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Date Mailed: March 2, 2020
MOAHR Docket No.: 20-000329
Agency No.:
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This case is before the Michigan Office of Administrative Hearings and Rules (MOAHR) 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 February 27, 2020. Petitioner appeared on his own behalf. Madeline Magnan, from the Kalamazoo Psychiatric Hospital, appeared and testified on behalf of the Respondent Michigan Department of Health and Human Services (MDHHS or Department). Valerie Kopka, Director of Forensic Services at the Center for Forensic Psychiatry, was also present.

During the hearing, Petitioner left the hearing room and the hearing concluded.

ISSUE

Did the Department properly transfer Petitioner to the Center for Forensic Psychiatry (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. In January of 2020, Petitioner was a resident at the Kalamazoo Psychiatric Hospital (KPH) pursuant to a court order. (Exhibit B, page 1).
2. During that month, a doctor at KPH requested that Petitioner be transferred to a more restrictive setting, *i.e.* the CFP, in order to ensure Petitioner's safety and the safety of others. (Exhibit B, page 1).
3. Lifeways Community Mental Health also approved Petitioner's transfer from the KPH to CFP. (Exhibit C, page 1).

4. On January 23, 2020, an Order of Transfer was completed. (Exhibit B, page 1).
5. On January 24, 2020, Petitioner was provided a written Notice of Transfer and Right to Appeal Transfer. (Exhibit A, page 1).
6. That same day, Petitioner signed and completed an Appeal of Transfer form. (Exhibit A, page 1).
7. On January 24, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a copy of Petitioner's Appeal of Transfer from the Department's Bureau of Hospitals and Administrative Operations.

CONCLUSIONS OF LAW

Individuals may be hospitalized and receive involuntary mental health treatment pursuant to court orders. See MCL 330.1403; MCL 330.1409(6); MCL 330.1464a; MCL 330.1472a; MCL 330.1468(2)(a).

Moreover, regarding the location of such treatment and 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.

*MCL 330.1407
(emphasis added)*

Similarly, 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.

MCL 330.1536
(emphasis added)

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.

*R 330.4011
(emphasis added)*

Here, pursuant to the above statutes and rule, the Department decided to transfer Petitioner from the KPH to the CFP. Petitioner appealed that decision.

On review, the transfer was proper and should be affirmed. The Department's representative credibly explained why Petitioner was being transferred due to his assaultive behaviors and in order to ensure his safety and the safety of others. Moreover, the Department also properly consulted with, and got approval from, the local community mental health program as required and there is no evidence suggesting that the transfer was detrimental to Petitioner.

Petitioner abandoned the hearing prior to testifying, but, based his earlier interjections, he only appears to dispute the transfer on the basis that he was not engaging in assaultive behaviors and he presented no evidence demonstrating either that the Department erred or that the transfer was detrimental to him.

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 community mental health program and the Department approve the transfer. That is what occurred in this case and the decision to transfer Petitioner 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 KPH to the CFP.

IT IS THEREFORE ORDERED that:

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



SK/sb

Steven Kibit

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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Community Health Rep

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