

This is an edited version of the Tribunal's decision. The forensic patient has been allocated a pseudonym for the purposes of this Official Report.

FORENSIC REVIEW: ZEIGLER [2021] NSWMHRT 1

s 46(1) Review of forensic
patients

TRIBUNAL: Ms Judith Walker Deputy President
Dr Janelle Miller Psychiatrist
Ms Elisabeth Barry Other Member

DATE OF HEARING: February 2021

PLACE: Mental Health Review Tribunal

DECISION

1. Having reviewed the case of Mr Zeigler on [date] under sections 46, 47, 48 and 49 of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal orders that Mr Zeigler be transferred to and detained at [address] to receive care and treatment, as soon as a bed becomes available. In the meantime, Mr Zeigler is to be detained at the A Hospital for care and treatment.
2. Mr Ziegler is allowed to be absent from both the A Hospital and D Care Services at [address] for the following periods and subject to the following terms and conditions:

Escorted day leave
3. These absences are to be allowed at the discretion of the Director of the facility at [address] subject to any conditions and requirements that the Director may impose.

REASONS

4. This is the Tribunal review of Mr Zeigler who is currently detained in A Hospital on an order of the Mental Health Review Tribunal dated [date].
5. The treating team is applying for Mr Zeigler to be transferred to and detained in an NDIS funded supported independent living facility conducted by D Care Services, with escorted day leave.

BACKGROUND

6. On [date] Mr Zeigler was found not guilty by reason of mental illness on charges of [offense] and ordered to be detained. Background information concerning Mr Zeigler's history, care and treatment as a forensic patient is provided in Annexure A to these reasons. In reaching its decision in this matter, the Tribunal has had regard to, and accepts as accurate, this background information which is maintained by the Tribunal's registry.

TRIBUNAL REQUIREMENTS

7. This is a review pursuant to section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* ("the Act"). Under section 46 the Tribunal is required to review the case of each forensic patient every six months. On such a review the Tribunal may make orders as to the patient's continued detention, care or treatment or the patient's release.
8. The Act has special evidentiary requirements in relation to leave or release which must be satisfied before the Tribunal can grant leave or release. In view of this, the Tribunal requires notice of applications for leave or release to ensure that the necessary evidence is available. This process also enables the Tribunal to provide notice of such applications to the Minister for Health, the Attorney General, and any registered victims who are entitled to make submissions concerning any proposed leave or release. A notice was provided to the Tribunal prior to this review for an application to transfer to D Care Services, [suburb], with escorted day leave.
9. The Tribunal must be satisfied pursuant to section 49 of the Act *that the safety of the patient or any member of the public will not be seriously endangered if the leave is granted.*
10. Without limiting any other matters the Tribunal may consider, the Tribunal must consider the principles set out in section 40 of the Act and section 68 of the *Mental Health Act 2007* as well as the following matters under section 74 of the Act when determining what order to make:
 - (a) *whether the person is suffering from a mental illness or other mental condition,*

- (b) *whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm,*
- (c) *the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration,*
- (d) *in the case of a proposed release, a report by a forensic psychiatrist or other person of a class prescribed by the regulations, who is not currently involved in treating the person, as to the condition of the person and whether the safety of the person or any member of the public will be seriously endangered by the person's release,*
- (e) *in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody.*

DOCUMENTARY EVIDENCE

11. The Tribunal considered the documents listed in the Forensic Patient Exhibit List dated [date] annexed to these reasons.

ATTENDEES

12. Mr Zeigler attended the hearing and was represented by his lawyer, Helen Seares of MHAS.

Also in attendance were:

- Dr A, Psychiatrist;
- Ms B, Psychologist;
- Ms C, Social Worker;
- Ms D, Registered Nurse;
- Ms E, Relationship Manager, D Care Services, and
- Ms F, Cantonese Interpreter.

PRESENT CIRCUMSTANCES

13. Mr Zeigler [age], was born in [country] and moved with his family to the [country] in [year]. In the following year the family suffered [an event] as a result of which Mr Zeigler suffered spinal cord injuries which resulted in him becoming a paraplegic. The family were resettled in Australia and Mr Zeigler is now an Australian citizen. After he arrived in Australia Mr Zeigler spent [time] in hospital and subsequently in a spinal rehabilitation unit. He suffered continuing pain and complications from his injury. It was noted in the medical section of the treating team report, prepared by Dr G, psychiatric registrar to consultant psychiatrist, Dr A, dated [date], that subsequent to the attack upon him, Mr Zeigler was reported to have developed a PTSD-like illness and over the next four years suffered from depression and psychotic symptoms. It was reported that Mr Zeigler [committed further offences]. In [year] and [year] he was admitted to two psychiatric units and discharged from the second on a CTO. [Details of the index

offence.] After being granted bail for the index offence, Mr Zeigler was admitted to [an] aged care facility. However it was reported that he was aggressive to staff and other residents. Subsequently Mr Zeigler was bail refused and entered custody. He was admitted to C Hospital where he expressed paranoid delusions towards staff and on occasions became aggressive. In [date], Mr Zeigler was transferred to the A Hospital. At times he refused his anti-psychotic depot medication and denied that he had a mental illness. In [date] he was referred for NDIS funding. He has also been considered by the Aged Care Assessment Team (ACAT).

14. Mr Zeigler is presently diagnosed with schizophrenia (paranoid subtype). He has also been diagnosed with a major depressive disorder (currently in remission) and post traumatic stress disorder (currently in remission). The treating team report noted that he demonstrates ongoing persecutory ideation in relation to the index offence and that at times he describes persecutory ideation toward some members of the nursing team. He is described as showing limited insight into his mental illness, need for treatment and the reasons for his admission.
15. Mr Zeigler was commenced on clozapine on [date] after clearance was received from the B Hospital Cardiology Department. It was noted that there had been incidents when Mr Zeigler had refused his clozapine monitoring bloods. The report observed that the course of clozapine treatment was complicated by side effects including over-sedation, hyper-salivation and constipation. It was reported that Mr Zeigler attended the Emergency Department at B Hospital on numerous occasions for episodes of recurrent bowel impaction and urinary tract infection. Over a period of time his clozapine dose was reduced from 300mg to 75mg at night. Mr Zeigler's antidepressant medication, mirtazapine was ceased to help further manage his sedation. The report noted that as a result of these medication modifications Mr Zeigler was observed to be more alert and oriented with less drooling of saliva and that his bowel function appeared to be more frequent and regular. His other anti-psychotic medication is four weekly depot paliperidone.
16. Mr Zeigler has suffered continuing issues related to his physical health. [Complex physical issues related to paraplegia outlined.] Mr Zeigler has had regular reviews by spinal rehabilitation and urology clinics. The report noted that he had continued to receive bladder, bowel and skin care and more recently has not suffered any pressure sores and has continued to use padded ankle-foot orthosis to offload contractures he has in his toes and feet. He has continued to complain of neuropathic pain affecting both his feet. The Spinal Clinic has assisted the treating team with the management of pain medication. Mr Zeigler requires ongoing considerable support for the activities of daily living, including toileting, showering, transfer and meals.

17. Mr Zeigler was assessed as having a high loading of historical factors for violence mainly towards individuals involved in his care. His loading of dynamic risk factors was assessed as being within the low range. It was stated in the report that his capacity to actively mitigate his risk of violence is limited although there have been improvements in his rapport with his treating team.

THE PROPOSAL

18. The treating team has explored various options for Mr Zeigler to be accommodated outside of the high secure A Hospital. He has recently been accepted at an NDIS funded supported independent living (SIL) facility at [location]. The opinion expressed by the treating team was that given the outcome of the risk assessment neither the safety of Mr Zeigler or members of the public would be seriously endangered by this transfer and accordingly the treating team requested a transfer to the facility.
19. In *R v Wilson (No 6)* [2019] NSWSC 529, Schmidt J considered s 27 (b) of the Act, a provision which among other things provided for circumstances where the Court can order that a person be “detained in a place other than a mental health facility.” An issue was how the Court could be satisfied that a proposed location was a place at which a person could be detained. Schmidt J explained that the word “detained” involved “the notion that someone is keeping someone else under restraint, custody or confinement” and observed that the place must be specified in the order and evidence was required that the place must be one from which the person will not be free to leave.
20. There are other sections of the Act which give the Tribunal power to order a person’s detention in a place referred to as “or other place.” Relevant here is s 47 which provides:
- (1) *The Tribunal may, after reviewing the case of a forensic patient under s46, make an order as to*
- (a) *the patient’s continued detention, care or treatment in a mental health facility, correctional centre or other place, or*
- (b) *.....*
21. It would seem that the approach taken by Schmidt J in *Wilson* could thus be applied to the circumstances of this matter.
22. The proposed accommodation is a group home facility providing supported independent living (SIL) which is conducted by D Care Services. Documents provided to the Tribunal about the proposed accommodation indicate that the building has seven bedrooms which are located on the ground floor and first floor. Five of these are for Specialist Disability Accommodation (SDA).

There is a second dwelling with one bedroom. The property is SDA registered with disability access, double front door, internal elevator, open plan living and dining, two lounge rooms, outdoor living area, fully accessible kitchen, support rails, disabled access bathroom, additional water closet rooms, laundry facilities and office/staff room. The documents provided to the Tribunal included a detailed assessment of Mr Zeigler's needs in the light of his mental and physical health issues. Ms E, relationship manager at D Care Health Service, told the Tribunal that she liaised with the participants moving into to the accommodation and their support workers and medical units to ensure a smooth transition. She said Mr Zeigler would have his own room and would have 1:1 care by a staff member for 19 and a half hours a day. He would have 2:1 staff on occasions of transfer, for example to nearby E Hospital if necessary or on outings. Ms E told the Tribunal that the one to one care ratio was recommended in the Occupational Therapy assessment. She said that there were "active" staff awake on a night roster. She told the Tribunal that the staff had certificate 4 in Disability and that there would be a registered nurse at the premises and a clinical manager as well. She said that the house was SDA approved and registered to provide for high needs clients. She added that some staff spoke [language]. Ms E noted that Mr Zeigler's plan provided for behaviour supports from psychologist and for allied health professionals to attend the premise.

23. Dr A, treating psychiatrist, told the Tribunal that he had been in touch with the [suburb] mental health team who had said that Mr Zeigler would be case managed by them and treated by their psychiatrist. He said he assumed the accommodation provider would liaise with the [suburb] mental health team and the clozapine clinic. He confirmed the opinion expressed in the treating team report that Mr Zeigler had been more settled in the last few months, that the medication adjustments had been helpful in this and that the reduction of the clozapine dose had reduced to some extent the bowel problems which had previously led to the Spinal Clinic suggesting the possibility of a permanent colostomy.
24. Social worker Mr C told the Tribunal that it was proposed that there would be a gradual transition for Mr Zeigler from the A Hospital to the [suburb] facility. Initially, Mr Zeigler might spend a couple of hours at [facility] to let him see what it was like and meet with staff, and then the time would be gradually extended. Dr A acknowledged that the transition could be a time of difficulty and increased risk, but said he considered that it could be managed safely. Dr A referred to Mr Zeigler's ongoing care from the Spinal Unit at B Hospital and said the team would try and get that care transferred to E Hospital and would facilitate the communication between the Spinal Unit and E Hospital.
25. Ms E described security at the premises and said that the front door was locked and that the perimeter fence of 1.2 or 1.5 metres had a safety gate. She added that the high needs clients

remained mostly in their rooms and occasionally came to the common area. She reiterated that if Mr Zeigler needed to leave the premises for health care, medical appointments or for community activities he would be accompanied by two staff members.

26. Mr Zeigler's lawyer, Ms Seares said that Mr Zeigler had told her that he was in agreement with the proposed move to the new facility. She said that he had asked if he would be free after the move and that she had explained to him that he would still be a forensic patient. The Tribunal asked the interpreter present at the hearing to again explain to Mr Zeigler that he would still be detained but in a group home rather than A Hospital, that he would have his own room and a person looking after him all the time, but would not be able to go out unless accompanied by staff members. He asked how it would be organised if he wanted to go to the shops. Dr A said the treating team strongly supported such leave. Ms E said that such leave would be in the facility's transport vehicle with two staff members.

DISCUSSION AND DETERMINATION

27. The evidence before the Tribunal satisfied the requirement for Mr Zeigler to be detained in the proposed accommodation. He would be closely monitored and only be able to leave the premises for approved purposes, in the facility's vehicle and accompanied by two staff members. Mr Zeigler is only able to mobilise in a wheelchair. The front door to the premises is locked. There is a security gate on the perimeter fence.
28. The Tribunal accepted the evidence of the treating team that although Mr Zeigler has continuing symptoms of his mental illness and can at times become irritable and even aggressive with staff when they are attempting to meet his needs, he no longer requires the high security of the A Hospital and that appropriate less restrictive care can be provided in the [suburb] facility with the high level resources available to him under his NDIS plan.
29. The Tribunal accepted Dr A's evidence about the arrangements being made with the [suburb] mental health team and in relation to seeking ongoing spinal care from E Hospital.
30. On the basis of the evidence at hearing the Tribunal determined that Mr Zeigler be transferred to, and detained at [facility], to receive care and treatment, as soon as a bed becomes available. In the meantime, Mr Zeigler is to be detained at A Hospital for care and treatment. The Tribunal also determined that Mr Zeigler could have escorted day leave from the facility and that such leave would not seriously endanger Mr Zeigler or any member of the public.

31. The Tribunal noted that there was likely to be an extended transfer period for Mr Zeigler and that arrangements were still to be finalised for spinal care at E Hospital. For these reasons it was determined that the next review should take place within four months.
32. The Tribunal requested that it be provided with the details of Mr Zeigler's proposed treating psychiatrist from the [suburb] mental health team on the next occasion.

Signed

Judith Walker
Deputy President

Dated this day