

ARBITRARY DECISIONS - - RIGHT TO BE FREE FROM

THE LAW

Each patient shall... "Have a right to a **humane psychological... environment** within the hospital facilities..."

§ 51.61(1)(m), Wis. Stats. [Emphasis added]

"Patients have the right to be free from having **arbitrary decisions** made about them. To be non-arbitrary, a decision about a client must be **rationally based** upon a **legitimate treatment, management or security interest.**"

DHS 94.24(3)(h), Wis. Admin. Code [Emphasis added.]

The treatment facility shall maintain a patient treatment record which shall include: "**Documentation** that is **specific and objective** and that adequately **explains the reasons** for any **conclusions or decisions** made regarding the patient."

DHS 94.09(6)(d), Wis. Admin. Code [Emphasis added.]

DECISIONS

1. A county **found a 17-year old ineligible for developmental disabilities services**. She had been **diagnosed** as having a developmental disability **at the age of 6 months**. At the age of 12, she was **diagnosed as autistic** by a multi-disciplinary team of professionals. **Autism is developmental disability** that is a **life-long condition**. The question was whether or not she met the eligibility threshold of a 30% or more functional limitation in at least two of five areas of skills. The county conceded she met that threshold in the area of "self-direction and independence". The records indicate that she also meets the threshold in the area of "self care". Thus, **she should have been eligible for the county's programs**. Her right to prompt and adequate treatment was violated by the county's denial of her eligibility. (Level III decision in Case No. 98-SGE-03 on 11/10/98.)
2. A mother complained that her **son's condition was worsening** since his **medications were discontinued**. Her son's **doctor was on maternity leave** and the service provider would not temporarily assign him to another doctor. She was instructed to call back when the doctor may have returned. But they never attempted to ascertain exactly when the doctor would come back. The **service provider violated the son's right** be free from **arbitrary decisions** being made about him. (Level III decision in Case No. 00-SGE-08 on 7/28/00, upheld at Level IV.)

3. **Financial assistance for housing is not an issue covered by client rights** and such decisions cannot be challenged in the grievance process in DHS 94. (Level III decision in Case No. 01-SGE-02 on 6/6/01.)
4. A patient **wanted to continue the individual therapy** she had received for 9 years, but the service provider shifted to **only doing group therapy** with her. She had been made aware months in advance of the upcoming change in services. The **treatment team agreed** that this **change was appropriate** for her treatment needs. Thus, her right to treatment and **her right to be free from arbitrary decision-making** were **not violated**. (Level III decision in Case No. 01-SGE-09 on 3/27/02.)
5. A man complained on his wife's behalf that she was **given a new therapist without consulting her first**. A treating facility has the **right to change therapists** for **business management reasons**. It is **good practice to consult with the patient first**, but it **does not rise** to the level of a rights violation **not to do so**. (Level IV decision in Case No. 02-SGE-07 on 3/10/04, reversing the Level III decision.)
6. A **methadone clinic** took away a client's **Sunday take-home privileges** after some incidents. The client had a positive breathalyzer test result for alcohol, had lost her take-home bottle, and had taken an overdose of another medication. She was **informed in writing** of the **requirements** for restoring her Sunday take-home privilege, which included having no positive breathalyzers for alcohol and obtaining a letter from her psychiatrist stating that in his/her best clinical judgment that she was responsible and could handle her Sunday take home bottle. Her **right to be treated fairly** was **not violated** because the clinic had **significant, appropriately documented reasons** to take away her Sunday take-home dose. The Sunday take-home dose was eventually restored in an individualized and appropriate manner. (Level III decision in Case No. 04-SGE-02 on 12/20/04)
7. A client of a **methadone clinic** had difficulties receiving psychiatric treatment for anxiety that was accessible and affordable to her and which was also acceptable to the clinic. She found one she liked, but **was told to quit seeing him** by the clinic or her services would be terminated. The psychiatrist in question **does not have a good reputation in the field of substance abuse treatment** because he has a reputation for **prescribing medications that may not be appropriate**. She then found a new psychiatrist who charged more and was less accessible for her to visit. Her right to choose her own psychiatrist was not violated because the clinic had good reasons to ask her to see a different psychiatrist. It was **not an arbitrary decision** by the clinic in these circumstances. (Level III decision in Case No. 04-SGE-02 on 12/20/04)
8. The primary rationale for the **proposed change in vocational services** for a client was **economic**. The county Health and Human Services program faced **increasing waiting lists** for people who need services while having **less fiscal support** to provide those services. In the face of a decreasing budget, the HHS was looking at areas where money could be saved. The **costs** of continuing this client's current vocational service provider were **considerably more** than other, **similar providers** in the area. It was

reasonable for the county to **consider cutting costs without cutting programs**. The client rights question was whether or not the other providers would be able to offer **like services** that **adequately met** the client's **individualized needs** and supported her right to receive **prompt and adequate treatment** appropriate to her condition. It was found that the support services the other vocational provides could offer would be **comparable**. The client would continue working in the same settings at the same times, and with a support person available for the same amount of time. The changes would necessarily include different persons providing those services and doing so under a different organizational structure. However, the vocational services would essentially be the same under the county's proposal. The county's request that the client choose between two other, less expensive, vocational services providers was reasonable and fair. The **need to serve as many clients as possible outweighs the potential benefits of one individual** to continue receiving services from a **more costly service provider** than is necessary to provide support services in a similar manner that other agencies may provide in the same setting. Thus, requiring the client to choose between the two less expensive of three possible providers was not a violation of her rights. (Level III decision in Case No. 03-SGE-09 on 4/11/05)

9. A client had used an **enclosed canopy bed** (manufactured and labeled as a "Vail 1000" bed) for several years for sleeping at night, occasional naps during the day, and as a platform for some personal cares. After an extensive review of the client's situation, it was concluded that **this particular canopy bed was appropriate and safe** for her use. Though technically a **restrictive measure**, it was found that the bed was the **least restrictive alternative to ensure her safety** while allowing her to get the sleep she needed. Therefore, the state and county decisions to discontinue their approval of the use of her Vail 1000 bed was a **violation** of the client's right to a **safe and humane environment** and an **arbitrary decision** because it **was not individualized** to this client's **exceptional safety needs and her unique situation**. This decision **does not set precedent for all Vail beds** or other canopy beds, but only for the bed as it was being used in this specific instance. Thus, the precedent is not binding for other provider agencies or other clients. (Level III decision in Case No. 07-SGE-03 on 12/19/07)
10. A former client of an outpatient **methadone clinic** complained about a new policy that **Sunday take-home doses** were restricted to those who did not miss other dosing days. He wanted the clinic to either be open on Sundays or reverse the Sunday take-home policy. It was concluded that the **policy did not punish patients** because it was **applied equitably**, it was **instituted to motivate** patients to take every scheduled dose, it **has been successful** in decreasing no-shows, it **complies with the federal regulations, state law and code** and the **provider does make exceptions** to the policy for patients that miss doses infrequently and for good reasons, such as automobile problems or illness. No rights violation was found. (Level III decision in Case No. 10-SGE-13 on 3/03/11)
11. A former client of an outpatient methadone clinic complained that he was **not allowed to use a cell phone** even though staff used them. The restriction of cell phone use on

program premises was **not arbitrary**. The clinic has to ensure that patients' confidentiality is protected. Cell phones can and have been used to record and then post to the Internet video of patients in the clinic. Staff are also prohibited from using cell phones there. If staff were not following that directive, the matter would need to be addressed by program administration since it would not amount to a patient rights violation unless evidence was provided that staff were illicitly video recording clients at the clinic. (Level III decision in Case No. 10-SGE-13 on 3/03/11)

12. A former client of an outpatient methadone clinic complained that the **rules and policies were constantly changing** without being adequately communicated to the patients, that he was not provided with a rule handbook after requesting one, nor were new rules put into writing for him. He wanted all rules to be preceded by four weeks notice and for there to be better staff-patient communication about policies. The two-week notice of the new Sunday take-home policy was adequate and did not violate patient rights. Recommendations were made regarding staff-patient communication. (Level III decision in Case No. 10-SGE-13 on 3/03/11)
13. It was **not arbitrary** for a provider to **deny** an adult client **transfer to the doctor of her choice** when **that doctor had expressed a wish to limit her new clients to minors only**. That would be a valid reason to deny the request. It is not a violation of patient rights for a provider to determine which doctors will see which patients, as long as the decision is rationally based and made in good faith. Any directives placed on what type of patients particular doctors see should be well documented. Doctors themselves may limit, within the provider's parameters, which patients they see based on their schedules and long-term career interests. (Level III decision in Case No. 11-SGE-02 on 06/27/11)
14. A client's right to be free from arbitrary decisions was **not violated** because the provider's **decision to terminate her treatment** was based on accusations the provider found credible. Also, the provider's decision was based, at least in part, on evidence of a missed same day call-back, which is a **rule violation**. (Level III decision in Case No. 11-SGE-05 on 9/20/11)
15. A client complained about **losing her Phase 5 treatment status** at a methadone clinic. Adjusting someone's treatment level is a **risk-reduction measure**. For that type of decision, the provider **only needs probable cause** to believe that the patient poses a significant risk in order to implement the measure. Her missed call-back and the two anonymous accusations that she was hoarding and selling her methadone doses provided them with sufficient probable cause to reduce her treatment phase. The **decision** was therefore **not arbitrary**. (Level IV decision in Case No. 11-SGE-04 on 10/17/11)
16. It is **not a rights violation for one party** to decide, in the midst of negotiation, that **they no longer want to negotiate**. (Level III decision in Case No. 11-SGE-06 on 12/02/11)