EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 25 OF THE MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/

IN THE DISTRICT COURT
AT HUTT VALLEY

I TE KŌTI-Ā-ROHE
KI TE AWAKAIRANGI

FAM-2024-085-000283
[2024] NZFC 8797

IN THE MATTER OF	AN APPLICATION FOR AN INPATIENT COMPULSORY TREATMENT ORDER PURSUANT TO SECTIONS 14 AND 30 OF THE MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992
BETWEEN	TE WHATU ORA – HEALTH NEW ZEALAND Applicant
AND	[HG] Person In Respect of Whom the Application Is Made

Hearing: 10 July 2024
(Heard at [centre deleted])

Appearances: Mr Ross for [HG]
Dr Horrigan, Responsible Clinician
Mr Jones, Second Health Professional

Judgment: 11 July 2024

RESERVED DECISION OF JUDGE S HOUGHTON
[Application pursuant to sections 14, 28 and 30 of the Mental Health (Compulsory Assessment and Treatment) Act 1992]

The application

[1] This is a reserved judgment after a hearing on 10 July 2024 of an application pursuant to ss 14, 28 and 30 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) regarding [HG].

[2] At the conclusion of the hearing, I advised that I was reserving my decision, but that it would be released on an urgent basis.

[3] A separate minute has issued regarding the hearing process and my examination of [HG] pursuant to s 18 of the Act which occurred on 10 July 2024. The option of adjourning this application to a later date was discussed, but on [HG]'s behalf Mr Ross sought for the hearing to proceed and the application to be determined.

[4] The application pursuant to ss 14, 28 and 30 of the Act is opposed by [HG], whom Mr Ross represents, and Mr Ross provided on 10 July 2024 written submissions setting out the opposition to the making of an order. Those submissions were discussed during the hearing and Dr Horrigan, who brought this application on 4 July 2024 responded to those submissions within the hearing.

What must I decide?

[5] I need to determine whether appropriate procedures under the Act have been followed and whether the grounds for the making of an order pursuant to ss 14, 28 and 30 are established.

[6] Mr Ross, on [HG]'s behalf, says that because the 14-day period of compulsory assessment under s 13 of the Act has been significantly reduced in circumstances that do not warrant it, the application for an inpatient compulsory treatment order pursuant to ss 14, 28 and 30 of the Act should be dismissed.

Relevant facts

[7] On 27 June 2024, [HG] was initially assessed and admitted to [a treatment centre], under the compulsory provisions of the Act.

[8] It is accepted that appropriate procedures pursuant to ss 8A, 8B, 9, 10 and 11 of the Act have been undertaken. The five-day period of assessment pursuant to s 11 of the Act commenced on 27 June 2024.

[9] On 2 July 2024, [HG] was deemed unfit to be released from compulsory assessment and the certificates pursuant to ss 12 and 13 of the Act were issued. The 14-day period of compulsory assessment pursuant to s 13 commenced on 2 July 2024.

[10] This application for a compulsory treatment (inpatient) order was made two days after that 14-day assessment period began, on 4 July 2024.

[11] It appears that on 4 July 2024, [HG] applied pursuant to s 16 of the Act, for a review of his condition by a judge. That was the same date that Dr Horrigan filed this application for a compulsory inpatient treatment order. On [HG]'s behalf Mr Ross submitted that the s 16 application must be put to one side and sought an immediate determination of the application for a compulsory treatment order.

[12] As will be apparent from my minute that has issued regarding the procedure on 10 July 2023, that day I conducted the examination of [HG] pursuant to s 18 of the Act. [HG] also remained present throughout the hearing. Pursuant to s 18(5) of the Act, I was not satisfied on 10 July 2024 that [HG] was fit to be released from compulsory status and reserved my decision with respect to the s 30 application.

Has appropriate process been followed?

[13] Dr Horrigan acknowledges that the application was only filed two days into the 14-day assessment period. He says he did that because he thought that would be best for [HG], to avoid delays he anticipated might occur procedurally, with the intent of ensuring that [HG]'s liberties were not restricted for any longer than was necessary. He acknowledged the concerns expressed by Mr Ross on [HG]'s behalf regarding the significant truncation of the 14-day assessment period, but says he did that with [HG]'s interests at the forefront of his mind.

[14] The wording within s 14 of the Act makes it clear that an application for a compulsory treatment order must be made before the expiration of the 14-day period

of assessment. Thus, the clinician can apply for a compulsory treatment order before the expiry of that period. That is apparent from ss 14(1) and (4) of the Act.

[15] However, this is not an unfettered power enabling a clinician to significantly reduce the 14-day assessment period arbitrarily, and not for administrative reasons.

[16] I refer to remarks made by Judge Druce in the case of *T v T* where, with reference to s 12, his Honour stated:[1]

> I certainly would not read the words "before the expiry of the first period of assessment" as indicating that a clinician can undertake an assessment at any time to suit the hospital purposes from the moment of commencement of the first period, but rather that the intention quite plainly is that the full extent of that period be utilised for the obvious objects of the Act.

[17] Mr Ross referred me to the decision of *Re Saiosi*[2]. Judge Grace held that a reduction from a five day assessment to two days under the first period of assessment (s 11 of the Act) in circumstances where it did not end during a weekend was inappropriate and the application for an inpatient treatment order must fail.

[18] In *Capital and Coast District Health Board* Judge von Dadelszen said:[3]

> [12] In this case, then, I need to be satisfied that the District Health Board did not truncate that period simply because staff or resources were unavailable for the weekend immediately following the decision the doctor made on the Friday, 1 September 2006. If administrative convenience was the sole reason, then, in my view, the application would have to be dismissed, because as I have tried to make clear already, administrative convenience is not a sufficient justification for bringing the 5 day period to an end effectively.
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> …
>
> [17] Just to emphasise, then, my view: if the Court can be satisfied that the primary reason for the truncation of the 5 day period is for the health and/or well-being of the patient, then that is justified. It is not justified if it is simply for the administrative convenience of the hospital authorities.

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[1] *T v T* FAMC Kaitaia FAM-2004-029-142, 4 August 2006 at [7].
[2] *Re Saiosi* (Family Court, Wellington, 30 May 2003), *Re F S L* (1993) 11 FRNZ 54, *T v T* FAMC Kaitai FAM-2004-029-142, 4 August 2006.
[3] *Capital and Coast District Health Board v R*, FAMC Wellington FAM-2006-085-950, 25 October 2006, Family Court, Wellington.

[19] I acknowledge that the health and wellbeing of a patient is not mutually exclusive to administrative convenience. It must be the case that there are some instances whereby the administrative convenience also benefits the patient.

[20] I consider too the case of *AJB,* wherein Judge Moss, accepting that "administrative convenience ought not to rule", made an assessment of the practicalities of the case at hand, (in that instance the second assessment period contained a series of weekend and public holidays).[4] Her Honour determined that the process had been properly followed. Furthermore, the Judge considered that the position of the patient was not substantially influenced by the shortening of the assessment period.

[21] I note too the case of *DT*[5]*,* a decision of Judge Mill, which considered the application of s 14 and I have found the following excerpt helpful:

> In my view, and for similar reasons as in Judge Grace's case, I find that the assessment prior to the notice of the 14 day assessment period was completed early substantially for the convenience of the responsible clinician as he would not be available at the end of that 5 day period. This is not what is envisaged in s 11 of the Act and there seems to be no compelling medical reasons for the period being shortened.
>
> Having said that it is equally clear that had the 5 day period been allowed to run that the doctor would have still certified for an additional period of assessment and that the 14 day period would have started on 24 March and not 21 March. An application for compulsory treatment order would still have been made given the medical opinion and evidence at that time and it still could have been considered by the Court on 12 April or more likely any later time within the relevant 14 day period.

[22] In that case the terms of the relevant provision (s 11) were found to have been breached in the interests of administrative convenience, however Judge Mill stated that this did not require that he dismiss the application. The Judge found that adjourning the proceedings for determination was a sufficient response to the breach.

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[4] *Capital and Coast District Health Board v AJB* (Mental Health) DC Wellington FAM-2011-085-001461, 29 December 2011, at [13].

[5] *Capital Coast v DT* (Mental Health) FC Wellington FAM-2006-085-000624, 12 April 2007 at [13]-[14]

My decision

[23] The fact that there is an element of administrative convenience present in a decision to bring forward an assessment does not necessarily mean that decision is inappropriate. An assessment must take place in the real world, with busy patient lists, weekends and non-clinical days being part of reality. I accept Dr Horrigan's evidence that he brought this application early because he thought that would be best for [HG] having regard to processes and particularly because he was concerned there may be delays in the Court process. However, I am not persuaded that was a reasonable concern only two days into a 14-day assessment period and I can see no benefit for [HG] in the 14-day assessment period having been reduced to two days.

[24] When considering relevant jurisprudence, the specific time periods provided for within the Act, the object of the Act, and the evidence available to me regarding [HG]'s circumstances, I am persuaded that it was not appropriate for the clinician to truncate the 14-day time period so significantly.

[25] The current application for a compulsory treatment order under s 14 of the Act is declined.

[26] The Registry is directed to urgently today release this decision and further, to email urgently today a copy of this decision to the two clinicians responsible for [HG]'s care at [email address deleted] and [email address deleted].

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Judge S Houghton
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 12/07/2024