Circuit Court for Dorchester County
Case No.: C-09-CV-24-000007

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 16

September Term, 2024

IN THE MATTER OF BRANDEN STANFORTH

Wells, C.J.
Beachley,
Albright,

JJ.

Opinion by Beachley, J.

Filed: January 9, 2025

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Under the federal constitution and the Maryland Declaration of Rights, individuals possess a significant liberty interest to be free from the "unwanted administration of antipsychotic drugs" which may be infringed upon only to satisfy certain overriding state interests. *Washington v. Harper*, 494 U.S. 210, 221 (1990); *Allmond v. Dep't of Health & Mental Hygiene*, 448 Md. 592, 609 (2016). When the state seeks to involuntarily medicate an individual committed to a mental health facility, it must meet statutory criteria outlined in § 10-708 of the Health-General Article ("HG") and apply that statute so as to satisfy the individual's procedural and substantive due process rights.

In this case, the Eastern Shore Hospital Center ("the Hospital"), a mental hygiene facility operated by Maryland Department of Health ("the Department"), appellee, convened a clinical review panel to approve the involuntary administration of a psychotropic medication to Branden Stanforth, appellant, a pretrial detainee committed to the Hospital because he was found incompetent to stand trial. The clinical review panel approved the request, Mr. Stanforth filed an administrative appeal, and, after a hearing, an administrative law judge ("ALJ") affirmed the panel's decision, beginning a 90-day approval period for the administration of the medication. Mr. Stanforth filed a petition for judicial review in the Circuit Court for Dorchester County, which affirmed the ALJ's decision.

On appeal from that decision, Mr. Stanforth asks two questions,[1] which we combine

[1] The questions as posed by Mr. Stanforth are:

(continued)

into one:

> Was the ALJ's finding that Mr. Stanforth was a danger to himself within the Hospital supported by substantial evidence in the record and, if not, was Mr. Stanforth denied his substantive due process right to refuse psychotropic medication?

The Department moves to dismiss the appeal as moot because the 90-day approval period expired on March 26, 2024, and the clinical review panel has not been reconvened.

For the following reasons, we deny the motion to dismiss the appeal as moot because the judgment on appeal is capable of repetition and evading review. We hold that the ALJ's finding of dangerousness in the Hospital was not supported by substantial evidence and, consequently, that the ALJ erred by approving the clinical review panel's decision.

BACKGROUND

A. Statutory Framework

HG § 10-708 governs the process for involuntarily medicating mentally ill individuals in Maryland. Absent an emergency, "[m]edication may not be administered to an individual who refuses the medication" unless the individual was admitted to a hospital involuntarily, or was "committed for treatment by order of a court," HG § 10-708(b)(2),

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> 1. Did the ALJ commit an error of law by erroneously equating dangerousness upon release to dangerousness within the hospital?
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> 2. Did the ALJ commit an error of law by failing to afford Mr. Stanforth substantive due process, which permits the forcible administration of psychotropic medication only upon a finding of dangerousness within the hospital setting?

including commitment following a finding of [incompetence to stand trial]." *Johnson v. Md. Dep't of Health*, 470 Md. 648, 658 (2020). In both scenarios, a clinical review panel must approve the administration of the medication. HG § 10-708(b)(2).

Under subsection (g) of the statute, the clinical review panel must make three findings before it may approve an involuntary medication order: first, that the medication is prescribed by a psychiatrist for the purpose of treating the individual's mental health disorder, HG § 10-708(g)(1); second, that the administration of that medication "represents a reasonable exercise of professional judgment[,]" HG § 10-708(g)(2); lastly, and of significance in this appeal, that

> [w]ithout the medication, the individual is at substantial risk of continued hospitalization because of:
>
> > (i) Remaining seriously mentally ill with no significant relief of the mental illness symptoms that:
> >
> > > 1. Cause the individual to be a danger to the individual or others while in the hospital;
> >
> > > 2. Resulted in the individual being committed to a hospital under this title or Title 3 of the Criminal Procedure Article; or
> >
> > > 3. Would cause the individual to be a danger to the individual or others if released from the hospital;
> >
> > (ii) Remaining seriously mentally ill for a significantly longer period of time with the mental illness symptoms that:
> >
> > > 1. Cause the individual to be a danger to the individual or to others while in the hospital;
> >
> > > 2. Resulted in the individual being committed to a hospital under this title or Title 3 of the Criminal Procedure Article; or

> 3. Would cause the individual to be a danger to the individual or others if released from the hospital[.]
>
> (iii) Relapsing into a condition in which the individual is unable to provide for the individual's essential human needs of health or safety.

HG § 10-708(g)(3). In this case, Mr. Stanforth does not challenge the subparagraph (g)(1) and (g)(2) findings, and the Department conceded that the subparagraph (g)(3)(iii) justification was inapplicable. Consequently, we are concerned only with the subparagraph (g)(3)(i) and (g)(3)(ii) findings.

If a clinical review panel approves a request to involuntarily medicate an individual, its decision is automatically stayed for 48 hours, the time in which the individual may request a *de novo* administrative hearing to review the decision of the panel. HG § 10-708(l)(1), (3). If a hearing is requested, the stay remains in effect until the administrative decision is issued. HG § 10-708(l)(3). If a decision approving the administration of medication is affirmed, it may remain in effect for up to 90 days, after which time a clinical review panel must be reconvened to determine if a renewal is warranted. HG § 10-708(n).

B. Facts and Proceedings

On June 22, 2020, Mr. Stanforth was committed to the custody of the Department after he was found incompetent to stand trial on charges of felony theft ($25,000 to $100,000) and the unlawful taking of a motor vehicle, also a felony. Md. Code, Crim. Law §§ 7-104(g)(ii) and 7-105(c)(1). He is diagnosed with schizoaffective disorder, bipolar type, and substance abuse disorder (alcohol and marijuana). When Mr. Stanforth was

admitted to the Hospital, he was manic and exhibiting psychotic symptoms, including pressured speech, insomnia, disorganized thought processes, paranoid delusions, and auditory hallucinations.

Since December 2021, Mr. Stanforth has voluntarily taken Clozapine, an antipsychotic drug, and Depakote, which prevents seizures (a side effect of Clozapine) and provides mood stabilization benefits. He also takes numerous medications for somatic conditions, including diabetes, high cholesterol, and acid reflux. Though the Clozapine resulted in significant improvement in many of Mr. Stanforth's symptoms—allowing him to remain calm, focus, and sleep—he continued to experience "fixed paranoid/somatic delusions" and remained incompetent to stand trial. Specifically, since he was admitted to the Hospital, he has advised his treating psychiatrist, Min Yu, M.D., that:

> a chip [was] planted in his forehead to control him, and he plan[ned] to find a doctor to remove it, but if he [could not] find a doctor to do it, he [would] use a box-cutter to make a small cut and pull the chip out by using a tweezer.

On December 4, 2023, Dr. Yu prescribed Abilify to augment the Clozapine with the goal of removing this remaining delusion. Mr. Stanforth refused that medication[2] and, on December 7, 2023, was notified that a clinical review panel would be convened on December 12, 2023, to determine whether he could be involuntarily medicated.

Mr. Stanforth attended the clinical review panel proceedings at the Hospital along with his patients' rights advisor. The panel, consisting of the clinical director of the

[2] On one occasion, Mr. Stanforth took the medication by accident, but he continuously refused it before and after that occurrence.

Hospital, a non-treating psychiatrist at the Hospital, and a social worker at the Hospital, recommended approval of the involuntary administration of Abilify. The panel applied the statutory criteria under HG § 10-708(g) and found that 1) the medication was prescribed to treat Mr. Stanforth's schizoaffective disorder, satisfying § 10-708(g)(1); 2) it was an exercise of Dr. Yu's reasonable judgment, satisfying § 10-708(g)(2); and 3) that without the medication, Mr. Stanforth was at substantial risk of continued hospitalization both because he would remain seriously mentally ill with no significant relief of his symptoms, under subparagraph (g)(3)(i), and because he would remain mentally ill for a significantly longer period of time, under subparagraph (g)(3)(ii). In making the alternative findings under the (g)(3) subparagraphs, the clinical review panel found that Mr. Stanforth's symptoms caused him to be a danger to himself or others both in the Hospital and upon release, and that the symptoms had caused him to be committed to the Hospital for incompetency to stand trial.

The next day, December 13, 2023, Mr. Stanforth requested a *de novo* administrative hearing. Two weeks later, his appeal was heard by an ALJ in a remote proceeding at which the Department called Dr. Yu in its case in chief and in rebuttal, and Mr. Stanforth testified in his case. We will discuss that testimony in more detail in our discussion, but, in sum, Dr. Yu testified that Mr. Stanforth's delusion that he had a chip implanted in his forehead was persistent, continuing for the entire three-and-one-half years he had been a patient at the Hospital; that he had made his plan for removing the chip clear on numerous occasions; and that his plan was, upon discharge, to find a physician who would perform surgery on

him to remove the chip and, if the physician refused, to rent a motel room and remove the chip himself with a sharp implement. She opined that he might bleed to death if he attempted to cut into his head. In her medical judgment, adding Abilify to augment the effects of the Clozapine was the last resort to attempt to remove Mr. Stanforth's remaining delusion and allow him to be safely discharged from the Hospital.

Mr. Stanforth testified that he did not wish to take Abilify. He explained that on the one occasion he took the medication by mistake, he had trouble sleeping and suffered from constipation. He expressed that he had no intention of attempting to perform the surgery to remove the chip while he remained hospitalized, but acknowledged his plan to seek to have the chip removed after he was discharged to the community because "it needs to be done."

The ALJ found that Dr. Yu prescribed Abilify to treat Mr. Stanforth's schizoaffective disorder; that it was a reasonable exercise of her professional judgment to do so; and that Mr. Stanforth's delusion caused him to be a danger to himself or others while in the Hospital (as well as upon his discharge). That same day the ALJ issued an order approving the clinical review panel's decision for a period of 90 days. We will discuss the ALJ's findings in greater detail in our discussion.

Mr. Stanforth petitioned for judicial review of that decision in the Circuit Court for Dorchester County. The court heard argument on February 6, 2024, and affirmed the ALJ decision. This timely appeal followed.

MOTION TO DISMISS

As a threshold matter, the Department moves to dismiss the appeal as moot. "[I]n order for a case to be heard and an appellate court to provide a remedy, there must be an existing controversy." *Off. of Pub. Def. v. State*, 413 Md. 411, 422 (2010). Indeed, "[a] case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant." *Suter v. Stuckey*, 402 Md. 211, 219 (2007). Subject to limited exceptions, if a controversy no longer exists when the case comes before us, we "usually dismiss the appeal without addressing the merits of the issue." *Powell v. Maryland Dep't of Health*, 455 Md. 520, 540 (2017); *see also* Md. Rule 8-602(c)(8).

A well-recognized exception to the mootness doctrine is that "even if no controversy exists at the precise moment that the case is before the appellate court, it will not be deemed moot if the controversy between the parties is 'capable of repetition, yet evading review.'" *Id*. at 540-41. In other words, "where a case, while technically moot, presents a recurring matter of public concern which, unless decided, will continue to evade review, we nonetheless have considered the case on its merits." *Off. of Pub. Def*., 413 Md. at 423.

Here, on December 27, 2023, the ALJ affirmed the clinical review panel's authorization to administer the medication, which began the 90-day approval period under HG § 10-708(n). Thus, the clinical review panel's authorization expired on March 26,

2024, and is now moot.[3] *See Allmond*, 448 Md. at 607 n.10. Because orders to administer refused medications expire in 90 days, however, "even an expedited appeal is not sufficiently swift to assure review of an order authorizing forced administration of antipsychotic medications[.]" *Beeman v. Dep't of Health & Mental Hygiene*, 105 Md. App. 147, 159 (1995). Accordingly, notwithstanding the mootness of the matter before us, we will address the merits of Mr. Stanforth's appeal.

STANDARD OF REVIEW

We review the decision of the ALJ, not the circuit court. *Allmond*, 448 Md. 141. Our review is limited to determining if there is substantial evidence in the record to support the ALJ's findings and conclusions and whether the decision is based on an erroneous conclusion of law. *See, e.g., United Parcel Serv., Inc. v. People's Couns. for Baltimore Cnty*., 336 Md. 569, 577 (1994). If a reasoning mind reasonably could have reached the factual conclusions that the ALJ reached, its findings and conclusions are supported by substantial evidence. *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 18 (2010). "A different, more expansive standard applies to purely legal conclusions[.]" *Beeman*, 107 Md. App. at 137. If the decision "is predicated solely upon an error of law, no deference is appropriate and the reviewing court may substitute its judgment for that of the [ALJ]." *Id*. (quoting *Kohli v. LOOC, Inc*., 103 Md. App. 694, 711 (1995)).

[3] The Department states in its brief that Mr. Stanforth's treatment team has not and does not intend to reconvene the clinical review panel to obtain renewed authorization for the medication. Given that there is nothing to prevent the treatment team from reconsidering this stance in the future, whether for Abilify or for a different psychotropic medication, this assertion does not alter our analysis.

DISCUSSION

a.

Before turning to the parties' contentions, we consider the Supreme Court of Maryland's decision in *Allmond*, which recognized that individuals possess a liberty interest under the Maryland Declaration of Rights to refuse psychotropic medications, held that HG § 10-708(g) is constitutional, and established the manner in which it must be applied so as not to violate an individual's constitutionally protected interest. 448 Md. at 592. Allmond was committed to a mental health facility operated by the Department for treatment after he was found incompetent to stand trial on a charge of first-degree murder. 448 Md. at 600-01. He was diagnosed with schizophrenia, but refused all psychotropic medications prescribed to him. *Id.* at 601-02. A clinical review panel was convened at the behest of Allmond's psychiatrist and approved the involuntary administration of a psychotropic medication for 90 days. *Id*. at 602. Allmond did not appeal from the initial order, but he did appeal after the clinical review panel reconvened to renew the authorization. *Id*. at 603.

After an administrative hearing, an ALJ found that the medication was prescribed to treat Allmond's mental health disorder and that it was a reasonable exercise of professional judgment. HG § 10-708(g)(1)-(2). Under subparagraphs (g)(3)(i)(2) and (ii)(2), the ALJ found that without the medication, Allmond was at substantial risk of continued hospitalization because he would remain seriously mentally ill with no significant relief of the symptoms that resulted in him being committed to the hospital for

incompetency to stand trial *and* because he would remain seriously mentally ill for a significantly longer period of time with the symptoms that resulted in him being committed to the hospital for incompetency to stand trial. The ALJ expressly found that Allmond was not a danger to himself or others inside or outside the facility under subparagraphs (g)(3)(i)(1) & (3) and (g)(3)(ii)(1) & (3). Subparagraph (g)(3)(iii) was not at issue.

On judicial review, Allmond argued that HG § 10-708(g) was unconstitutional under the federal constitution and the Maryland Declaration of Rights. The circuit court affirmed the administrative decision and the Supreme Court of Maryland granted *certiorari* review while Allmond's appeal was pending in this Court.

Our Supreme Court examined a trio of cases decided by the United States Supreme Court establishing the contours of the liberty interest to refuse psychotropic medications: *Washington v. Harper*, 494 U.S. at 223-25; *Riggins v. Nevada*, 504 U.S. 127 (1992); and *Sell v. United States*, 539 U.S. 166, 179 (2003). It distilled from these cases the following:

> There is a substantive due process right to refuse psychotropic drugs. *Harper*, 494 U.S. at 223. For convicted prisoners, a reasonableness test applies. *Id*. For pretrial detainees, the medication must be "necessary to accomplish an essential state policy." *Riggins*, 504 U.S. at 138. In any event, there must be "a finding of overriding justification and a determination of medical appropriateness." *Id*. at 135. Overriding justifications include preventing danger to the detainee's self or others in the facility and making a detainee competent to stand trial for a serious crime. *Harper*, 494 U.S. at 225; *Riggins*, 504 U.S. at 135; *Sell*, 539 U.S. at 180.

Allmond, 448 Md. at 613.

Allmond argued that HG § 10-708(g) was unconstitutional on its face because it permitted the Department to medicate a pretrial detainee against his or her will without a

predicate finding that, in an unmedicated state, the detainee was a danger to self or others *within the facility*. *Id*. at 615. The Court rejected this argument. It reasoned that if "the State desired to make a pretrial detainee competent to stand trial for a serious crime and was able to meet all the requirements of *Sell*," it still would require statutory authorization, which HG § 10-708(g) could supply without a showing of dangerousness within the facility. *Id*. at 616-17. On this basis, the statute was not facially unconstitutional.

Satisfaction of the HG § 10-708(g) statutory criteria would not necessarily "satisfy the constitutional minimum," however. *Id*. at 617. The Court held that the state's interest in "providing medical care to those committed to its custody" and "shortening the length of an individual's in-patient care" were not "overriding justifications" for medicating a pretrial detainee against their will. *Id*. at 617-19. Thus, "if the State offer[ed] nothing more than the bare minimum to satisfy the statute—that the individual has the same symptoms as resulted in the individual's hospitalization or that the individual would be dangerous if released—then the application of the statute would not be constitutional." *Id*. at 619. Because Allmond only challenged the constitutionality of HG § 10-708(g) on its face, the Court did not reach the issue of whether it was constitutional as applied to him. *Id*.

b.

Mr. Stanforth's challenge on appeal is two-pronged. First, he argues that the ALJ's findings under subparagraphs (g)(3)(i)(1) and (g)(3)(ii)(1) that, without the medication he was a danger to himself in the Hospital, were unsupported by substantial evidence in the record. Second, he asserts that absent this finding, the Department lacked an overriding

justification to medicate him involuntarily and, consequently, HG § 10-708(g), as applied to him, was unconstitutional.

The Department responds that the ALJ's finding that Mr. Stanforth was dangerous to himself within the Hospital was supported by substantial evidence in the record and its ruling upholding the clinical review panel's decision should be affirmed on that basis. The Department does not contend that the ALJ's decision may be sustained absent a finding of dangerousness within the Hospital.

c.

We turn to the evidence presented at the ALJ hearing bearing on the issue in dispute—Mr. Stanforth's dangerousness within the Hospital. Dr. Yu was accepted as an expert in medicine, adult psychiatry, and the treatment of patients in an inpatient setting with psychiatric medications. She testified that she had treated Mr. Stanforth for more than half the time since his admission to the Hospital three and a half years earlier. Since Mr. Stanforth began voluntarily taking Clozapine, his mental health symptoms had improved. He could sleep through the night, his "thought process [wa]s totally organized. He[was] able to engage in meaningful conversation . . . [and] focus on the topic. He [wa]s also much calmer." She explained that Mr. Stanforth had threatened to kill a man by the name of John Damsey, whom he blamed for implanting the chip in his head. Dr. Yu was unsure if Damsey was real or fictional. He had not made a statement threatening to kill Damsey for over a year.

The only concerning symptom that had not resolved was Mr. Stanforth's persistent delusion about the chip in his head. Dr. Yu opined that "the real reason for us to pursue additional medication with [the clinical review panel] is to try to make the last effort to get rid of the delusion because that delusion is posing an imminent danger to him." This was so, she explained, because his plan was "to get out of the hospital and then go to the community hospital to find a doctor to cut out the chip. And if he cannot find a doctor to cut out the chip, he is going to do it himself." Mr. Stanforth had advised Dr. Yu of his "detailed plan," which was: "to rent a hotel room, get a box cutter, make a small incision, and take [the chip] out with [a] tweezer." Dr. Yu opined that his treatment team was

> really worried about him harming himself because, you know, as we all know, the head has a huge amount of blood supply and if he cuts into his head, he is going to bleed to death. So that's the main reason for us to pursue the [clinical review panel] medication to add to, the Abilify to augment the Clozapine to try to make him lose or decrease the delusion, *so he can be safely discharged to the community.*

(Emphasis added).

When asked about conversations that she had with Mr. Stanforth concerning adding Abilify to his regimen, Dr. Yu explained that she had advised him it "could give him a chance to lose the delusion and *then get out of the hospital safely*[.]" (emphasis added). He responded that he did not wish to take another antipsychotic medication, noting specifically that he was worried about the increased risk of seizures. Dr. Yu explained that the treatment team had tried psychotherapy and other strategies before recommending Abilify as a last resort.

Asked whether there were any incidents that had occurred "during his hospitalization where Mr. Stanforth has demonstrated that he is a danger to himself or others," Dr. Yu replied:

> He has told me that he wouldn't cut out the chip by himself in the hospital. I have not observed him try to obtain any sharp object to try to cut the chip. But he made his plan very clear to me. *Once he leaves the hospital*, he is going to cut it out if no doctors would do that. And I told him that there would be no doctor who would do that because there is no chip in his head. We actually did a[n] MRI and our somatic physician ordered [an] MRI just to try to convince him that there was no chip, and he still is not convinced.

(Emphasis added). Mr. Stanforth never had been restrained or placed in seclusion during his hospitalization. Nor has he had any disciplinary issues.[4]

Dr. Yu explained the "particular clinical need" for prescribing Abilify was to augment the Clozapine "to reduce the paranoid delusion. So if he can even like reduce the intensity of the delusion, he will have doubts about the delusion, he could be, you know, not to have the plan to cut it out and, *therefore, he can be safely discharged to the community*." (emphasis added). She added, "it's all about the safety and we [are] just very worr[ied] about him cutting his head open, bleed to death." To achieve that result, the treatment team would recommend the lowest possible dose to remove the delusion because "the ultimate goal is to help him lose the delusion and *get out of here*." (emphasis added).

At the end of Dr. Yu's direct examination, counsel for the Department questioned her about the subparagraph (g)(3)(i)(1) and (g)(3)(ii)(1) findings:

[4] Dr. Yu described one incident where another patient accused Mr. Stanforth of touching her inappropriately, but that complaint was later withdrawn and was not substantiated.

> [COUNSEL FOR THE DEPARTMENT]: [W]ithin a reasonable degree of medical certainty, do you have an opinion whether without medication Mr. Stanforth is at substantial risk of continued hospitalization because of remaining serious mentally ill with not significant relief of mental illness symptoms or of remaining seriously mentally ill for a significantly longer period of time with symptoms that cause him to be a danger to himself or others[?]
>
> [DR. YU]: Yes. Actually, he has been here for 3 ½ years. And he was able to answer all the competency questions correctly. He would have been opined []competent to stand trial and out of the hospital if he was able to acknowledge the charge – the charges against him. The only reason that he was opined incompetent to stand trial is because of the delusion. He believes that the chip control him to – the individual had a chip implanted in his head, controlling him, he had to take the vehicle to get to that person. And so that's why he was, even though he totally mastered all the competency terminologies, procedures, he was totally able to become competent to stand trial, except for acknowledging the charge. So he has remained incompetent to stand trial for all of this time. Even if he times out,[5] he would still be involuntarily admitted here due to the danger to himself because his particular plan to cut out the chip by himself.

On cross-examination, Dr. Yu was asked primarily about Mr. Stanforth's stated reasons for refusing the take Abilify, the side effects of the drug, and the studies supporting its use in conjunction with Clozapine.

[5] Under Md. Code, Crim. Law § 3-107(a)(1), the court must dismiss charges against a defendant found incompetent to stand trial after the expiration of five years for a felony charge or a crime of violence (or the expiration of the maximum sentence for the crime, if less than five years). This Court has held that that time period begins to run on the date that a defendant is found incompetent, not the date the defendant is charged. *Kimble v. State*, 242 Md. App. 73 (2019).

We take judicial notice of the fact that Mr. Stanforth was found incompetent to stand trial by the District Court of Maryland for Wicomico County on May 21, 2020, in Case No. D-23-CR-20-000784. Even if Mr. Stanforth's criminal charges are dismissed in May 2025, however, Dr. Yu testified that the treatment team at the Hospital would petition for him to be involuntarily committed to the Hospital for continued treatment so long as his delusion remained.

In his case, Mr. Stanforth testified about the reasons he did not wish to take Abilify. He testified that he did not have "any intention of harming [himself or others] in the hospital[.]" When asked if he had any intention of performing surgery on himself in the Hospital, he replied: "No. Only you'd have to be hella smart to try to get something done like that in there."

On cross-examination, counsel for the Department asked Mr. Stanforth if he had plans to perform the surgery on himself "if [he] weren't in the hospital, and [he] thought it needed to be done?" He responded that he "kn[ew] it needs to be done" because, in his view, the MRI showed scar tissue consistent with the presence of a chip. He explained that if he was not hospitalized, he would go see a specific doctor he identified by name to request surgery to remove the chip. If that was unsuccessful, Mr. Stanforth testified that he would file charges of "slander and malpractice" against the doctors, then he would "try to wait it out" and find a different doctor to perform the surgery. He explained that the "truth of the matter of the fact is there is a chip there" and he was "positive that 99.999% of any doctors would see that."

On rebuttal, Dr. Yu was asked a single question that is not pertinent to the issue on appeal.

At the close of the evidence, counsel for the Department argued that it had met its burden to show that Mr. Stanforth "poses a danger to himself if he were not to be medicated" because this medication was the last resort to remove his persistent delusion that there was a chip implanted in his forehead. Counsel recognized that Mr. Stanforth

"readily admits he will not try to perform the surgery on himself while he is a patient in the hospital," but noted that he "also demonstrated that he does not understand that there may come a point when no doctor is willing to perform the procedure on him that he seeks to have performed." There was evidence establishing that Mr. Stanforth suffers "from a mental illness that causes him to believe that there is a surgical act that needs to be performed on him that it would actually be dangerous to perform on him and would not in fact help him in any way." For that reason and based upon Dr. Yu's testimony, the Department argued that it had proved it was more likely than not that Mr. Stanforth was dangerous to himself if he were not medicated consistent with the clinical review panel decision.

The ALJ asked counsel to clarify whether the underlying justification relied upon by the Department was "dangerousness . . . while in the hospital to himself." Counsel responded, "Yeah, in and out of the hospital." She added, "If he were to be released, . . . we believe he would try to perform this surgery on himself if he could not get it obtained through some other course."

The ALJ also asked counsel to confirm that the Department was not arguing, under *Sell*, that it had an overriding interest in making Mr. Stanforth competent to stand trial. Counsel responded that the "underlying charges" did not carry a sentence justifying reliance upon *Sell* and, consequently, the Department was "presenting this solely from a dangerousness perspective."

Counsel for Mr. Stanforth argued that, under *Allmond*, the Department "has to demonstrate that he's a danger to self or others while in the hospital" and that there was "absolutely no evidence whatsoever that Mr. Stanforth is a danger to self or others in the hospital." She emphasized that Dr. Yu testified that Mr. Stanforth had no behavioral issues during his more than three years "in this setting[.]" She reasoned that Mr. Stanforth's statements about his plans upon being released could not support a finding of dangerousness in the hospital.

In rebuttal, counsel for the Department argued that dangerousness upon release from the Hospital also was a statutory basis supporting the clinical review panel decision and Mr. Stanforth had stated in the past that he would perform the surgery on himself. Counsel reasoned that it was "unclear whether he would do so in the hospital or not but for the fact that he's prevented from having access to certain items while he is a patient."

After a brief recess, the ALJ ruled as follows. He found under HG § 10-708(g)(1)-(2) that Dr. Yu prescribed Abilify to treat Mr. Stanforth's schizoaffective disorder and that it was a reasonable exercise of her professional judgment to do so. Those findings are not at issue.

Turning to the alternative considerations under HG § 10-708(g)(3), the ALJ commented that Mr. Stanforth's counsel's argument that "there's really no evidence that he's a danger to himself while in the hospital" was "based upon the statement that, again, he can't really, you know, based on where he is and the controlled environment he's in, you know, do anything to himself to cut away at his head to get out the chip." That did not

mean that Mr. Stanforth did not intend to do so "if he was denied that opportunity by a doctor." The ALJ emphasized that the MRI performed on Mr. Stanforth revealed that there was "just no chip to cut away at" and yet he remained "99.999 percent sure that he's going to get that done one way or another if he's released." "[B]ecause of that," the ALJ found "that that is enough of a delusion to cause that danger and he remains dangerous while in the hospital."

The ALJ noted that he did have a concern about the "overriding justification" under *Allmond* given that the Department did not rely upon the *Sell* factors. He understood Mr. Stanforth's argument, through counsel, that he "really can't do anything to [him]self while [he's] in the hospital because of his controlled environment." Nevertheless, the ALJ found that "there is an overriding justification that he continues to remain in the hospital and remains a danger to himself in the hospital because of his delusion." The evidence established "that he would continue to find a way to get rid of this chip and really this Abilify and the prescription of it being really the sort of last resort to help with the Clozapine to help him get rid of that delusion is the only way to go."

d.

Dr. Yu's testimony established that Mr. Stanforth's delusion that he had a chip implanted in his forehead predated his commitment to the Hospital—it was the underlying reason he committed the crimes resulting in a finding that he was incompetent to stand trial—and had persisted during his entire three and one-half years at the Hospital despite administration of the anti-psychotic medication that he voluntarily took. During that time,

he never had been restrained or placed in seclusion. Dr. Yu's testimony, coupled with Mr. Stanforth's testimony, further established that his "detailed" plan for removal of the chip began with his release from the Hospital, followed by seeking out a doctor who was willing to remove the chip, followed by potentially suing doctors who refused to help him, and, finally, with self-help.

It is indisputable that Mr. Stanforth's plan, if carried out, is dangerous to him. The issue on appeal centers upon whether that danger exists *in the hospital setting*. As the State acknowledges in its brief, Dr. Yu's "principal focus was the danger Mr. Stanforth would pose *outside* the Hospital" and the medical opinion that medicating him could "facilitate his safe release." (emphasis in original). Nevertheless, the State contends Dr. Yu's testimony that the delusion posed "an imminent danger" to him and the evidence of "the staunchness" of the delusion supported a reasonable inference that he was dangerous in the Hospital "in light of the possibility that [he] might gain access to sharp instruments while committed[.]" We disagree.

"[W]e are mindful of how limited our role is; we 'may not substitute our judgment for that of the agency concerning the appropriate inferences to be drawn from the evidence.'" *Bond v. Dep't of Pub. Safety & Corr. Servs.,* 161 Md. App. 112, 125 (2005) (quoting *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 420 (1997)). Nevertheless, an inference is entitled to deference only when it is "reasonably deducible" from the evidence. *Jones v. State*, 343 Md. 448, 460 (1996); *see also Bereano v. State Ethics Comm'n*, 403 Md. 716, 756 (2008) (noting that an administrative agency is owed no

deference when it makes unreasonable inferences from the evidence). On this record, we conclude that it was unreasonable to draw an inference that Mr. Stanforth presented a danger to himself within the Hospital based on evidence that Mr. Stanforth had a persistent delusion about a chip implanted in his forehead and a plan to seek removal of that chip upon his release.

First, Dr. Yu and Mr. Stanforth both testified that he never had articulated a plan to attempt to surgically remove the chip while at the Hospital. Mr. Stanforth's plan began with his release, which was the "imminent" danger about which Dr. Yu was gravely concerned. The State conceded as much during its closing argument before the ALJ, stating that Mr. Stanforth "readily admits he will not try to perform the surgery on himself while he is a patient in the hospital," and arguing that it could rely upon Mr. Stanforth's dangerousness upon release as an independent basis for relief, a position it no longer takes on appeal.

Second, there was no evidence that, despite the persistence of his delusion, Mr. Stanforth ever tried to obtain any sharp implements while at the Hospital over the three and one-half years he had been committed prior to the administrative hearing. The evidence established that the Hospital had taken no measures to restrict Mr. Stanforth's movement beyond normal protocols and that he never had violated any rules.

Third, there was no evidence that it would be feasible for Mr. Stanforth to obtain sharp implements in the highly controlled hospital setting. The Department conceded this fact as well in its closing argument, noting that Mr. Stanforth was "prevented from having

access to certain items while he is a patient." The ALJ, in his ruling, also commented upon the fact that Mr. Stanforth was in a "controlled environment" where he could not "do anything to himself to cut away at his head to get out the chip."

Given the dearth of evidence that Mr. Stanforth intended to, had tried to, or realistically could execute a plan to remove the chip himself in the hospital setting, the ALJ's conclusion that the delusion itself was nonetheless dangerous to Mr. Stanforth while he remained in the Hospital cannot withstand scrutiny. Absent a finding of dangerousness within the Hospital, the Department offered "nothing more than the bare minimum to satisfy the statute—that [Mr. Stanforth] has the same symptoms as resulted in [his] hospitalization [and] that [he] would be dangerous if released[.]" *Allmond*, 448 Md. at 619. It follows that the application of HG § 10-708(g)(3) in this case violated Mr. Stanforth's substantive due process right to refuse psychotropic medication. *Id*. We reverse.

JUDGMENT OF THE CIRCUIT COURT FOR DORCHESTER COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.