



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.

Matter:	Treatment Authority Review
Attendees	
Patient:	Attended
Case Manager:	Attended
Decision	
Decision:	Treatment Authority is Confirmed - Community 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

The patient received the clinical report within the statutory timeframe.

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 patient's psychiatric history is set out in the clinical report prepared by the treating psychiatrist. The treating psychiatrist outlined that the patient has a long history with mental health services and was first diagnosed with schizophrenia with prominent negative symptoms when she was a teenager. She was at that time admitted to a mental health unit by a Child and Youth Mental Health Service (CYMHS). The clinical report outlines that the patient has not required any further inpatient admissions since that initial admission, despite a number of subsequent relapses in her mental state.

The treating psychiatrist outlined that when the patient has been unwell she has displayed symptoms such as auditory hallucinations, marked formal thought disorder, blunting and perplexity and disorganized behaviour, withdrawal, avolition, and guardedness. The clinical report outlines that the patient has predominantly presented as anxious and disorganised in thought and behaviour and often presented with mild paranoid mindset, guarded and hypervigilant about others around her. The treating psychiatrist outlines in the clinical report that the patient also experiences low mood and negative cognitions about herself which have a significant impact upon her functioning and sense of self.

In her oral evidence to the Tribunal, the case manager told the Tribunal that she has known the patient for several years and that the patient is making progress in her recovery. She said that the treating team are reviewing her medication dose and frequency. She said that she has a new consultant psychiatrist who may consider trialing the patient on oral medication rather than the depot medication.

The patient told the Tribunal at the hearing that she believes she is going well. She said that she has never experienced auditory hallucinations or paranoia, nor does she have disorganised thoughts or behaviour. The patient said that she would like the Treatment Authority revoked and that she would like to take oral medication. She said that she does not believe that the depot medication is helping her and that it does not have any positive effect at all. Rather, she complained that the depot causes her to experience pain for up to a week after the injection. In her self-report, the patient stated that the depot is painful, traumatic and causes physical pain.

In her self-report, when responding to whether she believes she has a mental illness, the patient stated that she believes she struggles with what other people consider normal activities, for example, going to new places. However, she does not believe her illness is as severe as what appears in the clinical report. The patient told the Tribunal at the hearing that she believes that the diagnosis given to her by her treating doctor may be wrong and that she instead has a learning disorder. This is somewhat contradictory to what the patient stated in her self-report where she stated that she now has a clear understanding of her diagnosis given by the doctor. The patient stated in her self-report that she now understands the importance of being consistent with taking medication.

The Tribunal accepts the medical evidence set out in the clinical report and provided orally that the patient has a mental illness as defined under the Act.

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

The treating psychiatrist outlined in her clinical report that the patient does not have capacity to consent to her treatment. The treating psychiatrist opined that whilst the patient's mental health is improving, she does not demonstrate insight into her diagnosis of schizophrenia, how it affects her functioning, and the requirement to treat her illness. The treating psychiatrist further opined that the patient is unable to weigh the risks and benefits of the proposed treatments for her illness, the side effects of the treatment, and the possible consequence of not being treated. The treating psychiatrist outlined in the clinical report that the patient has stated that if she was not subject to a Treatment Authority, she would not remain on depot medication. It is further reported in the clinical report that when the patient was previously prescribed oral medication, she reported being compliant with this medication, despite never having those prescriptions filled.

In her oral evidence before the Tribunal, the case manager stated that the patient demonstrates very limited insight into her illness and the patient reports to the treating team that she thinks she has a learning disorder and anxiety. The case manager stated that the patient has limited understanding of the extent of her illness and is unable to weigh to "pros and cons" of treatment.

The patient told the Tribunal, in both her oral evidence and in her self-report, that she believes that the diagnosis given to her by her treating doctor may be wrong and that she instead has a learning

disorder. She denied experiencing a number of the symptoms reported by the treating team and stated that she would prefer to take oral medication only, despite in the past reportedly being non-compliant with prescribed oral medication.

On the basis of the above evidence, the Tribunal is satisfied that the patient is not fully capable of understanding in general terms that she has an illness, or symptoms of an illness, that affects her health and welling. In particular, she does not understand her diagnosis, or the purpose of the treatment for her illness, or the consequences of not receiving that medication.

The Tribunal's view is that the patient does not have the capacity to consent to treatment of her illness.

- 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 Tribunal has considered the evidence in the clinical report and the oral evidence of the case manager, and the patient in relation to risk of imminent serious harm to the patient and others, and risk of the patient suffering serious mental deterioration as a result of her illness and an absence of involuntary treatment or continued involuntary treatment.

Both the clinical report and the oral evidence provided to the Tribunal indicated the patient remains at risk of disengaging with her treating team and ceasing her medication (in particular her depot medication), which would lead to a significant deterioration to her mental health. It was reported that if the patient did disengage from treatment, this would likely lead to a risk of rapid relapse and a decline in her mental health. The clinical report outlines that in the past, the patient has continued to report compliance with medication, however this was continually questioned due to the level of disorganisation and anxiety she experienced. The case manager provided oral evidence to the Tribunal that the patient has stated to the treating team that she wants to cease the depot medication and only take oral medication.

In the clinical report, the treating psychiatrist indicates that when unwell the patient presents with poor self-care and limited ability to function within her home and the community. The treating psychiatrist also indicates that in the past, the patient has expressed suicidal ideation at times of increased stress and/or when she is feeling low, which also presents as a risk to the patient. In her self-report and in her oral evidence to the Tribunal, the patient disputes this and said that she has never felt or expressed suicidal ideation.

The Tribunal formed the view that in the absence of a Treatment Authority, the patient would likely discontinue engagement with mental health services and cease required treatment (in particular the depot medication). The Tribunal was of the view that the patient does not fully accept or appreciate the seriousness of her illness and the likely consequences of deterioration of her mental state if she were to be untreated.

In reaching a decision, the Tribunal had regard to the relevant circumstances of the patient. Considering the evidence as a whole, the Tribunal considers that the patient's illness and the absence of continued involuntary treatment is likely to result in imminent serious harm to herself, and the likelihood of her suffering serious mental deterioration.

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 psychiatric history is set out in the clinical report, written by the treating psychiatrist. The treating psychiatrist outlined that the patient has a long history with mental health services and was first diagnosed with hebephrenic schizophrenia with prominent negative symptoms when she was a teenager. She was at that time admitted to a mental health unit by a Child and Youth Mental Health Service (CYMHS). The clinical report outlines that the patient has not required any further inpatient admissions since that initial admission, despite a number of subsequent relapses in her mental state.

The patient told the Tribunal at the hearing that she believes she is going well. She said that she has never experienced auditory hallucinations or paranoia, nor does she have disorganised thoughts or behaviour. The patient said that she would like the Treatment Authority revoked and that she would like to take oral medication. She told the Tribunal at the hearing that she believes that the diagnosis given to her by her treating doctor may be wrong and that she instead has a learning disorder.

Any intellectual disability

There was no evidence at hearing that the patient has an intellectual disability.

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

The patient lives with her parents. She currently has an NDIS package and is currently supported by support workers who assist her with travel training, computer skills, being able to express her needs and to attend therapy. The patient told the Tribunal that her goals include finding a TAFE course to attend, or to find a job, and to continue with her therapy, which she enjoys.

Response to treatment and care and the person's willingness to receive appropriate treatment and care and the person's response to previous treatment in the community

In the clinical report, the treating psychiatrist outlines that there is a history of the patient reporting that she is compliant with oral medication, however this was continually questioned due to the level of disorganisation and anxiety she experienced. It was further reported that despite the patient reporting compliance with oral medication, no prescriptions were ever filled.

The clinical report further outlines that in the past, the patient has shown resistance to engaging in therapy and has shown a lack of belief in the effectiveness of treatment and in her own ability to have positive experiences and changes in her life. It was reported that in the past it has been difficult for the treating team to build a therapeutic relationship with the patient and to maintain consistency with contact and treatment has been difficult as the patient would frequently cancel appointments and was very difficult to contact by telephone between those times.

The patient provided evidence at the hearing that she does not want to have the depot medication and that she preferred to have oral medication. This is consistent with the evidence of the treating team who reported that the patient has also stated this to them.

Less Restrictive Way

There was no evidence that the patient had an Advanced Health Directive, or that a personal

guardian had been appointed. There was no evidence that there was an appropriate person to fill that role. In the Tribunal's opinion there is no less restrictive way for the patient to receive care and treatment for her illness other than under a Treatment Authority (community category). It remains at this point in time, the least restrictive way of promoting the patient's health and wellbeing.

Human Rights

The Tribunal acknowledges the *Human Rights Act 2019*. In particular, the Tribunal considers that the following human rights under that Act are potentially engaged and limited by the decision of the Tribunal. In particular, the right to protection from torture and cruel, inhuman or degrading treatment (in this case treatment without the patient's full consent), freedom of movement, and the right to privacy and reputation. However, the Tribunal is satisfied that the restrictions placed on the patient by the Tribunal are lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. Taking into account the following, the Tribunal is satisfied that the limits imposed by the Tribunal's decision are reasonable and justified in accordance with section 13 of the *Human Rights Act*:

- the criteria of the relevant test under the Act were met and thus the confirmation of the authority is lawful and within the jurisdiction of the Act;
- the Treatment Authority has been determined to be the least restrictive way for the person to receive treatment and care;
- the human rights engaged have been balanced against the risk to the person's health and wellbeing that is likely to eventuate if the person does not receive treatment and care under the Treatment Authority.

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 imminent serious harm to herself and the likelihood of her suffering serious mental deterioration.

The Tribunal formed the view that a Treatment Authority was required in order to treat the patient's mental illness and manage the serious risks of harm she poses to herself.

In the Tribunal's opinion there is no less restrictive way for the patient to receive care and treatment for her illness other than under a Treatment Authority (community category). It remains at this point in time, the least restrictive way of promoting the patient's health and wellbeing.

The Tribunal is satisfied that the patient's safety and welfare could not reasonably be met by voluntary treatment.

For these reasons, the Tribunal has decided to confirm the Treatment Authority. The category of the Treatment Authority is community.

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.