

**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:

Docket No. 2009-31073 MHT

**[REDACTED],
Appellant**

HEARING DECISION AND ORDER

This case is before the State Office of Administrative Hearings and Rules 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 [REDACTED] [REDACTED] (Appellant) appeared and testified. [REDACTED], represented the Department. [REDACTED], [REDACTED]; and [REDACTED], Psychiatrist, testified as witnesses for the Department.

ISSUE

Did the Department properly transfer the Appellant to the Center for Forensic Psychiatry?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is institutionalized with a legal status of [REDACTED]
2. Appellant had been a resident of [REDACTED]
3. On or about [REDACTED], [REDACTED] requested the [REDACTED] [REDACTED] to approve the transfer of Appellant to Center for Forensic Psychiatry due to his ongoing aggressive behavior, and the security risk he poses.

4. On ██████████ agreed to have Appellant transferred to the ██████████ ██████████.
5. The Department issued the Order of Transfer on ██████████, indicating that Appellant will be transferred to the Center for Forensic Psychiatry on the basis that he requires a more restrictive setting due to his ongoing aggression and disruptive behaviors posing a security risk.
6. The Order of Transfer was approved by Community Mental Health (CMH), and Appellant was scheduled to be transferred on ██████████.
7. Appellant received the Notice of Transfer and Right to Appeal Transfer.
8. On ██████████, the State Office of Administrative Hearings & Rules received Appellant's appeal of the transfer.

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

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

Furthermore, the Department's administrative rules provide:

(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. [Emphasis supplied.] R330.4011.

In this case, The Department issued the Order of Transfer on [REDACTED], indicating that Appellant will be transferred to the Center for Forensic Psychiatry on the basis that he requires a more restrictive setting due to his ongoing aggression and disruptive behaviors, which pose a security risk. The Department determined that it is necessary for Appellant to be in a more highly secure setting. The Department has provided adequate evidence that Appellant's transfer would not be detrimental to his overall treatment. Further, Appellant provided no evidence to establish that the transfer would be detrimental to his overall treatment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department of Community Health properly transferred the Appellant to the Center for Forensic Psychiatry.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Marya Nelson-Davis
Administrative Law Judge

cc:

[REDACTED]

Date Mailed: 10/1/2009