

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 14-017485 MHT

████████████████████

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 January 22, 2015. Appellant appeared without representation and testified on his own behalf. ██████████ ██████████ Transfer Coordinator appeared and testified on behalf of the ██████████ ██████████, hereinafter the ██████████.

██████████, Admission Coordinator at ██████████ ██████████, appeared as representative for ██████████ ██████████ ██████████, Appellant's psychiatrist, and ██████████ ██████████, Appellant's clinical social worker, testified on behalf of ██████████ ██████████.

ISSUE

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

FINDINGS OF FACT

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

1. Appellant was readmitted to the ██████████ ██████████ (██████████) ██████████ on September 19, 2014 after having been discharged to a group home in June 2014. (Testimony)
2. Appellant had been adjudicated Not Guilty By Reason of Insanity (NGRI) on the charge of first degree murder and a Continuing (one year) Order was entered in Wayne County Probate Court on January 15, 2014. (Exhibit A, p 3; Testimony)
3. On November 25, 2014, Detroit Wayne Mental Health Authority authorized the transfer of Appellant from ██████████ ██████████ to the ██████████ ██████████

- ██████████ (██████████ or ██████). The CMHA letter of authorization and the Order of Transfer were forwarded to ██████████, Director, Bureau of State Hospitals and Behavioral Health Administrative Operations for review and signature. (Exhibit A, pp 3-4)
4. On or about November 24, 2014, Appellant's treatment team requested that he be returned to ██████ due to ██████████ no longer being the least restrictive facility for his needs. The team indicated the behaviors displayed by the Appellant created an environment of hostility and fear at ██████████ that interfered with the safety and treatment of staff and others housed in the unit. The NGRI committee approved his transfer to ██████. (Exhibit A, pp 1-4; Testimony)
 5. On November 25, 2014, the Order of Transfer was signed by ██████████ Director, Bureau of State Hospitals and Behavioral Health Administrative Operations. (Exhibit A, p 3)
 6. On November 26, 2014, Appellant was transferred and received his Notice of Transfer and Right to Appeal Transfer at the ██████████ wherein he appealed his transfer. (Exhibit A, p 2)
 7. The instant request for hearing was received by the Michigan Administrative Hearing System (MAHS) on December 3, 2014. (Exhibit A, p 1)

CONCLUSIONS OF LAW

The Michigan Mental Health Code provides, in pertinent part:

330.1407 Transfer of patient; notice; appeal.

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. The patient, a patient advocate designated to make mental health treatment decisions for the patient under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, if any, and the patient's guardian or nearest relative shall be notified at least 7 days prior to any transfer, except that a transfer may be effected earlier if it is necessitated by an emergency. In addition, the patient may designate up to 2 other persons to receive the notice. 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. If the patient, the patient advocate, or the patient's guardian or nearest relative objects to the transfer, the department shall provide an opportunity to appeal the transfer. MCL 330.1407

330.1536 Transfer of resident; notice; appeal.

(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.

The Michigan Administrative Code provides, in pertinent part:

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. (MAC R 330.4011, emphasis added).

Appellant now resides at the ██████████ following behaviors displayed by the Appellant that created an environment of hostility and fear at ██████████ ██████████ that interfered with the safety and treatment of staff and others housed in the unit.

Appellant's Clinical Social Worker testified that Appellant was readmitted to ██████████ on September 19, 2014 after having been discharged to a group home in June 2014. Appellant's Clinical Social Worker indicated that Appellant indicated upon admission that his mind was not right and that he was hearing music. Appellant's Clinical Social Worker testified that Appellant initially stayed in his room a lot and complained about hearing voices before he began to decompensate. Appellant's Clinical Social Worker testified that Appellant began standing alone in corners and acting very strange. Appellant's Clinical Social Worker indicated that on October 30, 2014, Appellant accused staff of killing his father and on November 1, 2014, Appellant was found standing over another patient's bed while the patient was sleeping, which caused the patient extreme fear. Appellant's Clinical Social Worker testified that staff tried to meet with Appellant regarding his strange and erratic behaviors, but during the meetings Appellant would smile, laugh, and say everything was alright. Appellant's Clinical Social Worker testified that on November 19, 2014, Appellant attacked a female staff member and threw her to the ground and on November 20, 2014, Appellant told another female staff member that he had been trying to date her for the past two years, which caused the staff person great concern. Appellant's Clinical Social Worker testified that later in the evening on November 20, 2014, Appellant lured a staff member into the bathroom, threw him to the floor, and beat him severely. The staff member was injured, required medical treatment, and missed work because of his injuries. Appellant's Clinical Social Worker testified that the decision was then made to request Appellant's transfer to ██████████ because ██████████ was not equipped to handle someone so unpredictable and dangerous.

Appellant's psychiatrist testified that he was the first person to treat Appellant following his release from ██████████ in 2003 and that Appellant did well for a couple of years. However, Appellant's psychiatrist indicated that Appellant has not been the same since and has been readmitted to ██████████ five or six times over the intervening years. Appellant's psychiatrist testified that since his most recent readmission, Appellant has been suffering from acute psychotic episodes where he has been violent, oppositional, and verbally abusive, especially towards African-American staff. Appellant's psychiatrist reiterated the incidents described by the Clinical Social Worker and testified that the hospital was simply not equipped to monitor and handle someone as unpredictable and violent as Appellant.

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Appellant's psychiatrist testified that following the last incident where a staff member was beaten in the bathroom by Appellant, the decision was made to transfer Appellant to ██████.

Appellant testified only that he is a good person and that he has it right with his maker.

On review, this transfer request was the result of behaviors displayed by the Appellant that created an environment of hostility and fear at ██████ that interfered with the safety and treatment of staff and others housed in the unit. Appellant threatened staff, others housed in the unit, and physically attacked two staff members, injuring one so severely that the staff member required medical treatment and missed work. Appellant was considered to be a high risk patient in need of a more secure and highly structured environment. Thus, the transfer to the ██████ - a more secure setting – was a reasonable resolution. Appellant offered no evidence or testimony to contradict the testimony of his social worker or psychiatrist.

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.

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 ██████ to the ██████.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: January 23, 2015

Date Mailed: January 23, 2015

RJM/las

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cc:

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***** NOTICE *****

The Michigan Administrative Hearings System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearings System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.