

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2013-30379 MHT

Case No. [REDACTED]

[REDACTED],
Appellant
_____ /

HEARING DECISION AND ORDER

This case is before the Michigan Administrative Hearing System 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 telephone hearing was held on [REDACTED]. The Appellant appeared without representation. He had no witnesses. [REDACTED], social worker supervisor/Transfer Coordinator appeared on behalf of the [REDACTED] for [REDACTED], hereinafter the [REDACTED]. She had no witnesses.

[REDACTED], CSW Manager-2/Transfer Coordinator at [REDACTED], appeared as representative for [REDACTED]. She had no witnesses.

ISSUE

Did the Department properly transfer the Appellant from the [REDACTED] to the [REDACTED]?

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 was transferred to the [REDACTED]. (Exhibit A, p. 3)
2. The Appellant has been adjudicated Not Guilty By Reason of Insanity (NGBRI) for UDAA, Retail Fraud, third degree, two counts; Fleeing, third degree, three counts; Assault with intent to do Great Bodily Harm Less than Murder; and Police Officer Assaulting/Resisting/Obstructing. He was transferred to the [REDACTED] from the [REDACTED] on [REDACTED]. (Exhibit A - throughout)

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3. On [REDACTED] the Appellant had been showing signs of decompensation related to his psychiatric stability. He then assaulted staff - breaking multiple bones in a staff member's leg. (Exhibit A and See Testimony)
4. On [REDACTED] the Appellant was placed in the Admissions Unit for higher security – but it was determined that he needed a more structured and highly secure setting than the [REDACTED] could provide. (Exhibit A, p. 3)
5. On [REDACTED] Community Mental Health Authority – [REDACTED], LMSW, authorized the transfer of the Appellant from [REDACTED] to the [REDACTED]. The CMHA letter of authorization and the Order of Transfer were forwarded to [REDACTED], Director, Bureau of State Hospitals and Behavioral Health Administrative Operations for review and signature. (Exhibit A, pp. 1 - 7)
6. On [REDACTED] the Appellant was transferred and received his Notice of Transfer and Right to Appeal Transfer at the [REDACTED] Center wherein he appealed his transfer. (Exhibit A at page 7)
7. During the hearing, Appellant said he did not want to be transferred to the [REDACTED] and if permitted to return to the [REDACTED] he "...would apologize and take his medications as needed, play basketball and stay fit." (See Testimony of Appellant and Appellant's Ex. 1)
8. On [REDACTED] his psychiatrist assessed the Appellant as a safety risk to staff, the patient and peers demonstrating violence against staff and peers and non-compliance with medications and labs. (Exhibit A, pp. 8 and 9)
9. The instant request for hearing was received by the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on [REDACTED]. It was scheduled for hearing [REDACTED].

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) A resident in a center may be transferred to any other center, or to a hospital operated by the department, if the transfer would not be detrimental to the resident and the responsible community mental health services program approves the transfer.

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(2) The resident and his or her nearest relative or guardian shall be notified at least 7 days prior to any transfer, except that a transfer may be effected earlier if necessitated by an emergency. In addition, the resident may designate 2 other persons to receive the notice. If the resident, his or her nearest relative, or guardian objects to the transfer, the department shall provide an opportunity to appeal the transfer.

3) If a transfer is effected due to an emergency, the required notices shall be given as soon as possible, but not later than 24 hours after the transfer. (Emphasis supplied) MCL 330.1536

Rule 330.4011 Transfer between state hospitals.

(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.

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(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. (Emphasis supplied)

The Appellant now resides at the ██████████ following assaultive events at the ██████████ and his need for a more secure environment. The Appellant testified that he wanted to return to ██████████ where he would apologize to those concerned, take his medication and stay fit. He authored a letter voicing these same ideas. See Appellant's Ex. 1

Since his admission to the ██████████ the Appellant's behavior has been problematic according to his social worker. He punched a window and threw hot chocolate at staff. He has sporadic attendance to group events – mostly sitting or pacing the hall.

Department witness ██████████ said that the Appellant was served his notice of transfer and appeal on the date of arrival once the emergency orders were executed by ██████████.

On review, this transfer request was the result of a recent attack by the Appellant on ██████████ staff causing serious injury. It followed an observed period of decompensation. Appellant was considered to be a high risk patient in need of a more secure and highly structured environment. Thus, the transfer back to the ██████████ - a more secure setting – was a reasonable resolution.

The Michigan Mental Health Code permits the transfer of a patient from one inpatient facility to another if it would not be detrimental or if an emergency is presented. The documents presented at the hearing show that all the paperwork required for transfer by law was fulfilled. There was no evidence that the transfer was detrimental to the Appellant. There was sufficient evidence to show an emergency situation, thus his transfer to a more secure facility.

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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 proposed the transfer of the Appellant from the [REDACTED] to the [REDACTED].

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

/s/ _____

Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]
[REDACTED]

Date Signed: 5/13/2013

Date Mailed: 5/13/2013