

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA DEPARTMENT OF
BEHAVIORAL HEALTH &
DEVELOPMENTAL DISABILITIES,
Petitioner,**

v.

Respondent.

: Docket No.:
: OSAH-MHDDAD-MRH- [REDACTED]
: WOODARD

Facility:
East Central Regional Hospital,
Gracewood, Georgia



FILED

JUN 11 2015

Georgia Dept. of Health & Human Services

**FINAL DECISION
ORDER AUTHORIZING CONTINUED HABILITATION**

Appearances:

James L. Bentley, III, Attorney at Law, Gracewood, Georgia, and Gary A. Glover, Special Assistant Attorney General, Augusta, Georgia, For Petitioner, East Central Regional Hospital

Cynthia McDowell, Attorney at Law, Augusta, Georgia, for Respondent, Brian Robert Cornett.

I. Introduction

This matter is the administrative review of a Petition for Order Authorizing Continued Habilitation filed by the Georgia Department of Behavioral Health and Developmental Disabilities ("Petitioner"). [REDACTED] ("Respondent") filed a request for hearing to contest Petitioner's proposed action.

The issue is whether continued habilitation of the above named Respondent at East Central Regional Hospital in Gracewood, Georgia ("the Facility") is necessary, in accordance with the provisions of Section 37-4-42 of the Official Code of Georgia Annotated (hereafter O.C.G.A.). For the reasons set forth below, the Petition is GRANTED, and continued habilitation of Respondent is authorized through June 13, 2015.

II. Findings of Fact

1. The Respondent is a 26 year-old male who has been diagnosed with Moderate Mental Retardation, Intermittent Explosive Disorder, and Autism. Respondent is currently a patient at East Central Regional Hospital, a habilitation facility operated by Petitioner. Respondent was admitted to the facility in 2007 following a failed attempt at community placement. He has remained at the facility during subsequent annual habilitation orders because of his destructive behavior against personal and state-owned property, and violence against other residents and facility staff. (Petitioner's Exhibits I and J; Testimony of Dr. Terri Lawless, MD).

2. Dr. Terri Lawless, Respondent's attending physician, has observed that Respondent has made great progress in controlling his behavior. However, Respondent still has a "short fuse" and can explode into aggressive and violent action at slight provocation. The facility administers the prescription medications Prozac to control his Intermittent Explosive Disorder, Lamectil to ameliorate mood swings, and Loxitane. Dr. Lawless testified that it is now much easier to calm Respondent when he is faced with stimulation that causes aggression, but he must make more progress before the facility will consider his return home or to another less restrictive placement such as a group home. Respondent has successfully returned home on weekends, and his behavior while at the facility has improved because he realizes that home visits are predicated on his following the rules and his treatment plan. If Respondent has an episode of poor behavior control during the week, he is usually not allowed to go home that weekend. The current goal is that Respondent have no behavior issues in any week, which is a significantly higher expectation than in past years when three such episodes per week was considered meeting the treatment goal. (Testimony of Terri Lawless).

3. The facility's staff has documented each episode of violent or aggressive behavior occurring during the current habilitation period. On June 13, 2013, Respondent was involved in a potentially violent situation with another resident named George. Respondent and George were sharing a toy gun. When George asked Respondent to return the toy gun, Respondent refused. He then threw the gun, then lunged at George, grabbed his wrist, and ripped off his shorts. His Activity Leader put Respondent in a submission hold and the threat of further harm to Respondent or another resident was avoided. In another incident on July 30, 2013, Respondent refused to follow his Activity Leader's instructions not to dribble a basketball during "Cake Time" at the gym. Respondent was not aware that it was not "Gym Time," and grew angry when told not to dribble the ball. Respondent was allowed to vent his anger, but when again instructed

to stop dribbling he threw a basketball at his Activity Leader and lunged at him. Again, the Activity Leader was able to diffuse the situation, but only after he was scratched and bitten. Security officers were called to the scene, and Respondent was escorted to his room where he was allowed to calm down. Respondent was kicked in the face by other residents during the July 30, 2013 incident, and was later taken to the hospital for evaluation. (Testimony of Rashad Parks, Activity Leader; Petitioner Exhibits B and C).

4. Another incident of violent and destructive behavior occurred on March 24, 2014. Respondent was served a hamburger with an obviously moldy bun. Respondent quickly became upset, and his anger grew into a rage. He overturned a dining table, tore a phone and hand sanitizer off the wall, and tore up a kitchen. The staff tried to call him down verbally, but he charged a staff member before being finally escorted to his room to calm down. Although Respondent destroyed property, there was fortunately no injury suffered by another person. (Testimony of Wanda Sanders; Petitioner Exhibit F).

5. The most serious incident of the past year occurred on February 8, 2014. A staff member named Charese Brannon asked Respondent to turn down the loud music in his room. After she left, Respondent followed her to the facility's chartroom, where he verbally confronted Ms. Brannon. Respondent's anger rapidly intensified, and he ripped papers off the chartroom wall, threw items off the desk, and took a radio from Ms. Brannon's grasp and stomped on it. Respondent either kicked-in a door or directly kicked Ms. Brannon with his foot, causing her to suffer a serious knee injury. As of the hearing date, Ms. Brannon has undergone several procedures, but has not returned to work. Respondent expressed his regret over causing her injury. (Testimony of Dr. Lawless; Petitioner Exhibit E).

6. The facility's Comprehensive Habilitation Team determined that it is necessary to continue involuntary habilitation of Respondent beyond June 13, 2014, when the current order expires. The team concluded that there is no less restrictive environment available. Prior to the expiration of the period the chief medical officer of the facility submitted a Petition for Order Authorizing the Continued Habilitation in a Facility of the Respondent. (Petitioner Exhibit L; Testimony of Dr. Lawless; Testimony of Betty Dyches, DBHDD Region Intake and Evaluation).

7. Respondent disagrees with any extension of the habilitation order, and filed a request for hearing within 15 days of the date of service of the Petitioner. Respondent wants to return home

to live with his mother, [REDACTED], and grandfather, [REDACTED]. He does not want to live in a group home, even if the facility can locate a home with suitable community supports such as live-in staffers. Respondent's mother and grandfather both testified that they want him to live at home. They believe that many of Respondent's behavior problems and health issues such as weight gain are due to how he is treated at Petitioner's facility. They recognize that if Respondent leaves the facility and subsequently has an episode of aggressive, violent behavior, he will not be able to return to the facility as an inpatient due to changes enacted in 2011 to Georgia law. (Testimony of [REDACTED], [REDACTED], and [REDACTED]).

III. Conclusions of Law

1. The Petitioner has the burdens of persuasion and going forward with the evidence. OSAH Rule 616-1-2-.07. The standard of proof is clear and convincing evidence. O.C.G.A. § 37-4-2.
2. The laws governing the involuntary habilitation of a person with developmental disabilities at a state-operated or state-owned inpatient facility, a private facility, or a community setting are found at O.C.G.A. § 37-4-1 et seq.
3. "'Client' means any person with a developmental disability who seeks habilitation under this chapter or any person for whom such habilitation is sought." O.C.G.A. § 37-4-2(1)
4. "'Habilitation' means the process by which program personnel help clients acquire and maintain those life skills which will enable them to cope more effectively with the demands of their own persons and of their environment and to raise the level of their physical, mental, social, and vocational abilities." O.C.G.A. § 37-4-2(8).
5. The Superintendent of a facility may petition for continuance of a client's habilitation beyond the expiration of an order issued by a court or by an administrative law judge (ALJ) with the Office of State Administrative Hearings. If the client or the client's representative requests a hearing within 15 days of service of the petition, a hearing will be conducted by the ALJ. After a hearing, the ALJ may order the client's continued habilitation for no longer than one year, subject to the Superintendent or Regional State Hospital Administrator's power to discharge the client pursuant to O.C.G.A. § 37-4-44(b). To continue habilitation beyond the current order, the ALJ must find that the client is developmentally disabled, and in need of care, training, education, habilitation, or other specialized services which the client is then receiving. O.C.G.A. § 37-4-42.

5. Treatment shall be provided the client in the least restrictive available alternative, environment, or appropriate habilitation, as applicable, within the limits of state funds specifically appropriated therefor. O.C.G.A. § 37-4-2(10).

7. Having made an independent review of the committee's report, the updated individualized program plan, the Petition, the testimony of all witnesses, and the documentary evidence admitted at the hearing, the ALJ concludes that the Respondent is in need of continued habilitation. Petitioner's facility is presently the least restrictive available alternative, particularly in light of Respondent's propensity for aggressive and violent behavior.

IV. Decision

The Petitioner is authorized and directed to retain the Respondent for care, training, education, habilitation, or other specialized services from the date the current Order expires, for a period of time, not to exceed beyond June 13, 2015, subject to finding of the chief medical officer or his designee that the Respondent is no longer a developmentally disabled person requiring continued habilitation. O.C.G.A. §§ 37-4-40, 37-4-42 and 37-4-44.¹

SO ORDERED this 11 day of June, 2014



M. PATRICK WOODARD, JR.
Administrative Law Judge and
Hearing Examiner

¹ This Order shall not be construed as prohibiting Petitioner from continuing to search for an appropriate, less restrictive living arrangement for the Respondent.