



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This case is before the Michigan Administrative Hearing System (MAHS) 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]. Petitioner appeared and testified on his own behalf. [REDACTED], Transfer Coordinator at the [REDACTED], appeared and testified on behalf of the Respondent Michigan Department of Health and Human Services. [REDACTED], Acting Director of [REDACTED], also testified as a witness during the hearing.

ISSUE

Did the Department properly transfer Petitioner from the [REDACTED] to the [REDACTED] ([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. Petitioner was admitted to the [REDACTED] after being found not guilty by reason of insanity on charges against him. (Testimony of Petitioner; Testimony of Respondent's representative).
2. The [REDACTED] is a maximum security hospital. (Testimony of Petitioner; Testimony of [REDACTED]).

3. Petitioner subsequently improved and was transferred to ██████, a less restrictive setting. (Testimony of Petitioner).
4. On ██████████, Petitioner was released from ██████ on Authorized Leave Status and was placed in an Adult Foster Care (AFC) home. (Testimony of Respondent's representative).
5. On ██████████, Petitioner eloped from his AFC home. (Exhibit 2, page 1).
6. After his elopement, Petitioner did not return to his placement and could not be located. (Exhibit 2, page 1).
7. While he was missing, ██████ requested that Petitioner be transferred to the ██████ (Testimony of Respondent's representative).
8. On ██████████, the ██████████, the local community mental health services program (CMHSP) approved the transfer between hospitals. (Exhibit 3, page 1).
9. On ██████████, an Order of Transfer was issued by the Department. (Exhibit 2, page 1).
10. On or about ██████████, the police located Petitioner. (Exhibit 1, page 1).
11. Petitioner was then taken to the ██████. (Testimony of Petitioner; Testimony of Respondent's representative).
12. Petitioner was also given a copy of the Notice of Transfer and Right to Appeal. (Exhibit 1, page 1).
13. On ██████████, the Michigan Administrative Hearing System (MAHS) received Petitioner's request for hearing with respect to the decision to transfer him.

CONCLUSIONS OF LAW

Regarding patient transfers between hospitals, MCL 330.1407 provides:

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.

Similarly, with respect to grounds for transfer, notice and objections, MCL 330.1536 states:

(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.

Moreover, Michigan Administrative Code Rule 330.4011, regarding transfers between state hospitals, further provides in part:

(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.

Here, pursuant to the above statutes and rule, Respondent transferred Petitioner from the [REDACTED] to the [REDACTED]. Petitioner appealed that transfer.

In support of the decision, Respondent's representative testified that, while Petitioner had been previously placed in an AFC as part of his Authorized Leave Status with [REDACTED] Petitioner subsequently eloped and could not be located for months. She also testified that, given that elopement and the probability that Petitioner was off his medication, in addition to the fact that he may have committed more crimes, [REDACTED] requested that he be

transferred back to the [REDACTED]. She further testified that both the local CMHSP and the Department approved the transfer and that, after he was located, Petitioner was taken directly to the [REDACTED] without ever being returned to or examined at the [REDACTED].

In response, Petitioner testified that, while he eloped, he did not commit any crimes and had no signs or symptoms of psychiatric issues. He also testified that he did not receive any documentation regarding the transfer and that he should have been brought back to [REDACTED]. He further testified that he believes that he was not returned to [REDACTED] due to a lack of a bed and that his civil liberties were violated by him being put in a more restrictive environment.

Given the above testimony and the record in this case, the undersigned Administrative Law Judge finds that the transfer was proper and should therefore be affirmed. The facts are largely undisputed and they demonstrate that Petitioner both improperly eloped from his AFC placement and that, given the significant time frame he was missing, was most likely off his medications. As such, there were sufficient clinical reasons for the transfer and Petitioner's mere objection to being placed in more restrictive setting, without anything more, is insufficient to demonstrate that the transfer would be detrimental to him. Moreover, the transfer requested by the professionals at KPH was approved by both the Department and the applicable CMHSP. The Michigan Mental Health Code permits the transfer of a patient from one inpatient facility to another if the transfer would not be detrimental to the patient and if both the local CMHSP and the Department approve the transfer. That is what occurred in this case and the Respondent's decision is therefore affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly transferred Petitioner from the [REDACTED] to the [REDACTED].

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Steven Kibit

[REDACTED]

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

[REDACTED]

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NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

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