public assistance programs. *See* RCW 43.10.030(8). Further, the Attorney General’s constitutional and statutory powers include the submission of amicus curiae briefs on matters affecting the public interest. *Young Ams. for Freedom v. Gorton*, 91 Wn.2d 204, 212, 588 P.2d 195 (1978). This case presents issues of significant public interest, including the level of protection afforded to taxpayer-funded cash assistance granted to low-income families and individuals in Washington.

III. ISSUE ADDRESSED BY AMICUS

Whether the anti-attachment restriction applicable to federal cash assistance prohibits the Benton County District Court from using contempt proceedings to reach those benefits in order to satisfy court costs and fines.

IV. STATEMENT OF THE CASE

On December 8, 2010, Briana Wakefield pleaded guilty to one count of disorderly conduct in the Benton County District Court (“District Court”) in a case filed by the City of Richland. CP 158–59. At sentencing, Ms. Wakefield was ordered to pay \$688 in court costs and \$500 in fines. CP 158. On July 18, 2012, Ms. Wakefield pleaded guilty to one count of harassment in the District Court in a case filed by the City of Kennewick. CP 904–05. Ms. Wakefield was sentenced to pay \$843 in costs and \$500 in fines following that conviction. CP 904.

In June 2013, the District Court issued a bench warrant for Ms. Wakefield’s arrest, citing a “Failure to Comply with Court Order.” CP 902 (listing the Kennewick case number). After the Benton County Superior Court issued a temporary restraining order blocking execution of the warrant, CP 884–85, the District Court set the matter for a “fine review” hearing. CP 883. A fine review hearing is a contempt proceeding for failure to pay costs and fines. CP 277.

Ms. Wakefield appeared at the fine review hearing on August 20, 2013. CP 31–118. The Cities of Richland and Kennewick were not notified of the hearing and no prosecutor appeared. Brief of Respondents at 1–2; *accord* CP 32 (appearances of counsel).

The District Court began the hearing by discussing Ms. Wakefield's payment history in the Richland case, CP 34–38, and clarified that the fine review hearing would cover both matters, CP 40 (“You’re here today to address the issue of what you want to do about your fines, fines that date from 2010 and—I don’t want to be wrong—2012.”). The Court explained that Ms. Wakefield's options were to pay the fines, work off the fines on work crew, or serve jail time for non-payment.¹ CP 43 (“That’s the issue. I’m willing, more than happy, Ms. Wakefield, to let you get back on work crew, work it off. You were great at it. The jail is ready to take you, and I’m willing to restart your payments on the other case, which is what this hearing is about.”).

Instead of selecting one of these options, Ms. Wakefield moved to “reduce or eliminate” her court costs. CP 39; *see also* CP 826–30 (“Motion to Reduce or Eliminate Costs Per RCW 10.01.160(4)”). In support of the motion, Ms. Wakefield presented evidence that she is “disabled due to bi-polar disorder, PTSD, and ADHD.” CP 165. She testified that her income consists of “SSI and food stamps,” and that she

¹ The record contains media reports indicating that defendants get a \$50 credit toward costs and fines for each day served in jail for non-payment, and a \$70 credit for each day served on work crew. CP 410–12. Ms. Wakefield testified that defendants pay an administrative fee of \$20 per week to participate on the work crew. CP 63.

receives \$710 per month in SSI and \$170 per month in food stamps. CP 54. Ms. Wakefield testified that she has no other cash income. CP 55.

The District Court reviewed Ms. Wakefield's previous payment history, observing that she made no payments on the Richland case, CP 36, and \$190 in payments on the Kennewick case, CP 101. The District Court also questioned Ms. Wakefield about her ability to perform work crew. CP 68–70. The District Court did not question the source or amount of Ms. Wakefield's income, and entered a finding that she "receives SSI and other state funded benefits." CP 240.²

At the close of the hearing, the District Court declined to remit Ms. Wakefield's costs and fines. CP 108–13; CP 239–241 (Findings of Fact and Conclusions of Law).³ The District Court ordered Ms. Wakefield to complete work crew to satisfy the costs and fines in the Richland

² The Respondents now assert there is "insufficient evidence" that Ms. Wakefield receives SSI. Brief of Respondents at 20. This argument, however, has been waived. The Respondents "did not assign error to the trial court's findin[g] of fact" in the Superior Court and "cannot now challenge it on appeal." *See State v. Levy*, 156 Wn.2d 709, 734, 132 P.3d 1076 (2006).

³ The Respondents correctly observe that Ms. Wakefield's motion referred to the cost-remission provision of RCW 10.01.160(4) but did not also cite the District Court's authority to remit fines pursuant to RCW 3.62.010 or RCW 10.01.180. Brief of Respondents at 11 & n.3. The record is clear, however, that the District Court analyzed costs and fines together and issued a ruling governing both. *See* CP 108 ("The Court does not have to, nor should it, get rid of the fines in this matter or the costs.").

matter, CP 111, 241, and to make payments of \$15 per month toward the Kennewick matter, CP 112, 242.

Ms. Wakefield appealed, and the Benton County Superior Court affirmed in part and reversed in part. CP 274–79. The Superior Court reversed the imposition of work crew “as an alternative to imprisonment” because there had been “no finding of contempt or willful failure to pay.” CP 278. The Superior Court affirmed the portion of the order “extending the payment of fines on [the Kennewick matter] at the amount of \$15.00 per month.” *Id.* The Superior Court denied Ms. Wakefield’s motion for reconsideration, CP 592–93, and this Court granted discretionary review.

V. ARGUMENT

Federal and state laws exempt cash assistance payments from “execution, levy, attachment, garnishment, or other legal process.” 42 U.S.C. § 407(a); RCW 74.04.280; RCW 74.08.210. The District Court’s fine review hearing was a formal contempt proceeding that constituted “other legal process.” Because Ms. Wakefield’s only source of possible payment is protected federal cash assistance, the District Court’s procedures violated the Social Security Act. If applied to state-funded benefits, the District Court’s procedures would likely violate state law.

A. Anti-Attachment Protections Apply to Federal and State Cash Assistance

The federal and state governments both operate cash assistance programs designed to help low-income people meet their basic needs. Ms. Wakefield's federal SSI benefits carry an anti-attachment provision that restricts the way they may be transferred. Benefits granted by Washington State have materially identical protections.

1. Ms. Wakefield's federal SSI benefits carry anti-attachment restrictions

The District Court found that Ms. Wakefield "receives SSI." CP 240. Supplemental Security Income, or SSI, is a federally administered benefits program "for aged, blind, or disabled individuals, including children, whose income and assets fall below specified levels." *Wash. Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 375 (2003); *see also* 42 U.S.C. §§ 1381–85; Rule 34(a)(3)(A), General Rules of the Superior Courts (describing SSI as a "needs-based, means-tested assistance program"). "The basic purpose of SSI is to assure a minimum level of income to people who are aged, blind, or disabled and who have limited income and resources." Soc. Sec. Admin., *Social Security Handbook* § 2102.1 (2009); *see also Dep't of Health & Human Servs. v. Chater*, 163 F.3d 1129, 1133 (9th Cir. 1998) (SSI "provide[s] a minimally decent standard of living to destitute, blind,

aged and disabled individuals.”). With certain exceptions, eligibility for disability benefits must be reviewed every three years. 42 U.S.C. § 421(i)(1).

The Social Security Act contains a provision, “commonly called the Act’s ‘antiattachment’ provision,” which limits the transfer of benefits. *Keffeler*, 537 U.S. at 379–80. The anti-attachment provision states:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). This protection applies to SSI benefits, *see* 42 U.S.C. § 1383(d)(1), and continues to apply after the benefits have been disbursed to Ms. Wakefield and deposited in her bank account. *See* 42 U.S.C. § 407(a) (applying to “moneys paid or payable”); *Philpott v. Essex Cty. Welfare Bd.*, 409 U.S. 413, 415–16 (1973) (rejecting an attempt to reach the bank account where a beneficiary deposited disability assistance).

Congress created an express exception to the anti-attachment rule called the Interim Assistance Reimbursement Program. *See* 42 U.S.C. § 1383(g); 20 C.F.R. § 416.525. Under this program, states may recoup “interim assistance” paid to social security beneficiaries while their SSI applications are pending with the federal government. As a result of this

carve-out, Washington State receives reimbursement from otherwise-protected benefits for the interim assistance it provides. *See* RCW 74.62.030(1)(c).

2. Anti-attachment protections also apply to cash assistance administered by Washington State

The Economic Services Administration of the Washington State Department of Social and Health Services (“DSHS”) also operates cash assistance programs for needy families and individuals. *See* RCW 74.04.050 (directing DSHS to administer public assistance). The Economic Services Administration reports annually on its cash assistance programs. *See* DSHS, Econ. Servs. Admin., *Program Briefing Book for State Fiscal Year 2014* (Jan. 6, 2015) (“*Briefing Book*”) <https://www.dshs.wa.gov/esa/manuals/briefing-book>. According to the Economic Services Administration, the purpose of cash assistance is to promote “poverty reduction” and “self-sufficiency,” with programs designed to “hel[p] low-income people meet their basic needs and achieve economic independence.” *Briefing Book*, Introduction at ii.

Washington devotes significant resources to cash assistance. The state spent \$572,579,600 on cash grants during the 2011–2013 biennium. *Briefing Book*, Expenditures at 4. Although the analysis for the 2014–

2015 biennium has not been finalized, DSHS projected that it would spend \$462,328,300 on cash assistance. *Id.*

The following cash grant programs are state-funded in whole or in part: Temporary Assistance for Needy Families, RCW 74.12.260; State Family Assistance, RCW 74.08A.100, RCW 74.12.035; Diversion Cash Assistance, RCW 74.08A.210; Aged, Blind, or Disabled Cash Assistance Program, RCW 74.62.030(1); Pregnant Women Cash Assistance Program, RCW 74.62.030(2); State Supplemental Payment, RCW 74.04.620; Ongoing Additional Requirements, RCW 74.08.283; Consolidated Emergency Assistance Program, RCW 74.04.660; and Disaster Cash Assistance Program, RCW 74.04.660. *See also Briefing Book, ESA Program Descriptions at 1–41.*

Each of these programs is needs-based and means-tested, meaning that eligibility is contingent on specific income and resource limits. *See id.* DSHS develops “need standards” for its cash programs which determine eligibility. WAC 388-478-0005(1). Need standards “represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living.” *Id.*; *see also* RCW 74.04.770 (directing that need standards be based on “actual living costs”). The need standards include “basic requirements,” defined as “food, clothing, shelter, energy costs, transportation, household maintenance and operations,

personal maintenance, and necessary incidentals.” WAC 388-478-0005(1). The “payment standard” is the amount actually paid to beneficiaries, and is equal to or less than the need standard, depending on legislative appropriations. RCW 74.04.770; *see also* WAC 388-478-0015 (2015 need standards); WAC 388-478-0020 to 388-478-0055 (2015 payment standards).

Like federal law, Washington law restricts the assignment of cash assistance. The state twice codified this restriction in the Public Assistance title, RCW Title 74. Specifically, the state anti-attachment provisions state:

Assistance given under [the Public Assistance] title shall not be transferrable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

RCW 74.04.280, and:

Grants awarded under [the Public Assistance] title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or insolvency law.

RCW 74.08.210.

These restrictions apply to all cash assistance funded or administered by DSHS, and continue to apply after the benefits have been

disbursed to the beneficiary. *See id.* (covering “moneys received” and “money paid”); *Anthhis v. Copeland*, 173 Wn.2d 752, 760, 270 P.3d 574 (2012) (explaining the general rule that funds “retain their exempt status postdistribution” when the statute makes an “unambiguous reference to money actually paid”). Finally, while Washington law permits DSHS to recover “overpayments” and payments “improperly received” by beneficiaries, *see* RCW 43.20B.620, RCW 74.04.300, these exceptions apply only to recoveries by DSHS.

B. The District Court Employed an “Other Legal Process” that Violated 42 U.S.C. § 407(a)

The District Court employed formal, legal procedures in an effort to secure Ms. Wakefield’s payment of court costs and fines. This enforcement practice constitutes an “other legal process” that violates the Social Security Act because Ms. Wakefield’s only source of income is protected federal cash assistance. If applied to state-administered cash benefits, the District Court’s fine review procedures would likely also violate state law.

1. The fine review hearing violated the anti-attachment provision of the Social Security Act

The U.S. Supreme Court has interpreted 42 U.S.C. § 407(a) to prohibit state and local governments from attaching social security benefits to defray the cost of state programs. In *Philpott v. Essex County*

Welfare Board, 409 U.S. 413, 415 (1973), a New Jersey welfare agency sought to recoup state cash assistance by “su[ing] to reach the bank account” where a beneficiary deposited the federal disability benefits he later received. The Supreme Court rejected this effort, holding that 42 U.S.C. § 407(a) “imposes a broad bar against the use of any legal process to reach all social security benefits.” *Id.* at 417. The Court declined to recognize an “implied exemption” that would have placed the county agency in a “preferred position as compared with any other creditor.” *Id.* at 416.⁴

A similar issue was presented in the criminal justice context in *Bennett v. Arkansas*, 485 U.S. 395 (1988) (per curiam). There, the state of Arkansas sought to attach a prisoner’s social security benefits “in order to help defray the costs of maintaining its prison system.” *Id.* at 396. Again citing Congress’s “clear intent” that social security benefits not be attached, the Court rejected Arkansas’s attempt to “seize” the benefits. *Id.* at 396–98; accord *In re Michael S.*, 524 S.E.2d 443, 446 (W. Va. 1999) (trial courts may not order criminal defendants “to pay restitution from [their] future supplemental security income benefits”).

⁴ In 1974, Congress responded to the *Philpott* decision by creating the Interim Assistance Reimbursement Program, *supra* section V(A)(1). See Social Security Act, Pub. L. No. 93-368, 88 Stat. 420 (1974) (codified at 42 U.S.C. § 1383(g)). In creating that exception, Congress left the general anti-attachment rule untouched.

The U.S. Supreme Court next interpreted the anti-attachment provision in *Washington Department of Social and Health Services v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003), a lawsuit against DSHS. There, the Social Security Commissioner had appointed DSHS as the representative payee for many of the children in the state foster care system. *Id.* at 379. When it serves as payee, DSHS “receives and manages” any social security benefits foster children receive and uses them “to help pay for the cost of the foster care [provided].” *Id.* at 375, 378. A class of foster children alleged that DSHS’s “use of their Social Security benefits to reimburse itself for the costs of foster care” was an “other legal process” that violated the Social Security Act. *Id.* at 379.

The Supreme Court ruled unanimously that DSHS did not violate the Social Security Act. *Id.* at 374, 392. The Court explained that “other legal process” requires “utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.” *Id.* at 385. The Court cited the Social Security Commissioner’s definition of “legal process” as “the means by which a court . . . compels compliance with its demand; generally, it is a court order.” *Id.* The Court held that DSHS’s actions did not qualify, because DSHS served as payee at the

Commissioner's request, sought no judicial intervention, and never asserted an "enforceable claim against its foster children." *Id.* at 386.

Here, the District Court's process falls squarely within *Keffeler's* definition of "other legal process." The District Court asserted enforceable claims against Ms. Wakefield. *See* CP 158, 904 (judgments); RCW 3.62.040(1) (authorizing district courts to collect court costs). When Ms. Wakefield made inconsistent payments, the District Court issued a bench warrant that compelled Ms. Wakefield to appear at a "contempt proceeding." *See* CP 902 (warrant); CP 277 (fine review hearing is a "contempt proceeding"). At the contempt proceeding—a formal hearing which took place in a courtroom, on the record, with a judge presiding, and testimony taken under oath—Ms. Wakefield was given the option to pay her debt or face imprisonment. CP 43 ("The jail is ready to take you."). At the close of the hearing, the District Court imposed a "sentence" of work crew in one matter and gave Ms. Wakefield three months to "restart" payments on the other matter. CP 111–12.

The District Court knew that Ms. Wakefield could only pay her court debt from her SSI benefits. The un rebutted evidence established that Ms. Wakefield's only cash income was SSI. *See* CP 55 ("Q: Do you have any income beyond, in the month, beyond your SSI and food stamp

benefits? A: No.”).⁵ The threat of imprisonment was an effort to “gain control over” a portion of that cash assistance in order to “secure discharge” of court costs and fines. *See Keffeler*, 537 U.S. at 386. Applying Supreme Court precedent, the fine review hearing subjected protected SSI benefits to “other legal process” in violation of the Social Security Act.

Other state courts recognize that individuals cannot be required to use protected benefits to satisfy debts owed to the criminal justice system. *See In re Lampart*, 856 N.W.2d 192, 199 (Mich. Ct. App. 2014) (reversing restitution order where trial court used “judicial mechanism” to “secure payment” from disability benefits); *State v. Eaton*, 99 P.3d 661, 665–66 (Mont. 2004) (restitution order “improperly burdens” defendant’s social security benefits); *Kays v. State*, 963 N.E.2d 507, 510–11 (Ind. 2012) (holding that it may not be error to “consider” social security benefits “in determining a defendant’s ability to pay restitution,” but explaining that “[t]his does not mean that the State could levy against that income to

⁵ The Supplemental Nutrition Assistance Program, formerly known as “food stamps,” provides electronic food benefits that can be used at participating grocery stores. *Briefing Book*, ESA Program Descriptions at 25–26. The benefits are not disbursed as cash, and Ms. Wakefield could not have transferred them to the court to satisfy court costs and fines. *See id.*

collect the restitution” and recognizing the obligation to “prevent indigent defendants from being imprisoned because of their inability to pay”).

The facts in *Lampart* were similar to the facts here. There, a woman sought to “modify or cancel a restitution obligation” after she had a heart attack and her “only source of income” became federal disability benefits. 856 N.W.2d at 194. The trial court denied the motion, reasoning that court guidelines required it to collect “SOMETHING,” so the court would continue to “review the monthly payment status at the next review hearing.” *Id.* at 195–96 (emphasis original).

The appellate court reversed, ruling that any effort by the trial court to use its “civil-contempt powers” to enforce the order “would constitute ‘other legal process’ that is prohibited under 42 U.S.C. § 407(a).” *Id.* at 199. In reaching this conclusion, the court rejected the argument, forwarded by the Respondents here, that a trial court skirts the anti-attachment provision as long as it does not “touch the contemnor’s money directly.” *See id.* at 200; *cf.* Brief of Respondents at 21 (“Here, the court did not order Ms. Wakefield to pay SSI benefits to the court.”). The Michigan Court of Appeals recognized that accepting this argument would “exalt form over substance and ignore the reality of the circumstances” because a contempt order requiring payment, when the court knows the only available income is cash assistance, is the “functional equivalent of

an order directly reaching the funds.” *Id.* at 201. On remand, the trial court was instructed not to enter a contempt order that would cause the debtor “to have to invade” her cash assistance “to satisfy her continuing restitution obligation.” *Id.* at 201.

The *Lampart* court’s reasoning is persuasive. It is well-established that “[t]he law should not be construed to do indirectly what it cannot do directly.” *Pierce Cty. v. State*, 159 Wn.2d 16, 48, 148 P.3d 1002 (2006) (citing *Gelpcke v. City of Dubuque*, 68 U.S. 175, 192 (1863)); *see also State v. Tracer*, 155 Wn. App. 171, 183, 229 P.3d 847 (2010) (explaining that “[i]t is axiomatic in law that one may not do indirectly what he may not do directly,” and holding trial court lacked authority for procedure employed below), *aff’d in relevant part*, 173 Wn.2d 708, 272 P.3d 199 (2012). It is black letter law that the District Court may not attach SSI benefits directly, and this Court should hold that the District Court may not reach them through a functionally equivalent contempt process.

2. The District Court’s process would be unlawful if applied to state cash assistance

Washington’s anti-attachment statutes are materially identical to the federal provision. State and federal law provide that cash benefits are not “transferable or assignable” and “shall not be subject to execution,

levy, attachment, garnishment, or other legal process.” *Compare* 42 U.S.C. § 407(a), *with* RCW 74.04.280 *and* RCW 74.08.210.

Given the identical language, this Court’s interpretation of 42 U.S.C. § 407(a) would likely apply to the state anti-attachment provisions. *See e.g., Schnall v. AT&T Wireless Servs., Inc.*, 171 Wn.2d 260, 271, 259 P.3d 129 (2011) (explaining that where federal and state rules are identical, “cases interpreting the analogous federal counterpart are highly persuasive”) (citation omitted); *State v. Morris*, 126 Wn.2d 306, 311–13, 892 P.2d 734 (1995) (adopting U.S. Supreme Court’s interpretation of federal law where state law contained “identical statutory language”); *State v. Sterling Theaters Co.*, 64 Wn.2d 761, 764–65, 394 P.2d 226 (1964) (“[N]early identical wording” of federal and state statutes indicates that “the motive or goal of federal and state regulation is the same.”); *cf. Kumar v. Gate Gourmet Inc.*, 180 Wn.2d 481, 491, 325 P.3d 193 (2014) (explaining that where federal and state purposes differ, state courts are “free to adopt those theories and rationale[s] which best further the purposes and mandates of our state statute”) (citation omitted).

Here, the federal and state purposes align. Both governments seek to provide low-income people with the means to meet their basic needs. *See Briefing Book*, Introduction at ii; Social Security Handbook § 2102.2. Anti-attachment restrictions support this goal by ensuring that benefits are

not improperly diverted from the recipient through legal action. The Attorney General respectfully submits that the District Court exceeded its authority by ordering that court costs and fines be paid even where the only possible payment source is means-tested public assistance.

VI. CONCLUSION

The Attorney General asks the Court to hold that the District Court's use of contempt proceedings to seek payment of court costs and fines from protected cash assistance is an "other legal process" that violates 42 U.S.C. § 407(a).

RESPECTFULLY SUBMITTED this 9th day of November, 2015.

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I certify under penalty of perjury under the laws of the state of Washington, that I served, via United States Postal Service and electronic email, a true and correct copy of the foregoing document upon the following:

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