

Involuntary Placement In Nursing Home: Court Orders Expedited Bedside Hearing.

A dementia patient had been judged mentally incapacitated and a legal guardian had been appointed because she suffered from diabetes and refused insulin treatments at home.

While she was in the hospital awaiting discharge, where she had been admitted for treatment of complications of her uncontrolled diabetes, her legal guardian filed court papers to have her discharged against her will to a nursing home where her diabetes could be managed. That is, the legal guardian sought court authority to make the decision for her that she would go to the nursing home rather than back to her apartment.

The judge referred the case to a court referee. The judge basically left everyone hanging waiting for the referee's report. The patient could not go home and would have to stay in the acute-care hospital until the referee got around to writing a report, the judge received the report, considered the report and made a decision.

The legal guardian went to the Appellate Division for a writ of mandamus, that is, an order from a higher court directing the lower-court judge to move forward with an expedited bedside hearing.

Each day that passes means continued unnecessary hospitalization and accumulation of even more medical bills.

The judge must hold an expedited hearing at the patient's hospital bedside to determine whether she will go home or to a nursing facility when she leaves.

Judges have experience in evaluating persons alleged to be incapacitated. Disparities often exist between written reports and what can be deduced from observing the person firsthand. Written reports tend to underrate capacity.

Legal proceedings that pertain to an individual's mental capacity can result in an incursion into personal liberty and interfere with an individual's independence and ability to live according to his or her own desires.

NEW YORK SUPREME COURT
APPELLATE DIVISION
February 25, 2003

Expedited Bedside Hearing Ordered

The New York Supreme Court, Appellate Division, agreed with the position taken by the patient's legal guardian.

The judge was directed to hold a bedside hearing and make a decision within six weeks, still a relatively short deadline in the context of legal proceedings.

Patient's Right To Be Present

The Appellate Division stressed the person's right to be present at a court determination that will profoundly affect how the person afterward will be able to conduct his or her life.

The Appellate Division also believed the integrity of the decision-making process is best served when judges who decide issues of mental capacity and capacity for self-care see, hear and observe the person in question, rather than relying on written reports.

According to the Appellate Division, written reports tend to understate mental capacity and play down competence in self-care. In these situations it is essential before ordering the drastic remedy of involuntary commitment that the need for it be demonstrated beyond doubt.

Financial Considerations

Without specifying who was actually footing the medical bills, the Appellate Division believed it was inappropriate to leave a person in limbo in the more expensive setting of an acute-care hospital when a nursing home would be more economical and possibly equally effective to meet the person's needs. **Levy v. Davis**, ___ N.Y.S.2d ___, 2003 N.Y. Slip Op. 11490, 2003 WL 550025 (N.Y. App., February 25, 2003).

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