



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 30, 2016
MAHS Docket No.: 16-006528
Agency No.: 0
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 June 30, 2016. Petitioner appeared without representation and testified on his own behalf. [REDACTED], Acting Director appeared on behalf of the [REDACTED].

[REDACTED] appeared and testified on behalf of [REDACTED]

ISSUE

Did the Department properly transfer Petitioner from 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, a resident of WRPB, had been adjudicated Not Guilty By Reason of Insanity (NGRI) on the charges of Carjacking; Operating-License-Forgery/Alteration/False ID; Operating without a License in [REDACTED]. A Continuing (one year) Order was entered in Wayne County Probate Court on [REDACTED]. (Exhibit A, p 3; Testimony)

2. On [REDACTED] authorized the transfer of Petitioner from [REDACTED] to the [REDACTED]. The [REDACTED] letter of authorization and the Order of Transfer were forwarded to [REDACTED] for review and signature. (Exhibit A, pp 3-4)
3. On or about [REDACTED], Petitioner's treatment team requested that he be transferred to [REDACTED] due to [REDACTED] no longer being the least restrictive facility for his needs. The team indicated that the transfer request was made after Petitioner was found to be in possession of the following contraband items on [REDACTED] marijuana; 4 pens; 1 unopened pack of Newport cigarettes; 2 lighters; and 3 packs of Skippy peanut butter. The NGRJ committee approved his transfer to CFP. (Exhibit A, pp 1-4; Testimony)
4. On [REDACTED] Petitioner received his Notice of Transfer and Right to Appeal Transfer, which he signed on that same date initiating this appeal. (Exhibit A, p 2)
5. On [REDACTED], the Order of Transfer was signed by [REDACTED]. (Exhibit A, p 3)
6. The instant request for hearing was received by the Michigan Administrative Hearing System (MAHS) on May 24, 2016. (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 affected 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.

(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).

Assistant Director testified that Petitioner was found to be in possession of the following contraband items on : marijuana; 4 pens; 1 unopened pack of Newport cigarettes; 2 lighters; and 3 packs of Skippy peanut butter. Assistant Director indicated that Petitioner had been acting out and acting in a threatening manner, which led to a drug test, the search of his area and the discovery of the contraband. Assistant Director testified that Petitioner was already on a behavior management plan because of an incident with a female peer at . Assistant Director indicated that Petitioner threatened to “start a war” with the person who turned him in over the contraband.

Petitioner testified his discharge summary incorrectly states that he dropped dirty for marijuana on three occasions when in fact he only did once. Petitioner indicated that he never became disruptive, never acted out, and never threatened anyone. Petitioner testified that he cooperated with the search team and told them where the contraband was when his area was being searched. Petitioner indicated that he believed the incident could have been handled at and that the transfer was detrimental to him because it will affect his plans for the future. Petitioner indicated that he would like to return to and work on his issues without the aid of illegal substances.

On review, this transfer request was the result of Petitioner being found to be in possession of contraband items, including marijuana; 4 pens; 1 unopened pack of Newport cigarettes; 2 lighters; and 3 packs of Skippy peanut butter. WRPH determined that a transfer to was necessary because is a more secure environment which would assist Petitioner manage his behaviors. Thus, the transfer to the - a more secure setting – was a reasonable resolution. While Petitioner disputed that he had acted out or threatened anyone, the discovery of the contraband in question would be sufficient grounds to transfer him to a more secure facility.

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 Petitioner.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department of Health and Human Services properly proposed the transfer of the Petitioner from [REDACTED] to the [REDACTED]

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/cg

Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]