STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
AUGSC-CV-22-189

A.F.,

Petitioner,

v.

MAINEGENERAL MEDICAL CENTER,

Respondent.

ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

BACKGROUND

Before the Court is a Petition for a Writ of Habeas Corpus brought by A.F., a 45-year-old deaf woman who suffers from mental illness. She was detained at MaineGeneral Medical Center's ("MGMC") Emergency Department ("ED") for 65 days from October 12, 2022 until December 14, 2022, when MGMC finally admitted her to their A-3 in-patient psychiatric unit.

The Court has considered the evidence at hearing on October 19, 2023, and has considered the written post-hearing arguments of the parties, the last of which was received on December 20, 2023, and has concluded that Petitioner A.F. is entitled to some form of relief, but the Court will be ordering further proceedings to hear arguments as to what form the relief should take.

Petitioner has asked the Court to grant her Petition based upon a finding that hospitals such as MGMC do not enjoy "plenary, unreviewable discretion" to decide which patients they admit from a "waiting list" of patients like A.F. who wait—sometimes for months—to be admitted to a psychiatric hospital after being "blue papered" under Maine law. Petitioner claims she was entitled to appointment of counsel, along with other due process protections, while

waiting for placement. She claims hospitals such as MGMC who contract with the Maine Department of Health and Human Services ("DHHS") to admit and treat "blue papered" individuals cannot simply reject a patient such as A.F. by asserting the person does not meet their standards for "acuity" and/or are not a good fit for their "milieu." MGMC asserts that it adhered to and went above and beyond the requirements under Maine law and pursuant to its contract with DHHS.

The parties do agree that under Maine's current system, psychiatric patients such as A.F. are living in emergency rooms across Maine for up to months at a time while they are waiting for admission to psychiatric facilities, including Maine's two State psychiatric hospitals, Riverview Psychiatric Center and Dorothea Dix Psychiatric Center, along with the 8 private hospitals that have contracted with the State to accept such patients in their psychiatric units. The parties agree that A.F. was detained at the MGMC ED while awaiting the so-called "white paper process" to unfold. That process carries with it elevated due process protections, including appointment of counsel and which may culminate in a full, confidential hearing before a District Court Judge.

The parties essentially agree as to what happened over the course of those 65 days. A.F. was held against her will at the MGMC ED while the process played out. MGMC provided her basic needs including interpreter services and medication, but she did not receive the same level of psychiatric treatment she would have received had she been admitted to either a State or private psychiatric hospital while being further assessed for court proceedings, nor was she afforded legal representation. The parties further seem to agree that MGMC followed the "blue paper" process established by the Maine Legislature twelve separate times by completing three statutorily mandated steps: (1) application; (2) certifying examination; and (3) judicial review

and endorsement. 34-B M.R.S. §§ 3863(1)-(3). Each time after these steps were completed, a District Court Judge who reviewed and endorsed the application stated, as printed on the form:

> I find this application and certificate to be regular and in accordance with the law. No psychiatric hospital has been located as of the date of the certifying examination. [A.F.] may remain at [MGMC ED] pending the location of an inpatient bed at a psychiatric hospital or other appropriate alternative subject to the requirements of 34-B M.R.S. § 3863(3). If an available inpatient bed at a psychiatric hospital is located, and the emergency admission of [A.F.] is still sought, the applicant shall immediately notify a judicial officer for final review and endorsement under Section 3.B.2 below.

Ex. 9.

Over the course of the 65 days, A.F. was rejected by the following hospitals: Riverview Psychiatric Center, Dorothea Dix Psychiatric Center, Spring Harbor Hospital, Northern Light Acadia Hospital, Southern Maine Medical Center, St. Mary's Regional Medical Center, Mid Coast Hospital, Penobscot Bay Hospital, Maine Medical Center, and MGMC. They all claimed that she was not a good fit for their hospital as her acuity level was too high, or otherwise did not fit their milieu. And these rejections repeatedly occurred while other patients, who were also awaiting admission from MGMC's ED, were admitted to psychiatric hospitals. Janelynn Duprey, Nursing Director for the ED at MGMC, testified that there is essentially no "waiting list" for these patients as that term is conventionally understood. Instead, prospective hospitals are permitted to decide whether a patient is a good fit for their facility. If not, the patient and the ED where the patient is being detained, have no option but to accept that decision, and to wait. And wait they did.

In A.F.'s case, her waiting finally ended when Nursing Director Duprey, clearly frustrated but undeterred, advised A.F. to contact Disability Rights Maine to take her case. This Petition

was soon filed with their assistance. Two days later, MGMC moved A.F. from their ED upstairs to their psychiatric unit.[1]

STANDARD OF REVIEW

Approximately three years ago, the Law Court stated in *A.S. v. LincolnHealth* that Section 3863 of Title 34-B was "an imprecise 'fit' for what is actually happening in Maine's emergency departments as they struggle to deal with patients who need psychiatric beds at a time when the State has failed to create or fund enough of those beds." 2021 ME 6, ¶ 16, 246 A.3d 157. The Law Court further noted that this statute is one of a very few "that provides the civil authority for a person or entity to hold another person against his wishes." *Id.* In addition, the Law Court recognized the guiding principle from the United States Supreme Court that "'civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'" *Id.* (quoting *Addington v. Texas,* 441 U.S. 418, 425 (1979)).

Eight years before its decision in *LincolnHealth*, the Law Court held in *In re Marcia E.*, that "[u]nder no circumstances may a hospital hold a person against his or her will for longer than twenty-four hours unless the hospital has obtained a judge's endorsement." 2012 ME 139, ¶ 6, 58 A.3d 1115. Three years later, the Maine Legislature amended Section 3863. *LincolnHealth*, 2021 ME 6, ¶ 20, 246 A.3d 157 (citing P.L. 2015, ch. 309, § 3 (effective July 2, 2015)). The Law Court noted that the amendments did not change the language requiring judicial endorsement within the first twenty-four hours after a person is detained. *Id.* ¶¶ 20-21. It continued:

> What was changed by the 2015 amendments, however, is the *duration* of the detention that such a judicial endorsement allows. The unambiguous language of the 2015 amendments permits a hospital that obtained judicial endorsement for a patient's detention during the "original" twenty-four-hour period of detention to

[1] MGMC does not argue in the post-hearing briefing that this case is moot. And even if it did, the Court concludes that the exceptions to the mootness doctrine applied by the Law Court in *A.S. v. LincolnHealth*—the public interest exception and the repeat presentation exception—apply with equal force here. 2021 ME 6, ¶¶ 8-10, 246 A.3d 157.

> continue to hold that individual for two additional forty-eight-hour periods if the hospital complies with certain requirements.

Id. ¶ 21 (emphasis in original).

The Law Court rejected LincolnHealth's central premise—that "there is simply no due process for those held by but not admitted to hospitals," as that position was "not supported by the language of the statute or by [Maine] case law." *Id.* ¶ 24. And the Court stated that it "could not endorse an interpretation of the statute that provides no legal protections for patients before an actual placement in a psychiatric hospital occurs." *Id.* It clarified, however, that LincolnHealth was not required to either discharge the Plaintiff in that case or transfer him to a psychiatric hospital at the end of the 120-hour authorized hold period. *Id.* ¶ 25. Instead, the Law Court held that the hospital could "restart" the process so long as certain requirements were met: a new application along with certifying information had to be supplied, "including adequate and updated information relevant to the individual at that moment in time," and it had to be submitted for judicial endorsement within twenty-four hours after the 120-hour period ends. *Id.* "With a new judicial endorsement in hand, the hospital may then continue its efforts to find an appropriate placement for the patient and will not be required to discharge him." *Id.*

The Law Court in *LincolnHealth* did not, however, have before it the exact issues presented here, and it did not address how many "restarts" are permissible before a patient's due process rights are violated. It seemed satisfied, however, that restarting the process after the 120-hour period, with a new application containing certifying information and updated clinical information on the individual—so long as judicially endorsed—would comport with due process requirements. That process was actually followed here. Importantly, however, the blue paper process was repeated 11 times after the first application was judicially endorsed on October 14, 2022. There is no indication in *LincolnHealth* that the Law Court ever expected that the "restart

process" could go on indefinitely, and it stated plainly that patients in A.F.'s circumstances continue to be protected by due process while waiting. *Id.* ¶¶ 24-25. A fair reading of the case would be that the Law Court went as far as it deemed appropriate with the record before it, but that it expected and hoped—along with the hospitals and Maine citizens who reside for extended periods in EDs—that the Executive and Legislative branches of Maine government would remedy what has now become a chronic problem.

The issue here as framed by the Petitioner is that detentions have indeed become indefinite in length for many vulnerable psychiatric patients. MGMC agreed this was the case, and candidly acknowledged that hospitals in Maine are indeed "warehousing" these patients. The parties also agree that the length of time an individual is now detained in Maine's EDs is affected by *how* they are chosen for admission by receiving hospitals, or not, from off the "waiting list." Clearly, the fundamental problem has not been addressed—not enough beds are available—but it is also the case that not everyone on the "waiting list" is treated the same. MGMC claims that this is by necessity and is legal based upon the contract they signed with DHHS. Petitioner claims that her due process rights were violated because there were in fact other "available beds" for A.F. during her long wait. But as her attorney essentially puts it, the beds were just not available *to her*. Pet'r's Br. 11-12. Petitioner therefore asks the Court to interpret the statutes and the contracts between the hospitals and DHHS and find that hospitals do not enjoy unreviewable discretion to reject patients such as A.F. based upon concerns of "acuity" and "milieu."

In any event, the parties seem to recognize that the only reason A.F. was finally placed in a psychiatric unit after 65 days of detention was that she was fortunate to have a medical professional at MGMC who advocated for her and arranged for her to call Disability Rights of Maine to get legal advice. That led to representation, and the filing of this Petition for Writ of

Habeas Corpus. Nursing Director Duprey testified, without contradiction, that at MGMC, "We have had people in our emergency department for up to six months." Tr. at 44-45. She emphasized that while their ED did their best to work with patients like A.F., what they are actually able to do is "provide safety with absolutely no treatment." *Id.* at 37. She stated that conditions can be "worse than jail in most situations. We have no outside time, we've got no windows. . . . [W]e're in four white walls here. So please consider that this place is like jail." *Id.* at 48-49.

The Court will address these issues separately.

FINDINGS AND CONCLUSIONS

DHHS currently contracts with eight private hospitals that contain psychiatric units and requires them to admit and involuntarily hold psychiatric patients, such as A.F., from EDs across the State. In addition, Riverview Psychiatric Center and Dorothea Dix Psychiatric Center can also receive such "blue papered" patients who are waiting for the process of civil commitment—sometimes referred to as the "white paper" process—to unfold. Section 3863(3)(D)-(E) of Title 34-B sets forth the requirements established by the Legislature in the 2015 amendments, which amendments extended the authority of these hospitals to hold patients up to 120 hours before the hospitals are permitted to "restart" the process pursuant to the Law Court's *LincolnHealth* decision.

A.F. points to two terms in the statute— "available inpatient bed" and "inpatient bed" — which she says are ambiguous, meaning that the terms are "reasonably susceptible to different interpretations." *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411. And because the terms are ambiguous, she claims that they must be construed in this case so as to avoid the unconstitutional result of indefinite detention without due process. The Court

disagrees with this analysis, as it has concluded that MGMC followed the requisite statutes as elucidated by the Law Court in *LincolnHealth.* Assuming, without deciding, that these undefined terms are ambiguous, the cases relied upon for this general proposition are cases where an agency has been told it cannot interpret ambiguous terms in a statute or regulation in such a way that it leads to an absurd, or as posited here, an unconstitutional result. It is important to note that the agency in question, DHHS, is not a party to this case. In addition, MGMC entered into a contract that specifically gave it the authority to decline admission to a patient who it deemed to not be "appropriate" for its facility. *See* Ex. 3, ¶¶ 1(b), 2(a)(i).

The reality is that MGMC, like all the other hospitals, are "stuck" with the determinations about "acuity" and "milieu" made by other hospitals, and the other hospitals are "stuck" with determinations made by MGMC. The Court agrees with MGMC that the Court cannot and should not involve itself in making such clinical judgments, particularly when DHHS has apparently bargained away its own right to object to these clinical decisions, presumably to find private hospitals such as MGMC willing to accept patients like A.F.

The Court is also concerned that if it held A.F. should have been admitted by one of the hospitals that declined to accept her, the Court would be blindly consigning another patient to a lower rung on the waiting list, creating an unfavorable or even "unconstitutional" result for the other patient. The Court is not willing to create such unintended and problematic consequences for other patients by ordering that sort of relief here.

Which is not to say that A.F.'s prolonged, indefinite confinement in the ED at MGMC comports with due process. As A.F.'s attorney points out, these multiple Applications, along with the "restart" of the process authorized by the Law Court in *LincolnHealth*, resulted in A.F.'s detention in an ED for 65 days. The Court concludes that given the length and circumstances of

her detention, more due process protections for A.F. were required. But for Nurse Duprey's intervention and Disability Rights Maine's willingness to file this case, A.F. could have easily become another patient who lived at MGMC's ED for six months.

The Court therefore concludes that A.F. was entitled to more due process than completion of multiple "blue papers" by District Court Judges at the Capital Judicial Center. The Court finds that due process requires that she was entitled to appointment of counsel once the "restart" of the process failed to result in her admission to a private or State hospital where she could have been further evaluated and treated.

The Court is aware that another Superior Court Justice recently ordered in a very similar Habeas Corpus case, implementation of a process, coordinated with the District Court, to establish a hearing process for a patient who was detained at Northern Light Eastern Maine Medical Center. *See* attached Amended Order, *In re:* [redacted], PENSC-MTH-2023-00275 (Nov. 22, 2023). The Superior Court ordered appointment of an examiner, with the consent of Northern Light and her attorney, and further ordered that a hearing would be conducted as part of the Habeas proceeding to determine if the patient met the criteria for involuntary hospitalization. This proceeding was also similar to the hearing conducted by the Lincoln County Superior Court in the *LincolnHealth* case that resulted in the Law Court decision providing for the "restart" process that is one of the issues in this case.

The Court has concluded in this matter that A.F.'s due process rights were violated by the length of her detention at MGMC. She was entitled to appointment of counsel and a hearing before a Maine Court once it became apparent that the "restart" process would fail to result in admission to a psychiatric hospital where she could be held while the "white paper" process, with its elevated due process protections, would unfold. So while the Court concludes that

MGMC did not violate her due process rights by engaging in the current process by which beds are found for patients awaiting admission, A.F.'s due process rights were nevertheless violated while she was in MGMC's custody due to the length and circumstances of her detention.

The Court recognizes that fashioning a remedy in this case presents legal and practical challenges. The Court will therefore order further proceedings to hear from the parties as to what might be constructively done to create a process between MGMC and the District Court at the Capital Judicial Center to provide due process for A.F. and others like her, should these patients find themselves detained at MGMC for similar lengths of time due to the chronic shortage of psychiatric beds. It may be that the parties and the Court will be able to agree upon a process to protect A.F. and others from further violations of due process.

The Clerk is therefore directed to schedule a conference with counsel for the parties to discuss the course of future proceedings. The conference can either occur in person or by Zoom. Notice shall be sent to the parties, as well as to DHHS, which may or may not want to appear and be heard.

CONCLUSION

The entry will be: The Petition for Writ of Habeas Corpus is granted in part based upon the Court's finding that A.F.'s rights to due process were violated by the length of her detention at the MGMC Emergency Department for 65 days without representation or hearing. The Court will conduct further proceedings to determine what remedy, if any, it can legally provide under these circumstances. Notice to follow.

This Order shall be noted on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

DATED: 2/13/24

Michaela Murphy
Justice, Superior Court

STATE OF MAINE
COURT

SUPERIOR

KENNEBEC, ss

AUGSC-CV-22-189

A.F.,

Petitioner,

v.

ORDER FOR REMEDY

MAINEGENERAL MEDICAL CENTER,

Respondent.

RELIEF

After conference with counsel, the parties have agreed in part with the remedy the Court should provide A.F. in light of the findings and conclusions set out in the Court's previous Order. Their disagreement was limited to the length of time the agreed-upon Remedy should remain available for A.F.

After consideration of their positions, the entry will be:

A.F. shall provide to Respondent, MaineGeneral Medical Center ("MGMC"), an authorization to disclose Petitioner's confidential patient information ("ROI") in which Petitioner directs MGMC to notify Disability Rights Maine if and when Petitioner is being detained in MGMC's Emergency Department pursuant to 34-B M.R.S.A. § 3863, provided that MGMC may not act on any such ROI that is more than one year old. Petitioner shall be responsible for providing a new ROI following the expiration of any prior ROI.

The remedy for A.F. provided herein shall be effective immediately, and will be enforceable for a period of five years.

This Order shall be noted on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

DATED: 4/5/24

Michaela Murphy
Justice, Maine Superior Court

Entered on the Docket: 4/5/2024