

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

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IN THE MATTER OF:

██████████

Docket No. 2013-30405 MHT

Case No. ██████████

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 telephone hearing was held on ██████████, at ██████████. The Appellant appeared without representation. He had no witnesses. The Department was represented by ██████████, supervisor of social work and Transfer Coordinator at the ██████████ for ██████████ [hereinafter the ██████████] and ██████████, CSW Manager-2/Transfer Coordinator for the ██████████ Center. Her witness was ██████████, direct care worker ██████████.

ISSUE

Did the Department properly transfer the Appellant from the ██████████ ██████████ to ██████████?

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 ██████████. (Exhibit A – pp. 1, 2 and 11)
2. The Appellant was a civil commitment to the mental health division of ██████████.
3. The Appellant was admitted to the ██████████ on ██████████ on emergent transfer from ██████████. (Department's Exhibit A, pp. 4 and 5)
4. Previously, the Appellant was on 2:1 staffing – but was last on 2:1 supervision for agitated/threatening behavior on ██████████ – his clinical reviewers attested that he has been “void of aggressive behavior since ██████████.” They sought beneficial administrative transfer for the Appellant to a less

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restrictive setting. (Department's Exhibit A, pp. 1 – 5)

5. On [REDACTED] the [REDACTED] Community Mental Health approved the inter-facility transfer of the Appellant from the [REDACTED] to the [REDACTED]. (Department's Exhibit A, p. 13)
6. On [REDACTED] the Order of Transfer was executed by Hospital Director [REDACTED] which memorialized his movement to a lesser restrictive setting – [because] "...the treatment team and Hospital Director have approved the transfer of [REDACTED] to the [REDACTED]. The patient no longer requires treatment in a maximum security hospital and is capable of handling a lesser restrictive environment. [REDACTED] CMH has approved this transfer." (Department's Exhibit A, p. 13)
7. On [REDACTED] the Appellant was discharged from the [REDACTED] and released to the custody of the [REDACTED] effective [REDACTED]. (Department's Exhibit A, p. 25)
8. On [REDACTED] the Appellant was transferred and received his Notice of Transfer and Right to Appeal Transfer. He did not execute the Appeal portion of the transfer document. (Department's Exhibit A, p. 26)
9. On [REDACTED] the Appellant filed a Recipient Rights complaint wherein he equivocated his appeal decision, stating; "I never consented to a discharge from the [REDACTED]. And any documents containing my signature¹ to show otherwise is forged." The Appellant then documented a desire to return to the [REDACTED]². (See Testimony and Appellant's Ex. #1)
10. An administrative hearing was scheduled before the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on [REDACTED] on the Appellant's request for hearing - received [REDACTED].
11. During the hearing, Appellant said he wanted to go back to the [REDACTED] because it was a modern building... and everybody at [REDACTED] was crazy and watched TV all day." He also objected to supervised toileting. (See Testimony of Appellant)

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.

1 The Appellant's signature does not appear on the notice of transfer/appeal. See Department's Ex. A p. 26

2 The document in question is difficult to read, but it was interpreted by Department witness [REDACTED] in the presence of the Appellant without objection. [ALJ note] – a typed translation is appended to the exhibit. See Appellant's Exhibit #1

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.

(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.
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,

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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.

The Appellant now resides at the ██████████ following a clinical assessment that he was no longer a patient in need of a secure psychiatric hospital having made significant gains in functioning during his intensive treatment at the ██████████.

The Appellant testified that he "...just wants to go back to the ██████████." He said everybody at "...██████ is crazy" and there is no one to interact with – he objected to monitored toileting. The Department witness ██████████ testified that the Appellant requires "an open door" during toileting owing to his risk for water intoxication. (See Testimony of ██████████)

The Appellant is not an elopement risk and he has made significant gains in improving his functionality. He simply does not require a maximum security hospital environment. While there might be some post-transfer adjustment malaise the transfer itself was clinically appropriate and not detrimental to the best interests of the Appellant.

On review of the evidence and the testimony presented today the transfer is indorsed by the ALJ. Thus, the transfer to the ██████████ - a lesser restrictive setting – was a reasonable resolution in the best interest of the Appellant.

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.

[REDACTED]
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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]
[REDACTED]

Date Signed: 5/13/2013

Date Mailed: 5/13/2013