

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████
Appellant
_____ /

Docket No. 2009-20022 MHT

HEARING DECISION AND ORDER

This matter is before the State Office of Administrative Hearings and Rules for the Department of Community Health pursuant to the provisions of MCL 330.1407, and Chapter 4 of the Administrative Procedures Act of 1969, as amended, MCL 24.271 *et seq.*

After due notice, a hearing was held on ██████████. ██████████) appeared and testified on his own behalf.

██████████ represented the Department of Community Health (Department). Also appearing were ██████████ of ██████████.

ISSUE

Has the Department properly proposed the transfer of the Appellant from ██████████
██████████

FINDINGS OF FACT

Based upon the competent, material and substantial evidence on the whole record, I find, as material fact, the following:

1. On ██████████ was informed it would close as of ██████████. In order to prepare for that event, ██████████ began the processing of transferring non-Intermediate Facility for the Mentally Retarded (ICFMR) patients to the ██████████. The Appellant is a non-ICFMR patient.
2. ██████████ the Appellant's Community Mental Health Services Provider (CMHSP), approved the Appellant's transfer to ██████████ by memorandum dated April 9, 2009. (*Exhibit 1*)

3. On ██████████ issued the Appellant a Notice of Transfer and Right to Appeal Transfer. The Appellant appealed the transfer, dated ██████████. (*Exhibit 1*)
4. On ██████████, the Appellant filed his Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

CONCLUSIONS OF LAW

A patient in a department hospital may be transferred to any other hospital, or to any facility of the department that is not a hospital, if the transfer would not be detrimental to the patient and if both the community mental health services program and the department approve the transfer.

MCL 330.1407

- (1) An individual is subject to being returned to a hospital if both of the following circumstances exist:
 - (a) The individual was admitted to the hospital by a judicial order.
 - (b) The individual has left the hospital without authorization, or has refused a lawful request to return to the hospital while on an authorized leave or other authorized absence from the hospital.
- (2) The hospital director may notify peace officers that an individual is subject to being returned to the hospital. Upon notification by the hospital director, a peace officer shall take the individual into protective custody and return the individual to the hospital unless contrary directions have been given by the hospital director.

MCL 330.1408

R 330.4011 Transfer between state hospitals.

Rule 4011. (1) A patient may be transferred between hospitals, including the university of Michigan neuropsychiatric institute or other facilities of the department which are not hospitals, for administrative reasons or for good and sufficient clinical reasons when approved by the department. Approval by the department shall be expressed by an order of transfer, a copy of which shall be forwarded to the director of each hospital involved. Prior to approval or denial of the transfer, the department shall consult with the contractually responsible county community mental health program. A request for

a transfer may be submitted by a hospital director, a patient, or other interested person.

(2) Before an approved transfer is acted upon, the director of the hospital in which the patient is currently residing shall notify in writing, not less than 7 days prior to transfer, the patient and his guardian or his nearest relative and up to 2 other persons designated by the patient, except if the transfer is necessitated by an emergency as determined by the hospital director and documented in hospital records. Under emergency circumstances, the hospital director shall effect a transfer as soon as necessary and issue the appropriate notices not more than 24 hours after transfer.

(3) The notification period of not more than 7 days prior to transfer may be reduced if the patient or his guardian or nearest relative approves the transfer in person, by telephone, or in writing, and this approval is documented. Written approval shall be obtained as soon as administratively possible.

(4) Notice of transfer by a hospital director shall inform the patient and his guardian or nearest relative of the right to object to the transfer. Upon receipt of a written objection, an appeal hearing shall be held promptly, under procedures established by the department. If an objection is made; transfer shall be delayed until a ruling of the appeal hearing indorses it, unless an emergency as determined and documented by the hospital director necessitates an immediate transfer. An emergency transfer is revocable by decision of the director of the department or by order of the appeal referee.

(5) Administrative transfer of a patient to another department hospital for purposes of supervision in connection with convalescent leave or other community placement may be appealed if it is alleged that the supervision or administrative control of the leave or placement, by the hospital to which the administrative transfer is made, and not the leave or placement itself would be detrimental to the patient.

(6) Each hospital shall establish procedures through which patients, guardians, or responsible relatives may participate in the planning or selection of a leave or placement.

AC R. 330.4001

[REDACTED]
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The Appellant testified he is opposed to the transfer, but provided no legally sustainable challenge the Department's assertion that, because the [REDACTED] is closing, it must transfer the Appellant to another facility.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department of Community Health has properly proposed the Appellant's transfer from [REDACTED].

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge

cc:

[REDACTED]

Date Mailed: 6/30/2009