



Statement of Reasons

This is an edited version of the statement of reasons issued pursuant to section 756 of the *Mental Health Act 2016*. The patient and persons attending the hearing have been de-identified and, in some cases, may be allocated pseudonyms for privacy reasons. Other details that may lead to the identification of the patient may have also been modified or omitted. The modification or omission of these details does not affect its decision or its reasons for the decision.

Decision made prior to 1 January 2020 so *Human Rights Act 2019* not applicable

Matter:	Treatment Authority Review
Attendees	
Patient:	Attended
Psychiatrist:	Attended
Registrar:	Attended
Other attendees:	Patient's legal representative, Patient's mother
Decision	
Decision:	The Treatment Authority is confirmed. The category of Treatment Authority is inpatient.

The patient was placed on a Treatment Authority, inpatient category by an authorised doctor. The Treatment Authority was reviewed and confirmed by an authorised psychiatrist. The patient attended a Mental Health Review Tribunal (**Tribunal**) hearing, during which he was legally represented and advocated for the revocation the Treatment Authority. The Tribunal's decision was to confirm the Treatment Authority as inpatient category.

Statutory Framework and Issues to be determined by the Tribunal

Set out in Appendix A to these Reasons is a summary of the principal provisions of the *Mental Health Act 2016 (Act)* that are relevant to the Tribunal's conducting a review of a person's Treatment Authority. Further reference will be made to these under "Application of evidence before the Tribunal to relevant provisions".

The issues for determination at the review were:

1. whether the treatment criteria in section 12 of the Act continue to apply to the person.
2. whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness.
3. if a Treatment Authority is confirmed, whether the category should be community or inpatient.
4. if the category is community, whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.
5. if the category is inpatient, whether any limited community treatment is approved or extended for the person. If the Tribunal approves or extends limited community treatment, whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.
6. what, if any, conditions should be imposed on the Treatment Authority?

Clinical Report

Prior to the patient's hearing, the Tribunal received and considered each of the following documents:

- a Clinical Report prepared by the treating psychiatrist
- Treatment Authority.

The patient confirmed that he had sufficient time to consider the Clinical Report and wished for the hearing to proceed.

Summary of evidence and findings

Treatment Criteria

In order to be satisfied that the person should continue to be subject to a Treatment Authority, all of the treatment criteria in section 12(1) of the Act must apply. The Tribunal considered each of the criteria in turn.

1. Does the person have a mental illness?

The Tribunal found that the patient had a mental illness as defined in section 10 of the Act. The Tribunal accepted the evidence of the treating psychiatrist in both his Clinical Report and oral evidence at the hearing.

In both the Clinical Report and oral evidence, the treating psychiatrist opined that the patient had a diagnosis of bipolar affective disorder, marked by a current manic episode. The symptoms of the patient's illness included elevated mood, increased energy, agitation, irritability and grandiose delusions. The treating psychiatrist described the patient's mood has been "up and down" over the last three to four weeks. The Tribunal accepted the accuracy of the treating psychiatrist's description of the patient's symptoms.

The patient's evidence was that he did not have bipolar affective disorder, but rather a brief reactive psychosis due to employment and family related stressors. His hospitalisation was due to an isolated incident, and he has no mental health issues.

2. Does the person have capacity to consent to be treated for the illness?

The Tribunal was satisfied that at the date of hearing, the patient did not have capacity to consent to be treated for his illness. In particular, that he did not understand that he has an illness, or symptoms of an illness, that was affecting his mental health and wellbeing (s. 14(1)(a)(i) of the Act).

The patient's capacity to consent to treatment was formally assessed by the treating psychiatrist. The treating psychiatrist's finding, as set out in the Clinical Report, was that the patient lacked capacity to consent to treatment as he did not believe he had a mental illness. In his oral evidence, the treating psychiatrist said he considered that the patient's capacity remained limited at the date of the hearing due to a continued lack of understanding that he has a mental illness. Further, he did not understand the negative impact cannabis use was having on his mental illness.

The patient advised the Tribunal during the hearing that he had not been taking medications. If he was discharged from hospital, he would take medication if he needed it. He would be continuing to use cannabis, which had been prescribed to him and was effective in treating his cancer.

3. Are the person's illness and an absence of involuntary treatment or continued involuntary treatment likely to result in either:

- a. imminent serious harm to the person or others; or**
- b. the person suffering serious mental or physical deterioration?**

The Clinical Report set out the treating psychiatrist's opinion about the risks that would likely result in the absence of involuntary treatment for the patient. The Tribunal accepted the evidence of the treating psychiatrist that non-compliance with medication, and non-engagement in other aspects of treatment would be highly likely if the patient were not subject to a Treatment Authority and being treated in a hospital setting. The Tribunal considered that the category of Treatment Authority was required to be inpatient as the patient's treatment and care needs could not be reasonably met while receiving treatment in the community.

In the absence of compliance with medication and treatment, the patient was likely to suffer a serious mental deterioration. He was also at risk of imminent serious harm due to impulsivity and financial vulnerability, with concerning behaviours prior to his admission to hospital outlined in the Clinical Report. Further, the Clinical Report alleged that the patient was aggressive while unwell towards a member of the community, resulting in a verbal altercation.

The Tribunal formed the view that the patient does not fully accept or appreciate the seriousness of his illness and the likely consequences of mental deterioration if untreated. Further, that the patient did not appreciate that regular cannabis use was negatively impacting his mental state. Voluntary treatment and treatment in the community at the date of hearing could not mitigate the risks posed by the patient's illness.

Relevant Circumstances

In reaching a decision, the Tribunal had regard to the relevant circumstances of the person subject to the Treatment Authority.

Mental state and psychiatric history

The patient's most recent, formal mental state examination was set out in the Clinical Report and opined that he was experiencing grandiose delusions. During the examination, the patient stated that he did not want to take the medication being prescribed to him, and would prefer to use his own medication to treat his cancer and anxiety.

The patient's psychiatric history is limited. His first contact with Queensland's mental health service was over 10 years ago, when he was experiencing his first psychotic episode. He was treated voluntarily at this time in an inpatient setting. The episode of psychosis was found to be drug-induced. The patient had no further contact with the mental health service until this year when the Treatment Authority was initiated.

Any intellectual disability

The patient does not have an intellectual disability.

Social circumstances, including, for example, family and social support

The patient's mother acts as his Power of Attorney for personal and financial matters. The patient's mother attended the hearing and advised the Tribunal that the patient would be welcome to return home to live with her, but this would be on the condition that he not use cannabis as this has "caused problems." The patient also gave evidence that he could live with friends when discharged from hospital.

Response to treatment and care and the person's willingness to receive appropriate treatment and care

There was limited evidence as to the patient's response to treatment and care. At the date of the hearing, the treating psychiatrist advised that the patient had been prescribed risperidone and olanzapine in oral tablets. A prescription for sodium valproate had been ceased as the patient would not take this medication. The treating psychiatrist said he was considering commencing the patient on a paliperidone depot.

The patient was not willing to receive appropriate treatment and care. He was refusing to take prescribed medications, instead preferring the use of cannabis products.

If relevant, the person's response to previous treatment in the community

There was no evidence before the Tribunal of the patient's previous treatment in the community. It did not appear that after his contact with mental health services over 10 years ago that he received any treatment at all.

Less Restrictive Way

The Tribunal found that there was no less restrictive way for the patient to receive treatment, other than under a Treatment Authority, inpatient category. The Tribunal accepted the treating psychiatrist's evidence that if treated voluntarily, the patient would discharge himself from hospital immediately. Further, that although the patient has a supportive mother and there was a Power of Attorney in place, that the patient's consent to treatment would unlikely result in the patient receiving appropriate treatment, including medication, or cessation of cannabis.

Conclusions of the Tribunal

The Tribunal concluded that the treatment criteria were met as the patient has a mental illness, does not have the capacity to consent to be treated for the illness, and the absence of involuntary treatment for that illness is likely to result in serious imminent harm to the patient and others, or a serious deterioration of the patient's mental health. In the Tribunal's opinion, there was no less restrictive way for the patient to receive treatment and care for his illness other than under a Treatment Authority, inpatient category.

Presiding Member

Appendix A

Statement of the law regarding Treatment Authorities

The main objects of the *Mental Health Act 2016 (Act)* are set out in section 3(2) and must be achieved in the way outlined in sections 3(2) and 3(3).

Section 413(1) of the Act provides the Mental Health Review Tribunal (**Tribunal**) must review a Treatment Authority within 28 days after it is made, each 6 months for the first year, and at intervals of not more than 12 months thereafter (a **periodic review**).

Also, the Tribunal must review a Treatment Authority on application by the patient subject to the authority, an interested person for the patient or the chief psychiatrist (an **applicant review**). Section 413(3) empowers the Tribunal, on its own initiative, to carry out a review of the Treatment Authority (a **tribunal review**).

Section 419 provides that on a periodic review, the Tribunal must decide to confirm or revoke the Treatment Authority. On an applicant review, the Tribunal must decide whether to make the orders sought by the applicant, and on a tribunal review, the Tribunal must decide any particular matter stated in the notice given under section 418(3) and make orders under Chapter 12, Part 2, Division 4 as it considers appropriate.

Section 421 provides that on a review of a Treatment Authority, the Tribunal must revoke the authority if the Tribunal considers the treatment criteria no longer apply to the patient subject to the authority or there is a less restrictive way for the person to receive treatment and care for their mental illness. However, the Tribunal does not have to revoke the Treatment Authority on the basis that the patient has capacity if the Tribunal considers the patient's capacity to consent is not stable.

Section 412 provides that in making a decision in relation to a review of a Treatment Authority under Chapter 12, Part 2, the Tribunal must have regard to the relevant circumstances of the person subject to the authority. The Act defines **relevant circumstances** of a person, as each of the following:

- (a) the person's mental state and psychiatric history;
- (b) any intellectual disability of the person;
- (c) the person's social circumstances, including, for example, family and social support;
- (d) the person's response to treatment and care and the person's willingness to receive appropriate treatment and care;
- (e) if relevant, the person's response to previous treatment in the community.

Sections 423 and 428 provide that the Tribunal may change the category of the Treatment Authority from inpatient to community or from community to inpatient depending on the applicable conditions in those sections.

If the category of the Treatment Authority is community, the Tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person the subject of the authority.

If the category of the authority is inpatient, the Tribunal may approve limited community treatment, or an extension of limited community treatment for the person. In deciding whether to do this, the Tribunal must have regard to the purpose of limited community treatment.

If the Tribunal approves or extends limited community treatment, it must also decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

Section 426 provides that the Tribunal may change, remove or impose a condition on the Treatment Authority. However, the Tribunal may not impose a condition on the Treatment Authority that requires the person to take a particular medication or dosage of that medication.

The Tribunal may order a Treatment Authority patient's transfer to another authorised mental health service under section 427.