



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: March 20, 2020
MOAHR Docket No.: 20-000020
Agency No.: 0
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This case is before the Michigan 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 March 19, 2020. Petitioner appeared and testified on his own behalf. Petitioner requested that his witness, [REDACTED], be conferenced into the hearing. The undersigned contacted [REDACTED] on two occasions and left her messages for her with the conference line information but she did not call the conference line while the hearing was pending.

Valerie Kopka, Director of Forensic Services appeared and testified on behalf of the Center for Forensic Psychiatry (CFP).

Madeline Magnan, Administrative Discharge Specialist, appeared and testified on behalf of Kalamazoo Psychiatric Hospital (KPH).

ISSUE

Did the Department properly transfer Petitioner from KPH to CFP?

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 is a male resident of Kent County Michigan who was admitted to KPH on October 25, 2019 after his release from CFP on an involuntary Not Guilty By Reason of Insanity (NGRI) Diagnostic order. (Exhibit A, p 3; Testimony)
2. On November 3, 2019, Petitioner eloped from KPH after visiting another patient. Following the elopement, KPH recommended that Petitioner be transferred back to CFP should he be found or turn himself in. (Exhibit A,

pp 2-3; Testimony)

3. On November 11, 2019, Network 180, the Community Mental Health agency in Kent County, was made aware of the transfer of Petitioner from KPH to CFP and agreed with the transfer. (Exhibit A, p 4; Testimony)
4. The Network 180 approval and Order of Transfer were forwarded to the Director, Bureau of State Hospitals and Behavioral Health Administrative Operations for review and signature. (Exhibit A, pp 3-4)
5. On November 8, 2019, the Order of Transfer was signed by the Director, Bureau of State Hospitals and Behavioral Health Administrative Operations. (Exhibit A, p 3)
6. On or about December 27, 2019, Petitioner turned himself in to Network 180 and was transferred first to [REDACTED] emergency department and then transferred to CFP. At CFP, Petitioner was given his Notice of Transfer and Right to Appeal Transfer. Petitioner then appealed his transfer. (Exhibit A, p 2)
7. On January 2, 2020, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (Exhibit A, p 1). A hearing originally scheduled for February 12, 2020 was adjourned because Petitioner had a Probate Court hearing on that same date.

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, Emphasis added

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

Petitioner now resides at CFP following his elopement from KPH.

KPH's Administrative Discharge Specialist testified that Petitioner eloped from KPH so KPH recommended that Petitioner be transferred back to CFP should he be found or turn himself in. KPH's Administrative Discharge Specialist indicated that Petitioner broke his ALS contract by eloping from KPH.

Petitioner cited MCL 330.1126 to support his argument that he was improperly transferred to KPH. MCL 330.1126 provides:

The department shall endeavor to ensure that no individual will be admitted to or provided services by a facility of the department or a facility of a community mental health services program unless the facility can provide treatment or services appropriate to the individual's condition and needs. The department shall also endeavor to ensure that an individual's course of treatment will be completed in the shortest practicable time.

Petitioner argued that KPH was not able to provide treatment or services that were appropriate to his needs or conditions during his stay, so he eloped. Petitioner testified that he was not sleeping properly at KPH and could not get proper medication to help him sleep. Petitioner indicated that he was sleepless for three days and was on the brink of mania. Petitioner further argued that returning him to KPH after his elopement would have ensured his treatment be completed in the shortest practicable time, as provided for in MCL 330.1126.

On review, this transfer request was the result of Petitioner's elopement from KPH. Thus, the transfer to CFP - a more secure setting - was a reasonable resolution. Petitioner offered no evidence or testimony to contradict the testimony of the Department's witnesses. While Petitioner asserted that he left KPH because he was not

receiving proper treatment, Petitioner then sought to be returned to the very same setting. Petitioner certainly had other options to address his concerns at KPH besides elopement.

The Michigan Mental Health Code permits the transfer of a patient from one inpatient facility to another if it would not be detrimental to the patient or if an emergency is presented. The evidence presented at the hearing shows that all the paperwork required for transfer by law was fulfilled. There was no evidence that the transfer was detrimental to Petitioner. As such, the Department's decision was proper and should be 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 KPH to CFP.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/sb

Robert J. Meade
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS -Dept Contact

Nick Norcross
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Petitioner

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