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 applicant review and 1st review
Attendees	
Patient:	Attended
Senior Medical Officer:	Attended
Case Manager:	Attended
Decision	
Date of decision:	2021
Decision:	The treatment authority is confirmed. The category of the treatment authority is inpatient.

A treatment authority was made under the *Mental Health Act 2016* (Qld) (**Act**) requiring the patient to have treatment for a mental illness. The patient was an inpatient at the time of the hearing and had applied to the Tribunal for review of the treatment authority. The Tribunal was also required to review the treatment authority in accordance with the Act. For the reasons set out below, the Tribunal decided to confirm the treatment authority and leave the category unchanged.

Statutory Framework

Appendix A to these reasons is a summary of the provisions of the Act that are relevant when the Tribunal reviews a treatment authority.

Clinical Report

The patient's treating psychiatrist provided a clinical report. The patient recalled receiving a copy of the clinical report some time before the hearing but could not recall the date he received it and said he had not read the report. The Tribunal explained that it was open to the Tribunal to adjourn the hearing to allow the patient further time to review the report. Given that he was an inpatient at the time of the hearing and was aware that he was able to make an application for review again at any time, the patient expressed a wish to proceed with the hearing without delay. Having regard to sections 723, 733 and 734 of the Act the Tribunal decided not to adjourn the hearing.

Summary of evidence and findings

Do the treatment criteria apply?

Does the person have a mental illness?

At the time of the hearing, the patient was an inpatient. He had been there for three weeks, after having presented to emergency via ambulance reporting physical concerns. The treating psychiatrist's opinion, set out in his report, is that the patient has schizophrenia. In addition to the treating psychiatrist's report, the Tribunal also heard oral evidence from a senior medical officer (**SMO**) involved in the patient's treatment and care.

The patient relocated from interstate to Queensland late last year. He had been living in his own apartment interstate. He moved to Queensland to live on his family's property. The patient has previously worked but at the time of the hearing he was not employed.

The patient had some brief contact with mental health services earlier this year, as described in the clinical report, but the current admission was the patient's first admission to hospital in Queensland for his mental health. The patient's history of treatment for his mental health interstate is not clear but does not appear to be extensive. He says that for a long time he was taking medication prescribed by his general practitioner for symptoms of anxiety and depression. He also says that he participated in an alcohol rehabilitation program and saw a psychiatrist as part of that treatment but was not diagnosed with schizophrenia.

The SMO provided additional detail regarding the basis for the diagnosis of schizophrenia. He explained that the diagnosis appears to have been first made during the current admission. He said that the patient expresses several ideas that are delusional. These include beliefs regarding his physical health and beliefs around the health service and circumstances of his admission to hospital. He expresses the belief that he has physical problems, despite medical advice to the contrary. He also has ongoing concerns regarding his own exposure to Covid 19 and beliefs regarding the prevalence of Covid-related deaths.

The patient disputes that he has schizophrenia. He considers he has anxiety and depression but that these symptoms do not warrant inpatient treatment. He also asserts that the beliefs attributed

to him as being delusional are true. These beliefs are set out in his application for review. He also maintained in the hearing that he attended hospital due to a cardiac issue, that he had been physically quite sick, and had improved significantly but would always have cardiac issues. He also reiterated his beliefs about suffering Covid 19 and the importance of contacting media about his concerns regarding Covid 19.

The Tribunal was satisfied, based on the opinions of the treating psychiatrist and the SMO, that the patient has a mental illness. His symptoms include a range of delusional beliefs, and his illness is best described at present as schizophrenia.

Does the person not have capacity to consent to be treated for the illness, or if the person has capacity to consent, is that capacity not stable?

The patient's treatment at the time of the hearing involved inpatient care, regular review by a psychiatrist and medication. However, the patient did not have the capacity to consent to that treatment. His illness affected his ability to understand in general terms the symptoms he was experiencing, the nature and purpose of treatment for his illness, and the consequences of not receiving treatment. He was not able to understand that he held a range of beliefs that were delusional, that antipsychotic medication may assist in treating his illness, and that without treatment he had at times acted on his beliefs in ways that were detrimental to him.

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 patient was clear in the hearing that he did not consider he required inpatient care, that he found inpatient care made him depressed and that he felt he had nothing to do in hospital. The patient was also clear that he did not agree with treatment with medication. He disagreed that his beliefs went beyond anxiety and depression and were delusional. He also said the medication made him feel drowsy and sick. The Tribunal concluded that the patient was therefore unlikely to remain an inpatient or continue with antipsychotic medication in the absence of a treatment authority.

Based on the history set out in the clinical report, and the SMO's oral evidence, the Tribunal was also satisfied that in the absence of continued treatment the patient would continue to suffer serious mental deterioration. The severity of that deterioration was reflected in the patient's reduced level of functioning (having previously functioned at a high level), the extent of his ongoing delusional ideas, the significant steps he had taken at times in acting on those ideas.

The Tribunal was therefore satisfied that an absence of continued involuntary treatment was likely to result in the patient suffering serious mental deterioration.

Is there a less restrictive way for the person to receive treatment and care for the person's mental illness?

Under section 421 of the Act, the Tribunal must revoke a treatment authority if there is a less restrictive way for the person to receive treatment and care for their illness. Section 13 of the Act sets out the ways that a person could receive treatment that is reasonably necessary that would be regarded as less restrictive. None of those circumstances existed in the present case.

The Tribunal considered that, for the patient, treatment that was 'reasonably necessary' at the time of the hearing included inpatient care and treatment with antipsychotic medication. The patient had not made an advance health directive that authorised administration of appropriate medication. There was also no indication that any person was appointed as attorney or guardian, or willing to

act as statutory health attorney. The patient and his parents had a strained relationship and had obtained orders limiting their contact with each other. Even if someone was able to act as statutory health attorney to provide consent to inpatient care and treatment with appropriate medication, it was unlikely that the patient would comply with treatment in that circumstance. There was therefore no less restrictive way of ensuring the patient received treatment that was reasonably necessary.

Category and conditions of the treatment authority

The Tribunal decided that the patient's treatment and care needs at the time of the hearing could not reasonably be met if the category of the treatment authority was community, given the patient's level of symptoms, the steps he had taken to act on his beliefs, and the recent changes in medications.

Human Rights

The Tribunal considered the relevant human rights set out in the *Human Rights Act 2019* (**HRA**). Rights under the HRA are engaged and limited by the Tribunal's decision, including the right to not have treatment without consent and the right to freedom of liberty. However, the Tribunal is satisfied that the limits imposed by the Tribunal's decision are reasonable and justified in accordance with section 13 of the HRA. The limitations are lawful under the Act, are imposed in order to achieve the important purpose in section 3 of that Act of ensuring the health and wellbeing of a person who has a mental illness who is unable to consent to treatment, and the limitations are the minimum necessary to achieve that purpose.

Conclusions of the Tribunal

For these reasons the treatment authority was confirmed, and the category of the order was continued as inpatient.

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).

Below are extracts of sections from the Act relevant to the Tribunal's review of a treatment authority.

412 Matters to which tribunal must have regard

(1) In making a decision under this part in relation to a review of a treatment authority, the tribunal must have regard to the relevant circumstances of the person subject to the authority.
Examples of decisions in relation to a review of a treatment authority:
- deciding whether to confirm or revoke the authority
- deciding whether to confirm or change the category of the authority
- deciding whether the person is to receive any treatment in the community
- deciding whether to change or remove a condition to which the authority is subject or to impose a condition on the authority.

(2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.

413 When reviews are conducted

(1) The tribunal must review (a periodic review) a treatment authority:
(a) within 28 days after the authority is made; and
(b) within 6 months after the review under paragraph (a) is completed; and
(c) within 6 months after the review under paragraph (b) is completed; and
(d) at intervals of not more than 12 months after the review under paragraph (c) is completed.

(2) Also, the tribunal must review (an applicant review) a treatment authority on application by:
(a) the person subject to the authority; or
(b) an interested person for the person mentioned in paragraph (a); or
(c) the chief psychiatrist.

(3) Further, the tribunal may at any time, on its own initiative, review (a tribunal review) a treatment authority.

(4) If the tribunal receives written notice under section 210(3) of the amendment of a treatment authority, the tribunal must review (also a tribunal review) the authority within 14 days after receiving the notice.

(5) This section is subject to sections 414 to 416 and chapter 16, part 2, division 6, subdivision 2.

419 Decisions

(1) On a periodic review of a treatment authority, the tribunal must decide to:
(a) confirm the authority; or
(b) revoke the authority.

Note:
See subdivision 2 for the orders the tribunal may make if it confirms the authority.

(2) On an applicant review of a treatment authority, the tribunal:
(a) must decide whether to make the orders sought by the applicant; and
(b) may make the orders under this division it considers appropriate.

(3) On a tribunal review of a treatment authority, the tribunal:
(a) must decide any particular matter stated in the notice given under section 418(3); and
(b) may make the orders under this division it considers appropriate.

421 Requirement to revoke treatment authority

(1) On a review of a treatment authority, the tribunal must revoke the authority if the tribunal considers:
(a) the treatment criteria no longer apply to the person subject to the authority; or
(b) there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) However, subsection (1) does not apply if the tribunal considers the person's capacity to consent to be treated for the person's mental illness is not stable.
Example of when a person's capacity to consent is not stable:
the person gains and loses capacity to consent to be treated during a short time period.

423 Change of category to community
If the category of the treatment authority is inpatient, the tribunal must change the category of the authority to community unless the tribunal considers that 1 or more of the following can not reasonably be met if the category of the authority is community:
(a) the person's treatment and care needs;
(b) the safety and welfare of the person;
(c) the safety of others.

426 Conditions
(1) The tribunal may:
(a) change or remove a condition to which the treatment authority is subject; or
(b) impose a condition on the treatment authority.
(2) However, the tribunal may not impose a condition on the treatment authority that requires the person to take a particular medication or a particular dosage of a medication.

427 Transfer to another authorised mental health service
(1) The tribunal may order the person's transfer to another authorised mental health service to provide treatment and care for the person.
(2) In deciding whether to order the person's transfer under subsection (1), the tribunal must have regard to the following:
(a) the person's mental state and psychiatric history;
(b) the person's treatment and care needs;
(c) the capacity of the authorised mental health service to which the person is to be transferred;
(d) whether the transfer would be in the best interests of the person, including, for example, closer proximity to the person's family, carers and other support persons.

428 Change of category to inpatient
(1) This section applies if the category of the treatment authority is community.
(2) The tribunal may change the category of the treatment authority to inpatient, but only if the tribunal considers it is reasonably necessary for an authorised doctor to examine the person in order to review the person's treatment and care needs.
Note:
Under section 209, the authorised doctor who examines the person may change the nature or extent of the person's treatment in the community.
(3) If the tribunal changes the category of the treatment authority under this section to inpatient, the tribunal may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.
(4) For subsection (3), an authorised person may transport the person to an inpatient unit of the stated authorised mental health service.
Note:
For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.