

Medication Forced Again

Kerry O'Malley Report: Mental Health Review Tribunal Hearing 1/4/20

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Kerry O'Malley, defending against an application by the Health Department for a Community Treatment Order ('CTO'), lost her case at the Mental Health Review Tribunal ('MHRT') hearing on the 1st of April, 2020. The CTO is now in force, permitting the Health Department to forcibly inject her every month.

The Tribunal, held at Gladesville, consisted of three members: a lawyer, a psychiatrist and a former nurse acting as a community member. It was held as a video-conference linking to the Nepean Hospital treating team - psychiatrist and a nurse/case manager, with Kerry O'Malley in the JA office. Kerry again requested Justice Action's (JA) support for the hearing. JA has stood beside her since 2015 after her doctor requested its assistance.

This hearing followed an adjourned hearing on 11th of March, 2020, when the Tribunal had agreed that Brett Collins, her primary carer, would be recognised as her representative and thus have access to the Health Department file for the purpose of the case. However, in the intervening period, two Deputy Presidents of the Tribunal overruled the hearing decision and said that no person was allowed representation if they were not a patient locked in hospital.

Not only was Kerry denied representation at the hearing, but also as a consequence, independent access to her file. The Penrith Mental Health Service then gave Kerry herself 30 minutes to look at 6 pages rather than the whole file as required by law.

The primary point of discussion in both hearings was intended to be the replacement of the forced CTO with the Personal Management Plan (PMP) prepared by Kerry with her support people. The Plan was created as a workable alternative to the CTO, incorporating both medical and social intervention strategies. Ultimately, the Plan aimed to enhance Kerry's autonomy over her own life and mental health rather than her feeling sick from the side effects of the forced medication.

Contrary to this Plan, the Tribunal gave the Order to the Health Department and rescheduled the next hearing for 30 September 2020, in 6 months' time; bringing her to a 9 month CTO period in total (after discharge from Concord Hospital). This was despite the Concord psychiatrist's statement that medication was probably unnecessary.

The case raises a number of considerable procedural issues, including but not limited to the denial of representation, access to files, and Tribunal independence. Ultimately, these issues turn on a denial of rights to Kerry O'Malley, with the creation of a CTO without any justifying 'risk of serious harm' despite her two years of stable independence. The O'Malley case certainly has wide and significant implications. If this lovely woman, a mother of five, cannot be defended against coercive treatment, with access to information and representation, nobody is safe.

Denial of Representation

The Tribunal, consisting of two Deputy Presidents, in a considered decision prior to the hearing's commencement pronounced that nobody defending against a CTO application is entitled to representation, lawyer or otherwise. Rather than invoking the Tribunal's discretionary powers in making such determinations, the Tribunal relinquished this responsibility by citing the *Mental Health Act 2007* ('The Act') [s.154](#) as limiting representation to exclusively those patients in a hospital (See Appendix B for the full negotiations).

The [MHRT Annual Report](#) states that, in practice, representation is normal. Including mental health inquiries, representation was reported to be provided to 83% of all hearings in civil jurisdictions.¹ For more analysis of this report, see Appendix A.

The report, on representation and attendance at hearings, further states that:

All persons appearing before the Tribunal have a right under s 152 and s 154 of the Act to be represented, notwithstanding their mental health issues.²

But this was refused. In negotiations with the MHRT, JA said on the 8th of March, 2020 (see full email correspondence in Appendix B):

If you think that it is necessary, I will be pleased to get legal advice about the rights of people on a community treatment order to be represented.

It seems obvious from the Act and that section, that it is intended that people with disability are not to be disadvantaged before the Tribunal. The significant coercive powers of the Tribunal over such individuals in the community must be carefully and fairly exercised, even more so than with those who are in locked psychiatric hospitals. To leave them and the Tribunal without the option of representation, because the legislation doesn't explicitly provide for them, would be unthinkable and clearly unintended.

Of course the practice of the Tribunal has been to allow such representation. I have acted in that capacity for a number of people on many occasions. The person and the Tribunal have been pleased to accept my and our organisation's support.

¹ MHRT Annual Report (Page 25,)

² MHRT Annual Report (Page 25,)

Regardless each Tribunal or court has its own inherent powers and obligation to ensure it is fair. It may be that s.154 (1) has that role.

The hospital and tribunal's resistance to representation and file inspection is cause for concern. The *Statistical Review of the MHRT*³ demonstrates that legal representation makes a difference for consumers. However, despite the MHRT receiving funding of nearly \$8 million annually⁴, due to funding restrictions, the Legal Aid Commission has stated that it cannot automatically provide representation to the tribunal.⁵ The report also has no data in relation to any 'application for representation by a non-legal practitioner.'⁶

With currently over 5000 Tribunal hearings for NSW patients who forcibly receive treatment under a s 51 CTO⁷, the implications of O'Malley's determination are significant.

Access to Documentation

As an implication of the above, a lack of representation means that no individual is permitted to view the Health Department file, despite [explicit sections of the law](#) to the contrary.⁸ Even O'Malley herself only saw 5 or 6 pages of a statement made to the tribunal (with many sections redacted), instead of the whole file of hundreds of pages accumulated over 30 years. The Tribunal considered that issue and determined that access to documentation is contingent on the psychiatrist's discretion.

JA posed the following question to the Tribunal:

Is the Tribunal now rescinding my role, decided at the March 11 hearing, as her representative, under s 154? Does that mean that the offer by Dr Suman for me to inspect the file under s 156 is no longer to apply?

The MHRT Deputy President replied on the 19th of March:

Dear Mr Collins,

The Tribunal had no power to make the order under s 156. Therefore, the purported order has no legal force.

*Kind regards
Maria Bisogni*

The MHRT had adjourned the earlier 11th of March hearing as JA and O'Malley had been refused access to the medical files by hospital staff. JA asserted that this was a breach of the right to inspect the file, under s 156 of the *MH Act*. The Tribunal reluctantly agreed and retired to consider whether Collins was to be accepted as O'Malley's representative, as had been the case on many previous occasions.

³ Statistical review of the MHRT, CITE

⁴ (appendix 5, p 55)

⁵ Report, Page 25

⁶ Report, (Table 2, p 33)

⁷ Statistical review of the MHRT, table 1

⁸ See, eg, *Mental Health Act 2007 s156*

The Chair of the 1st of April hearing disallowed Collins being considered a 'representative' but allowed him time to speak, as a 'primary carer'. Collins expressed concern about O'Malley's right to appropriately examine the file, given her significantly limited access. Responding, The MHRT Chair stated her frustration in having to handle 'procedural matters' of file access, and supported the denial of both O'Malley and Collins' access to the hospital file.

A Supreme Court Appeal is necessary. These decisions fundamentally disempower consumers who try to assert their rights. With the majority of appeals against the Tribunal failing, it will not be easy.

Personal Control Obstructed

During the hearing, O'Malley presented her Personal Management Plan and stated that:

"I would hope that the Tribunal will not impose another Community Treatment Order over me.

Previous to the current CTO, I remained free from hospital admissions for 2 years. Over these two years, I remained very well. I was prescribed a small dose of Largactil for times when I may become stressed or sleepless. This was the only medication I took over these two years.

Unfortunately, I had run out of it when I acted out of character as the doctor's report records.

The medications that I am currently prescribed are giving me serious side effects which are anxiety and no motivation to do things. Also concentration is poor. I have gained weight and have loss of hair on these medications.

It is my hope that the Tribunal will allow me the freedom to go off these medications and once again be prescribed what I need as I know this to be a better solution than what is currently in place for me.

My rights have been overlooked as I am not a danger to myself or anyone else.

I have good supports including my daughter who brought me here today. She didn't want me at risk of corona virus by using public transport. I also have a lot of support from Church friends and I will see Dr Ben Teoh whom I chose and with whom I have an appointment in 8 weeks and a wonderful psychologist in Penrith.

So I hope the Community Treatment Order won't be imposed."

The fact that Kerry O'Malley was not a risk to herself or others was totally lost to Nepean staff and the Tribunal. Furthermore, Nepean insisted on continuing as her psychiatrist/case-manager rather than enabling the transition phase that was to occur post-discharge from Concord Hospital. The Nepean psychiatrist said he was already aware that O'Malley had engaged with external services of her choice - over several appointments - with a psychiatrist and a psychologist.

In addition to her chosen medical and psychological supports, she is enjoying very regular involvement and support with her family, her church and Justice Action. She indicated that her doctor of choice had set a time period of 6 weeks between appointments, which she understood was based on his assessment of her health status.

Independent Tribunal?

Despite the clear requirement for Tribunal independence, the 'community member' stated she had been a long term nurse, and at length gave her personal view of support for the Penrith psychiatrist.

She did, however, indicate consideration of O'Malley's preference - that is, a return to the successful medical management of a low dose Largactil to assist her sleep, instead of a forced medication via a CTO of antipsychotic medication with the deleterious side effects O'Malley experiences.

JA Team member Loretta Picone reminded the Tribunal that the rationale to continue the CTO, at the hearing late last year, was for this transition period. She protested that the Tribunal and hospital continued to obstruct O'Malley from pursuing her chosen treatment plan by considering a continuation of the CTO. The Tribunal's Psychiatrist member said nothing during the hearing.

Brett Collins, her designated carer and representative, had explained to the Tribunal the Personal Management Plan was to take the place of the CTO. He argued that there was no serious risk to O'Malley nor others, and that she had no problem without a CTO for 2 intervening years. Therefore the Tribunal giving consideration to a CTO continuation at the tribunal was flawed. He tabled the [JA Analysis of Community Treatment Orders](#) that shows them to be counter productive. He said that the evidence was against any need for an order. He said that s.68 of *The Act* clearly said a CTO was not for the convenience of others, was limited to a therapeutic purpose, and said that in this case was not the least restrictive approach.

While not actually stating that O'Malley was a risk to herself or to others (the basis for any CTO to be considered)¹⁰, the Tribunal's Chair claimed a CTO was necessary as O'Malley may not be able to be sufficiently closely managed by her chosen private psychiatrist and psychological services she is engaged with, and that: '... she is seen as mentally ill.... If there is no medication, I want a safety net, should there be a need.'

O'Malley did have an opportunity to speak, as did Collins and Picone – but they felt they were ignored. Often during the hearing statements were simply given space, but then the Tribunal continued speaking on another matter.

It seems that they were given lip service to what was intended in the [Australian Charter of Healthcare Rights](#); referring there to the importance of being shown respect, dignity, participation, and appropriate communication.

¹⁰ CITE THE ACT

Appendix A: Selective Examination of the [MHRT Annual Report 2018-9](#)

The MHRT's report indicates that CTO's are steadily increasing, from 5055 in 2008-9 to 5599 in 2018-9; and shows out of 5177 people on s51 CTO, most - i.e. 1501 of CTO's - were made for persons detained in a Mental Health facility, and under half were for continuing CTOs.¹¹

Most CTO's are for under 6 months and generally longer orders are to be made 'when there are clearly established reasons for justifying a longer period' (Page 22). Table 2 refers to civil jurisdictions of the *MH Act*, where in 2018-9 432 variations and revocations of CTO S65 occurred (Page 33).

It seems from the MHRT Report for 2018-9 that the Tribunal is refusing many cases, nor are they inclined to vary CTO's. In Table 10, we see that Tribunals (and previously Magistrates too) are making more orders, as CTO s51 increased by 3%, where out of 5519 applications for 3638 individuals (page 22), 5177 CTO s51's were made. Meanwhile, only 51 were declined (page 38). While the total number of hearings is increasing, it is at a slow rate, of +0.7% in 2018-9, far slower than the aforementioned growth of CTOs (Table A).

The MHRT saw a slight increase in hearings - 18668 hearings of 6787 'assessible people' (Table 2) with 5519 applications for involuntary treatment in the community setting (Table 2, page 39), in 2018/9. Of these there are 4060 (74%) hearings on CTO's, where 19 of the s65 CTOs were revoked (Table 1), with 432 variations/revocations of CTO.

For 1248 people, the report noted in mid-2019 a slight increase in the rate involuntary patient orders made by the tribunal, and a 'number of patients' have been 'discharged or reclassified as voluntary patients' since, and a small number of CTO's may have been revoked by the Director of the community mental health facility responsible for implementing the order (p24).

Overall, it seems that the Tribunal is maintaining rather than looking to reduce CTOs.

Appendix B: Negotiations with Mental Health Review Tribunal

From: "Maria Bisogni (Ministry of Health)" <Maria.Bisogni@health.nsw.gov.au>

Date: Friday, 20 March 2020 at 9:30 am

To: Brett Collins <brett@justiceaction.org.au>

Subject: RE: Kerry O'Malley/Representative status clarification

Dear Mr Collins,

Yes. Pursuant to s 154 you do not qualify to be Ms O'Malley's representative at her hearing.

¹¹ (Statistical Review, Table 9 + 10 p 38).

Kind regards,
Maria Bisogni

From: Brett Collins [mailto:brett@justiceaction.org.au]
Sent: Thursday, 19 March 2020 3:08 PM
To: Maria Bisogni (Ministry of Health) <Maria.Bisogni@health.nsw.gov.au>; Rodney Brabin (Ministry of Health) <Rodney.Brabin@health.nsw.gov.au>; Alisa Kelley (Ministry of Health) <Alisa.Kelley@health.nsw.gov.au>; Danielle White (Ministry of Health) <Danielle.White1@health.nsw.gov.au>; Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>; Anina Johnson (Ministry of Health) <Anina.Johnson@health.nsw.gov.au>
Subject: Re: Kerry O'Malley/Representative status clarification

Dear Ms Bisogni,

Is the Tribunal now rescinding my role, decided at the March 11 hearing, as her representative, under s.154?

Kind regards,

Brett

From: "Maria Bisogni (Ministry of Health)" <Maria.Bisogni@health.nsw.gov.au>
Date: Thursday, 19 March 2020 at 2:50 pm
To: Brett Collins <brett@justiceaction.org.au>, "Rodney Brabin (Ministry of Health)" <Rodney.Brabin@health.nsw.gov.au>, "Alisa Kelley (Ministry of Health)" <Alisa.Kelley@health.nsw.gov.au>, "Danielle White (Ministry of Health)" <Danielle.White1@health.nsw.gov.au>, Aman Suman <Aman.Suman@health.nsw.gov.au>, "Anina Johnson (Ministry of Health)" <Anina.Johnson@health.nsw.gov.au>
Subject: RE: Kerry O'Malley/Representative status clarification

Dear Mr Collins,

The Tribunal had no power to make the order under s 156. Therefore, the purported order has no legal force.

Kind regards
Maris Bisogni

From: Brett Collins [mailto:brett@justiceaction.org.au]
Sent: Thursday, 19 March 2020 2:00 PM
To: Maria Bisogni (Ministry of Health) <Maria.Bisogni@health.nsw.gov.au>; Rodney Brabin (Ministry of Health) <Rodney.Brabin@health.nsw.gov.au>; Alisa Kelley (Ministry of Health) <Alisa.Kelley@health.nsw.gov.au>; Danielle White (Ministry of Health) <Danielle.White1@health.nsw.gov.au>; Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>; Anina Johnson (Ministry of Health) <Anina.Johnson@health.nsw.gov.au>
Subject: Kerry O'Malley/Representative status clarification

Dear Ms Bisogni,

You are mistaken about my being offered access to Ms O'Malley's file for two hours. The first one hour occasion was replaced by the second. Are you now saying that a two hours inspection is a reasonable period?

You are also mistaken that I had access to Ms O'Malley's medical records on December 17, 2019.

I did not.

I assume that my arguments about the rights for people on CTO's to be represented have been rejected by the Tribunal, as you only refer to me as Ms O'Malley's designated carer whereas before I was also her representative. That is a serious issue with wide implications. I do ask that you address that directly as I did ask for a decision please.

Is the Tribunal now rescinding my role, decided at the March 11 hearing, as her representative, under s.154? Does that mean that the offer by Dr Suman for me to inspect the file under s.156 is no longer to apply?

Kind regards,

Brett Collins

From: "Maria Bisogni (Ministry of Health)" <Maria.Bisogni@health.nsw.gov.au>

Date: Thursday, 19 March 2020 at 11:50 am

To: Brett Collins brett@justiceaction.org.aub

Cc: "Rodney Brabin (Ministry of Health)" <Rodney.Brabin@health.nsw.gov.au>, "Alisa Kelley (Ministry of Health)" <Alisa.Kelley@health.nsw.gov.au>, "Danielle White (Ministry of Health)" <Danielle.White1@health.nsw.gov.au>, Aman Suman <Aman.Suman@health.nsw.gov.au>, "Anina Johnson (Ministry of Health)" <Anina.Johnson@health.nsw.gov.au>

Subject: RE: Kerry O'Malley/Representative status clarification

Dear Mr Collins,

I cannot give you advice as to whether or not you should obtain legal advice in relation to s 154.

It is not clear to me why you are raising an objection to the time allocated to you to inspect the documents, when you had not availed yourself of the time that was set aside for you. Two one hour inspections appeared to be reasonable. I note that you had access to Ms O' Malley's medical records for the hearing of 17 December 2019.

In any event, as a designated carer you do not have any right of access to Ms O' Malley's medical records.

At the hearing on 11 March 2020, Dr Suman stated that he would allow access to Ms O' Malley's medical records, subject to his obtaining legal advice.

Having considered your request for access below, the matters discussed at the last hearing, and in the interests of procedural fairness, I order that Ms O' Malley be allowed to inspect her medical records under s 156, in the presence of a member of the treating team or his or her delegate.

Specified information in the medical record may be redacted from the medical records if the treating team considers that it would be harmful to Ms O' Malley or any other person for that information to be communicated.

The procedural order will be emailed separately to Ms O' Malley and Dr Suman.

Kind regards
Maria Bisogni

From: Brett Collins <brett@justiceaction.org.au>
Date: Wednesday, 18 March 2020 at 3:20 pm
To: "Maria Bisogni (Ministry of Health)" <Maria.Bisogni@health.nsw.gov.au>
Cc: "Rodney Brabin (Ministry of Health)" <Rodney.Brabin@health.nsw.gov.au>, "Alisa Kelley (Ministry of Health)" <Alisa.Kelley@health.nsw.gov.au>, "Danielle White (Ministry of Health)" <Danielle.White1@health.nsw.gov.au>, Aman Suman <Aman.Suman@health.nsw.gov.au>
Subject: Re: Kerry O'Malley/Representative status clarification

Dear Ms Bisogni,

If you think that it is necessary, I will be pleased to get legal advice about the rights of people on a community treatment order to be represented.

It seems obvious from the Act and that section, that it is intended that people with disability are not to be disadvantaged before the Tribunal. The significant coercive powers of the Tribunal over such individuals in the community must be carefully and fairly exercised, even more so than with those who are in locked psychiatric hospitals. To leave them and the Tribunal without the option of representation, because the legislation doesn't explicitly provide for them, would be unthinkable and clearly unintended.

Of course the practice of the Tribunal has been to allow such representation. I have acted in that capacity for a number of people on many occasions. The person and the Tribunal have been pleased to accept my and our organisation's support.

Regardless each Tribunal or court has its own inherent powers and obligation to ensure it is fair. It may be that s.154 (1) has that role.

If the issue of my status is such a problem, the right of Ms O'Malley to inspect is also there for the same purpose of openness and fairness. As her primary carer I would assist her. Regardless we ask for access.

156 Inspection etc of medical records

- (1) A patient or person having any matter before the Tribunal is, unless the Tribunal otherwise determines, entitled to inspect or otherwise have access to any medical records in the possession of any person relating to the patient or person.

Please tell me what you decide so that I can do what is required?

Time to inspect file

On the timing issue, are you saying that in the opinion of the Tribunal, one hour to inspect the file is all that the Act provides, regardless of the complexity of the issues and my need for advice? That the Health Dept has no further obligation to allow me to look again? Doesn't

that negate the explicit right under s.156? I assume the right of inspection of government files is well recognised and there are protocols already in place for that to happen.

Is one hour without any opportunity to return the maximum time that the Tribunal supports under the Act?

I'm sorry to cause such a bother, but we are most concerned about the forcible medication of this lovely woman Ms Kerry O'Malley, who has never been a risk of serious harm to herself or others. The evidence is clear. She is most distraught at this unnecessary interference in her life and the side effects of the medication.

The Concord head of the treating team told the Tribunal in December that he thought continuing the medication past the initial few weeks may well not be necessary but he wanted just to be sure she was settled down fully. The Tribunal order was only for three months to reassess whether the order was necessary. This hearing is to decide whether the forced medication should continue.

Kind regards,

Brett

From: Maria Bisogni (Ministry of Health)
Sent: Wednesday, 18 March 2020 1:47 PM
To: 'brett@justiceaction.org.au' <brett@justiceaction.org.au>
Cc: Rodney Brabin (Ministry of Health) <Rodney.Brabin@health.nsw.gov.au>; Alisa Kelley (Ministry of Health) <Alisa.Kelley@health.nsw.gov.au>; Danielle White (Ministry of Health) <Danielle.White1@health.nsw.gov.au>; Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>
Subject: RE: Kerry O'Malley/Representative status clarification

Dear Mr Collins

I note that you have not availed yourself of the opportunities offered to you to inspect Ms O' Malley's file, as per Dr Suman's letter below.

In any event, having reviewed s 154 of the *Mental Health Act* ('the Act') it is clear to me that the Tribunal (on 11 March 2020) did not have the power to approve you as Ms O' Malley representative. The Tribunal's power to approve representation is limited to assessable persons, patients detained in mental health facilities, persons under the age of 16, correctional and forensic patients. As Ms O' Malley is not a patient under the Act there is no power to appoint a representative of her choice.

Kind regards
Maria Bisogni
Deputy President

From: Aman Suman (Nepean Blue Mountains LHD)
Sent: Wednesday, 18 March 2020 10:13 AM
To: Brett Collins <brett@justiceaction.org.au>; Rodney Brabin (Ministry of Health)

<Rodney.Brabin@health.nsw.gov.au>; MHRT-MHRT <MHRT-MHRT@health.nsw.gov.au>
Cc: Ahmed Abdulaziz (Nepean Blue Mountains LHD) <C; Kerry O'Malley
<kerryomalley1952@gmail.com>; Anne Vevers (Nepean Blue Mountains LHD)
<Anne.Vevers@health.nsw.gov.au>; Annette Gallard (Nepean Blue Mountains LHD)
<Annette.Gallard@health.nsw.gov.au>
Subject: Re: Kerry O'Malley/Representative status clarification

Hi Brett

First of all I would like to correct some information you have highlighted in your email.

Mr Abdulaziz was planning to review Ms O'Malley from clinical perspective (routine appointment). In the meantime if he got clarification from the tribunal (regarding a specific hearing date), then he planned to provide her with hearing paperwork -- not her clinical file.

You have mentioned that we (Older Person Community mental health team) continue to treat you and Ms O'Malley with disrespect. I would like to state that its your perception rather than fact. We as a team are here to help and care of our clients and their carers the best we can. You would need to appreciate the fact that you have been provided 2 appointments (1 hr each) on 11th and 18th March which you chose not to attend. We had cancelled our clinical appointments to accomodate your request for urgent review of clinical paperwork. Hence, your comments about our team about not helping you and being disrespectful is completely unjustified and unacceptable.

Moving forward, Mr Abdulaziz will be sending you an email with next available date and time for you to come to review the documents. The documents would be for you and your clerk to review only. Mr Abdulaziz would be there for you to answer any questions. The documents would not be available for scanning or copying. Treating team does not want Ms O'Malley to go through these documents which could lead to her experiencing distress and possible relapse of her illness.

I have copied Anne Vevers (Nursing manager) and Annette Gallard (Nursing Unit manager) who manage the team and deal with other clinical matters.

Kind regards

Aman Suman

Visiting Medical Officer | **Blue Mountains & Plains Older Person Community Teams**
Level 1. Mental Health Centre, Nepean Hospital, Kingswood NSW 2750. P.O. Box 63, Penrith NSW 2750
Tel (02) 4734 4720 | Fax (02) 4734 4731 | Mob 0428 343 699 | Aman.Suman@health.nsw.gov.au
<http://www.health.nsw.gov.au/>

From: Brett Collins <brett@justiceaction.org.au>

Sent: Tuesday, 17 March 2020 18:44

To: Rodney Brabin (Ministry of Health); MHRT-MHRT

Cc: Ahmed Abdulaziz (Nepean Blue Mountains LHD); Aman Suman (Nepean Blue Mountains

LHD); Kerry O'Malley

Subject: Re: Kerry O'Malley/Representative status clarification

Dear Mr Brabin,

Neither Dr Suman nor Mr Abdulaziz has responded to my email underneath. I asked them for an arrangement to inspect the file and proposed sometime today when I could also talk with them if they wanted.

Ms O'Malley has just informed me that Mr Abdulaziz told her today that he will be attending her home tomorrow, Wednesday 18th at 1pm to talk about the Tribunal hearing and to show her the file.

As Mr Abdulaziz knows, the Tribunal has accepted my role as her representative. That was the reason the matter was adjourned on March 11 so that I could inspect the file. This should be clarified by the Tribunal record as Dr Suman apparently questions it. He asked on Friday in his email below: [I am happy for you to get clarification from the tribunal regarding your status - Please let us know the outcome.](#)

Mr Brabin, would you give clarification on the matter please?

As her representative, it would be entirely inappropriate for him to deal with Ms O'Malley separately about Tribunal matters while we are part heard before the Tribunal. I formally ask that the Penrith Mental Health Service give me access to the documents and that they not deal separately with my client. They should cancel the appointment and they must deal with me.

This behaviour is consistent with what I originally had perceived and about which I complained. Despite Dr Suman's protestations: "[In nutshell, our team will try to help you and Ms O'Malley in every possible way we can](#)" I continue to be treated disrespectfully as is Ms O'Malley, and so is the Mental Health Review Tribunal in carrying out its functions.

Dr Suman must take responsibility as team leader, and I intend to express my concerns to the Tribunal at the next hearing about trusting his ability to use his powers respectfully, when vulnerable people are affected. Inconvenience to the Tribunal and myself is not nearly as important.

Kind regards,

Brett

From: Brett Collins <brett@justiceaction.org.au>

Date: Monday, 16 March 2020 at 12:12 pm

To: Aman Suman <Aman.Suman@health.nsw.gov.au>, "Rodney Brabin (Ministry of Health)" <Rodney.Brabin@health.nsw.gov.au>, MHRT-MHRT <MHRT-MHRT@health.nsw.gov.au>

Cc: "Ahmed Abdulaziz (Nepean Blue Mountains LHD)" <Ahmed.Abdulaziz@health.nsw.gov.au>

Subject: Re: Kerry O'Malley Tribunal hearing March 26, 2020.

Hi Dr Suman and Mr Abdulaziz,

I think there might be a misunderstanding about what I intend to do.

I wish to inspect the file under s.156. I don't require any clinical time at all. If someone wants to talk with me about the file that would be fine, but I will be making my own assessment along with my clerk and it will take some time, definitely greater than an hour. I will not need to discuss the file with your clinical workers.

We would be happy to use a spare room or to share a space with other workers. I would judge carefully what to discuss with Ms O'Malley based upon your advice, before showing her any part of the file.

This procedure has been adopted many times in this situation with other representatives I have been told, and I have experienced it dealing with the NSW Coroner inspecting their confidential files. It shouldn't be a problem for anyone, with the goodwill you offer.

(2) A [representative](#) of a person having any matter before the [Tribunal](#) is entitled, at any time before or during the consideration of that matter by the [Tribunal](#), to inspect or otherwise have access to any medical records in the possession of any person relating to the first mentioned person.

I was hoping to come in today at midday as I proposed, but now ask that you arrange another time for me and my clerk to start.

I have significant commitments later in the week so would like to do this on Tuesday 17th March please. I know that you Dr Suman attend Penrith Mental Health Service on that day, if you also wanted to talk with me.

When would suit you?

Kind regards,

Brett

From: Aman Suman <Aman.Suman@health.nsw.gov.au>

Date: Friday, 13 March 2020 at 4:14 pm

To: Brett Collins <brett@justiceaction.org.au>, "Rodney Brabin (Ministry of Health)" <Rodney.Brabin@health.nsw.gov.au>, MHRT-MHRT <MHRT-MHRT@health.nsw.gov.au>

Cc: "Ahmed Abdulaziz (Nepean Blue Mountains LHD)" <Ahmed.Abdulaziz@health.nsw.gov.au>

Subject: RE: Kerry O'Malley Tribunal hearing March 26, 2020.

Hi Mr Collins

As a team providing care for Ms O'Malley, we would be happy to assist you in every way we can to review her clinical notes.

I am happy for you to get clarification from the tribunal regarding your status – Please let us know the outcome.

In regards with the issue about 1 hr time limit, as a clinical team, we would be setting aside 1 hr clinical time for you to come and review the documents. I think this is reasonable clinical time we could assist you with. We have highlighted specific assessments which should not take you more than 1 hr.

In regards with your clerk accompanying you, I would like to remind you that we would be going through clinical documentation related to Ms O'Malley which has lot of personal details. I would be concerned about having a third person in the meeting due to privacy reason. We would get clarification from legal team with area health and come back to you.

In nutshell, our team will try to help you and Ms O'Malley in every possible way we can. Your email gives an impression as if we are trying to obstruct your efforts. What you need to understand is that we have clinical commitments which are to be prioritised in addition to other administrative requests.

I hope this email clarifies Older Person Community Mental Health Team's views about assisting you.

Kind Regards

Dr Aman Suman

Visiting Medical Officer (VMO)

Older Persons Community Mental Health Team

Level 1 , 2-6 Station Street, Penrith NSW 2750

Tel (02) 4734 4720



From: Brett Collins [<mailto:brett@justiceaction.org.au>]

Sent: Friday, March 13, 2020 3:07 PM

To: Rodney Brabin (Ministry of Health) <Rodney.Brabin@health.nsw.gov.au>; MHRT-MHRT <MHRT-MHRT@health.nsw.gov.au>

Cc: Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>; Ahmed Abdulaziz (Nepean Blue Mountains LHD) <Ahmed.Abdulaziz@health.nsw.gov.au>

Subject: Re: Kerry O'Malley Tribunal hearing March 26, 2020.

Dear Mr Brabin,

I have just spoken with Mr Abdulaziz of the Penrith Mental Health Service. I have copied him and Dr Suman into this email.

Unfortunately I am being impeded in properly preparing for the Tribunal hearing on March 26, and I have encountered quite difficult behaviour in assisting Ms O'Malley. The Tribunal said that any preliminary matters should be decided in advance of the hearings. I bring this to you now. The interaction below is what occurred.

Mr Abdulaziz said that he accepted that I was Ms O'Malley's designated carer and said therefore I couldn't be her representative in the Tribunal hearing. He didn't agree that the Tribunal on March 11, had given me standing as her representative. He didn't agree that the adjournment was for me as her representative to inspect the file.

I asked him that I as her representative spend more than an hour to view the documents under s.156 of the Act. He said that the LHD had rules and that I was only allowed an hour.

I also asked to bring my clerk with me to assist with the assessment. He initially said that I couldn't bring her, but then said he would need to talk with his legal section.

My approach has been totally courteous and I had hoped additionally for a productive discussion with them about ways we could work together for Ms O'Malley's benefit. That was proposed underneath and ignored. We had hoped to incorporate their service into Kerry's Personal Management Plan.

Ms O'Malley feels really disappointed about the way she has been and is being treated, and the gross imposition upon her right to autonomy and right to support on her terms. She has never harmed herself or others. Justice Action agrees and has the right under s.162 to talk about it as has been granted on previous occasions.

We ask that you clarify our status and ensure that unreasonable restrictions on our rights under s.156 be not applied. If necessary we ask for a procedural hearing to decide the matter.

Kind regards,

Brett

From: "Ahmed Abdulaziz (Nepean Blue Mountains LHD)" <Ahmed.Abdulaziz@health.nsw.gov.au>
Date: Friday, 13 March 2020 at 2:10 pm
To: Brett Collins <brett@justiceaction.org.au>
Cc: Aman Suman <Aman.Suman@health.nsw.gov.au>
Subject: RE: Kerry O'Malley Tribunal hearing March 11, 2020.

Hi Brett,

As discussed on the phone today.

Another appointment has been set for you to come and view the documents as Kerry-Anne's Primary carer with Kerry-Anne's permission and presence.

Time for viewing the documents is Wednesday the 18th March 2020 from 1530-1630.

Also as discussed we are happy for you to attend on these dates with Kerry-Anne Present.

As stipulated by the tribunal on the 11th of March 2020 you are within your rights as her primary carer to act as her primary carer.

Regards,

Ahmed Abdulaziz (Nepean Blue Mountains LHD)

From: Brett Collins [<mailto:brett@justiceaction.org.au>]
Sent: Thursday, March 12, 2020 5:35 PM
To: Ahmed Abdulaziz (Nepean Blue Mountains LHD) <Ahmed.Abdulaziz@health.nsw.gov.au>; Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>
Cc: Kerry O'Malley <kerryomalley1952@gmail.com>
Subject: Re: Kerry O'Malley Tribunal hearing March 11, 2020.

Hi Ahmed and Aman,

I just left a message on your answer machine Ahmed.

I will need more time than an hour to properly examine the documents and will need my clerk to assist me.

Of course I will also need to discuss them with Ms O'Malley which will take some time too.

The Mental Health Act ensures that it is done properly as of course the Tribunal decided.

(2) A [representative](#) of a person having any matter before the [Tribunal](#) is entitled, at any time before or during the consideration of that matter by the [Tribunal](#), to inspect or otherwise have access to any medical records in the possession of any person relating to the first mentioned person.

I would be pleased to visit on Monday at noon if you wouldn't mind putting the documents aside for that time.

Would that suit you?

I note that you haven't mentioned meeting with me as I proposed.

Kind regards,

Brett

From: "Ahmed Abdulaziz (Nepean Blue Mountains LHD)"
<Ahmed.Abdulaziz@health.nsw.gov.au>
Date: Thursday, 12 March 2020 at 4:47 pm
To: Brett Collins <brett@justiceaction.org.au>
Cc: Aman Suman <Aman.Suman@health.nsw.gov.au>
Subject: RE: Kerry O'Malley Tribunal hearing March 11, 2020.

Hi Brett,

I have spoken to Kerry Anne in the morning today appointment is tomorrow from 1430-1530. Only yourself as the Primary carer and Kerry-Anne will be allowed to view the documents and for no longer than 1 hour.

Hope to see you then.

Kind regards,

Ahmed Abdulaziz (Nepean Blue Mountains LHD)

From: Brett Collins [<mailto:brett@justiceaction.org.au>]
Sent: Thursday, March 12, 2020 1:23 PM
To: Ahmed Abdulaziz (Nepean Blue Mountains LHD) <Ahmed.Abdulaziz@health.nsw.gov.au>; Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>
Subject: Re: Kerry O'Malley Tribunal hearing March 11, 2020.

Dear Dr Suman and Mr Abdulaziz,

I have just received notice of the next hearing for Ms O'Malley in two weeks time.

I wish to arrange a time to inspect the file referred to at the hearing yesterday. It will take several hours and I will be bringing an associate with me. I would like to do this very shortly and would be happy to talk with you also, as the Tribunal suggested yesterday.

It would provide an opportunity to work together for Ms O'Malley's benefit.

When would suit you?

Kind regards,

Brett

From: Brett Collins <brett@justiceaction.org.au>

Date: Tuesday, 10 March 2020 at 1:49 pm

To: "Ahmed Abdulaziz (Nepean Blue Mountains LHD)" <Ahmed.Abdulaziz@health.nsw.gov.au>, Aman Suman <aman.suman@health.nsw.gov.au>

Subject: Re: Kerry O'Malley Tribunal hearing March 11, 2020.

Dear Dr Suman and Mr Abdulaziz,

Dr Suman, you said that you would respond to my emails today, now that you have the designated carer authority form.

We haven't yet received the documents prepared by the treating team for the Tribunal at the hearing tomorrow.

Our documents for Ms O'Malley were sent last Friday and yesterday to you both. Also the Registrar of the Tribunal sent them to you this morning in the email below.

Would you send us your documents now please? We will need to take advice from people who won't be attending the hearing tomorrow, so do need them straight away.

Please acknowledge this email upon receipt.

Kind regards,

Brett

From: "Rodney Brabin (Ministry of Health)" <Rodney.Brabin@health.nsw.gov.au> on behalf of MHRT-MHRT <MHRT-MHRT@health.nsw.gov.au>

Date: Tuesday, 10 March 2020 at 12:19 pm

To: "Ahmed Abdulaziz (Nepean Blue Mountains LHD)" <Ahmed.Abdulaziz@health.nsw.gov.au>

Cc: Brett Collins <brett@justiceaction.org.au>

Subject: FW: Kerry O'Malley Tribunal hearing March 11, 2020.

Dear Mr Abdulaziz,

For your information please see attached documents provided to the Tribunal in relation to Ms O'Malley's hearing tomorrow. In particular please note the Personal Management Plan proposed by Ms O'Malley and her carer/representative Brett Collins. It would be helpful if the treating team is able to respond to this plan at the hearing.

Regards

Rodney Brabin

Registrar | **Mental Health Review Tribunal**

PO Box 247, Gladesville, New South Wales 1675

Tel (02) 9816 5955 | Fax (02) 8979 6811 | rodney.brabin@health.nsw.gov.au

www.mhrt.nsw.gov.au



Health



From: Brett Collins [<mailto:brett@justiceaction.org.au>]

Sent: Monday, 9 March 2020 4:50 PM

To: MHRT-MHRT <MHRT-MHRT@health.nsw.gov.au>; MHRT-Civil <MHRT-Civil@health.nsw.gov.au>

Cc: Kerry O'Malley <kerryomalley1952@gmail.com>; Ja Team <justiceaction.team@gmail.com>; Loretta Picone <lpicone01@gmail.com>; Aman Suman (Nepean Blue Mountains LHD) <Aman.Suman@health.nsw.gov.au>

Subject: Kerry O'Malley Tribunal hearing March 11, 2020.

Dear Mental Health Review Tribunal,

We attach documents to be tendered to the Tribunal for the hearing on Wednesday March 11, at 11am of Kerry-Anne O'Malley.

I am her designated carer. I was given permission on the last occasion on December 17, 2019 and on several previous occasions to represent Ms O'Malley.

Please see attached form and Proposed Personal Management Plan which have been sent to the Case Manager and treating psychiatrist.

I also attach a report by Dr Yola Lucire and another report by Ms Lesley Rowe prepared on the 2017 occasion.

I ask that those documents be all received for the Tribunal hearing.

I will be at Gladesville for the occasion with my associate.

Please acknowledge upon receipt.

Kind regards,

Brett

Brett Collins

Coordinator

JUSTICE ACTION

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