



MARYLAND
LEGAL AID

Advancing
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For Immediate Release

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Maryland Legal Aid Secures Patient Rights in Court of Appeals Case *Jason Mercer v. Thomas B. Finan Center*

BALTIMORE, MD., February 3, 2022 –The recent decision in *Jason Mercer v. Thomas B. Finan Center* is a tremendous victory in a case of first impression for vulnerable clients. Maryland’s Court of Appeals directly ruled that a patient receiving inpatient psychiatric treatment has the statutory right to counsel upon request, and associated due process rights, in an administrative appeal of the hospital’s decision to forcibly medicate the patient.

Patients confined in mental health hospitals face stigma and lack of resources, both of which can negatively affect their access to justice. The *Jason Mercer v. Thomas B. Finan Center* decision highlights the Maryland Legislature’s intention to safeguard the personal liberty interests of patients through effective due process.

In July 2019, Mr. Mercer, a patient at a psychiatric institution, refused to take prescribed psychotropic medication. A hospital panel met and approved administration of the forced medication, which led to Mr. Mercer submitting an appeal. On the appeal request form, he declined legal representation; however, at the administrative hearing nine days later, Mr. Mercer requested to have legal representation. The Administrative Law Judge (ALJ) interpreted his request for counsel as a request for a postponement and denied it. The administrative hearing took place and resulted with the ALJ’s approval of the decision to forcibly medicate Mr. Mercer.

In September 2019, Mr. Mercer was represented by MLA in an appeal to the Circuit Court of Allegany County, which affirmed the ALJ’s decision. Through counsel, Mercer then appealed the case to the Court of Special Appeals; in January 2021. The Court of Special Appeals also affirmed the ALJ’s ruling.

Undeterred, MLA filed a Petition for Writ of Certiorari. Throughout the process, MLA claimed Mercer had a statutory right to counsel at the administrative hearing and that

the ALJ, in denying his request for counsel, deprived him of his procedural due process rights.

MLA is pleased with the Maryland's Court of Appeals opinion issued in December, 2021, which specifically interpreted the plain language of the statute to grant to a patient in forced medication cases the right to counsel upon request. The Court "[concluded] that in this case the ALJ erred in declining Mercer's request to be represented by counsel at the administrative hearing." It further clarified that, in these cases, "due process requires, at a minimum, verification that an individual was properly advised and knowingly and voluntarily waived the right to request counsel and elected to proceed unrepresented."

The Court of Appeals further departed from the lower decision of the Court of Special Appeals, which attempted to establish a deadline for a patient's request. However, as discussed in the Court of Appeals' opinion, the statute prescribes no deadline for a patient to request counsel and, thus, to have the use of counsel upon request.

"Maryland Legal Aid has consistently maintained that a patient's right to request and to have the use of counsel in these cases is a clear due process safeguard within the statutory scheme intended to protect the fundamental liberty interest against forced psychotropic medication. My special thanks to my MLA colleagues, especially to Cornelia Bright Gordon, MLA's Director of Advocacy for Administrative Law, who provided immeasurable support, perspective, and guidance throughout this case," said Miriam Sincell, Chief Attorney for MLA's Allegany/Garrett office in Cumberland.

About Maryland Legal Aid

Maryland Legal Aid (MLA) is a private, non-profit law firm that provides free, civil legal services to people who are in Baltimore City and Maryland's 23 counties from 11 offices. The firm handles cases involving a wide range of issues, including family, housing, government benefits, healthcare, employment, and consumer law. MLA also represents children in CINA (Child in Need of Assistance) proceedings in 16 jurisdictions. Other vulnerable populations, such as homeowners facing foreclosure, migrant and seasonal farm workers, people with developmental and mental health disabilities, nursing home and assisted living residents, and veterans seeking benefits and assistance with related legal issues also receive representation through special projects. MLA's Community Lawyering Initiative, which includes its Lawyer in the Library program, assists with expunging criminal records to remove barriers to obtaining housing, employment, and child custody through clinics held in libraries, community centers, non-profit organizations, places of worship, schools, healthcare facilities, and other communal places.