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**FOR IMMEDIATE RELEASE**

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**SPRINGFIELD REGIONAL HUMAN RIGHTS AUTHORITY**

**REPORT OF FINDINGS**

**HRA CASE # 10-050-9014 & 9017**

**ANDREW MCFARLAND MENTAL HEALTH CENTER**

**INTRODUCTION**

The Springfield Regional Human Rights Authority (HRA) has completed its investigation of complaints at Andrew McFarland Mental Health Center (Center), a state-operated facility (SOF) that has 125 inpatient beds in Springfield. The HRA combined two complaints that have similar implications. The allegation states that the Center does not offer adequate and humane services in the least restrictive setting pursuant to treatment plans and it restricts property.

If substantiated, the allegation would be a violation of the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5) and The Illinois Administrative Code (59 Ill. Admin. Code 112.30).

Specifically, part one of the complaint states that the Center violated consumers' rights when it banned peanut products from its menu, vending machines and the token store. Part two states that the Center offers a limited and inadequate diet to a person with diabetes who is a vegetarian with ethnic preferences. Also, the consumer is denied peanut products and to have frozen meals provided by his family or friends when he chooses.

**METHODOLOGY**

To pursue the investigation, an HRA team visited the Center and interviewed two Center Administrators, the Treatment Services Supervisor (Supervisor) and the Director of Nursing (Manager) and the consumer. The HRA received electronic correspondence from the Administrator and dietician. With consent, the HRA reviewed sections of the consumer's record.

**MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE**

The following rights are guaranteed under these Sections:

No recipient of services shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of the receipt of such services. (405 ILCS 5/2-100 a).

(a) A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided. The recipient's preferences regarding emergency interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan. ... [405 ILCS 5/2-102]

## **PART 1 FINDINGS**

A group of consumers wrote "the patients of [unit] find serious flaws with the policy of no peanut products. The logic is as follows: 'people have drowned so we can't have water.' As adults we should know if we are allergic to peanuts. There are warnings on all products that are used to process peanuts, regardless if the other product contains peanuts or not..."

At the initial site visit, an Administrator explained that the Department of Human Services (DHS) issued an administrative order to discontinue offering peanut and shellfish products. The Administrator stated that this position was taken after a food allergy related death occurred at another SOF. The Administrator said that consumers may be very ill and a danger to themselves when they arrive at the Center and may not report significant allergies even when prompted and that those foods may cause deadly reactions.

Later, another Administrator stated that the Department of Human Services required SOFs to convene performance improvement teams to address food allergies. Center staff concluded that shellfish and peanuts were a high risk, and it implemented the practice of not allowing those food products.

According to the Administrator, DHS has since requested additional data related to peanut and shell food products after a number of consumers expressed dissatisfaction with the elimination of peanut products from the facility. The Administrator stated that while access to peanut butter is not a "right", the Center acknowledged there was room

for compromise.

In order to ensure consumers allergic to peanuts are not served peanuts or related products, the following changes were made as of May 19, 2010. Dietary will resume serving peanut butter with breakfast once a month (as was the practice prior to the restriction) and weekly as an evening snack. Staff will double check the allergy list prior to serving.

The HRA interviewed two consumers regarding the restricted foods. Consumer 1 stated that because he was a vegetarian, peanut butter and peanut products were an important part of his diet because those products provide protein, an important part of individual nutritional needs.

Consumer 2 explained that he did miss having peanut butter available, especially at breakfast and that his favorite candy, peanut butter cups were no longer available at the Center commissary or in vending machines.

### **CONCLUSION**

Pursuant to the Mental Health Code consumers shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided.

The allegation that the Center violated consumers' rights when it discontinued offering peanut products is substantiated. That is, the HRA believes Code violations may occur when the Center generates blanket policies that interfere with individual determinations and that do not consider consumers' views and choices.

The HRA acknowledges that the Center has discontinued its policy restricting peanut products.

### **RECOMMENDATIONS**

The HRA recommends that the Center address individual dietary needs in individual treatment and dietary plans.

### **SUGGESTIONS**

The HRA suggests that the Center:

1. Return peanut butter cups to its commissary and vending machines.

2. Adhere to its obligation to protect individual medical needs regarding food allergies pursuant to an individual treatment plan.

## **PART 2 FINDINGS**

The second allegation states that a consumer, who is a vegetarian, cannot exercise choice with regard to foods, is not offered all varieties of foods, including peanut butter and the facility does not provide sufficient ethnic foods, and it does not allow the consumer to have foods provided by a relative.

The consumer stated that he feels staff have misused their authority and they have taken non-therapeutic measures against him since he complained that he was one of three persons with diabetes on the unit who was not allowed to participate in the holiday buffet during December 2009. The consumer said that he cooperates with staff and does not instigate trouble with other patients or staff.

The consumer explained that he has adhered to the diabetic diet the staff offered him; however, (he feels) that the staff do not offer compromise when it restricts him from his favorite foods, including ethnic foods, peanut butter and chocolate cake. According to the consumer he is not allowed to have the same snacks offered during evening snack and, on some occasions it upsets him. Also, he is only allowed to have special Indian meals that a relative sends him on Thursday evenings, during that mealtime, and he is not allowed to have the scheduled meal that evening. The consumer stated he considers the meals brought in by his family his to have when he chooses, not when at the time the staff offer and that it should not replace his regular meal.

The Administrator stated that the consumer has Type II diabetes and the Center provides a vegetarian diet at his request. The Dietician ensured that special items were added as cost and availability allows. Additionally, dietary staff occasionally prepare special meals and family and friends have brought ethnic meals into the facility.

According to the Supervisor, the Center addresses the consumer's health and dietary issues on a daily basis to ensure his health while providing him with the least restrictive setting. The Supervisor said that the consumer participates in the point system that allows him to earn points for completing activities of daily living, including adhering to his health needs relating to diabetes and that he is allowed to purchase and supplement his diet with sweet snacks purchased in the Center's commissary. Also, the consumer has the opportunity to use points earned to order food from a public restaurant weekly.

The DON said that she and the Center Physician and Dietician have worked closely with the consumer to create a healthy and diverse diet. The DON stated that she empathized with his desire for certain foods that the Center may not be able to provide because the State's menu program does not carry those products. She noted that the Center always provides menu substitutes to accommodate his dietary needs. The DON explained that the dietician has gone to great lengths, even shopping in local stores to provide diversity to his diet.

The DON stated that it is important that the consumer's diet is carefully managed because of his diabetes and other health concerns. She said that the consumer is not always compliant with Accu checks, a method used to measure his blood sugar. The Center pursued Court Ordered Administration of psychotropic medication that included forced Accu checks and those requests were granted January 29, 2010. The DON said that the Center's ethics committee that is made up of Center Physicians and Nurses review the case regularly.

The DON verified that the consumer's family provides frozen ethnic meals that the consumer is offered every Thursday evening as a replacement for that evening's regular meal.

The DON stated that from October 2009 to the present the consumer has had shingles and psoriasis and those conditions have had an adverse effect regarding his overall health.

The dietician wrote that the consumer is on a vegetarian, carbohydrate controlled menu that shows that he receives at least one Indian vegetarian entree or more each week (Beijing eggplant, tempura, Indian peas & pasta, vegetarian egg roll, stuffed eggplant, lentils & carrots with cumin) plus 2- 3 entrees made with bean curd (tofu) weekly. He also receives plain yogurt weekly (week 4 he gets it 5 times) which is another way to meet his request for Indian cuisine. He is diabetic and currently is refusing to take his Metformin (an oral anti diabetic medication) so a carbohydrate consistent diet is even more important to control his blood sugars which he is now refusing to check. The Unit staff continues to serve Indian entrees on Thursday evening.

The Initial Treatment Plan nutritional screening states the patient has a good appetite and prefers Ethnic food: vegetarian...

The Initial Psychiatric Nursing Assessment states:

Rights Read to Recipient: [Yes] Verbalizes understanding [Yes]

A Consent to Medication Counseling form states:

I have been told about and have been given written information about the following medicines; Risperidone, Zoloft. [The form states that the consumer] agrees to take the medicine listed above. The form is signed by the consumer on October 5, 2009.

The Activity Therapy Assessment states:

Targeted behaviors: history of refusing to cooperate with treatment/non compliance with medication.

The Physicians Progress Notes state:

10/08/09 – Patient's labs came back and show glucose of 167 [average 65-110]...In addition his accucheck is elevated. Last night it was 206. And this a.m. it was also elevated. Staff report that patient has been using sugar to sweeten his drinks and that he is eating sweet deserts that are not suitable for a diabetic. In addition he is eating unhealthy snacks, i.e. potato chips, etc. between meals. He also states he has heartburn after eating veggie burger.

10/19/09 – Patient was seen by dietitian, who recommended an 1800 calorie diet with 100 calorie snack. Patient did not agree with diet. He wants to order out and eat as much as he feels like. However, his accuchecks are up and his Hb [hemoglobin] A1c is 83 which indicates consistently elevated sugars. He was advised of the danger of this trend. [Another Physician] was present. Patient also complains of back pains and muscle spasms for the last few days and of tenderness and tingling in the left flank of his abdomen....

10/20/09 – 'I have my lawyer involved. It is my right to refuse the diabetic diet.' Listened to patient concerns and explained rationale of ADA diet. Consumer was pleasant. Order received to continue diet to 1800 ADA vegetarian no fish with 100 calorie snack. Patient verbalizes he understands but still upset.

11/17/09 - Nutrition note – patient notified [registered dietician] that he wants Indian Vegetarian diet and also veggie burger gives him heartburn. Will not be able to give patient special food but will provide appropriate selection for vegetarian diet. Will also explore if any other brand of veggie burger is available. Will explain response to his concerns orally or in writing today.

01/27/10 – Psychiatrist's note. Patient continues to be disheveled, not taking care of self. Skipping meals which is unusual for him. He must be losing weight, denies suicidal ideation. There is significant deterioration in functioning frequent observation for suicide ordered.

01/29/10 – Psychiatry Note: Patient continues to be disheveled. Court ordered medication for ninety days.

02/01/10 – Patient is uncooperative with staff and refuses to be seen by me. He got court ordered medication, weight and labs...

02/02/10 – Patient has been accepting court ordered medication...

02/02/10 – Nutrition Note – reassessment completed – Patient refuses to be seen. Patient has been refusing his diabetes and psoriasis

medications since January 15, 2010.... Patient uncooperative with treatment.

02/03/10 – Family Practice Note – Patient continues to refuse treatment for [diabetes] and psoriasis. He occasionally skips meals and/or snacks...

02/10/10 – Psychiatry Note – Patient is disheveled...he is noted to mumble constantly, mostly uncooperative with weights and vitals. Accu Checks in 120's to 150's.

The Order for Administration of Authorized Involuntary Treatment was filed 01/29/10 and signed by the court states:

To Administer Psychotropic Medication....testing and/or other procedures... Accu checks...Medical and psychiatric exams.

The Center provided documentation that the consumer's glucose was monitored everyday from January 1, 2010 through February 13, 2010.

The Center provided a copy of the facility's Plan of Modified Menu for May 2010 including the vegetarian carbohydrate controlled diet plan that is offered to the consumer. Meals include four ethnic offerings; taco salad; lentils, carrots with cumin, tofu stir fry and eggplant Beijing.

The consumer's record did not address whether or not the Center discussed informed consent regarding his medical condition and the treatment plan does not address details regarding his diet.

### **STATUTES AND RULES**

A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible.... In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided. (405 ILCS 5/2-102 a).

Pursuant to the Mental Health and Developmental Disabilities Code:

Every recipient who resides in a mental health or developmental disabilities facility shall be permitted to receive, possess and use personal property and shall be provided with a reasonable amount of storage space therefor except in the circumstances and under the conditions provided in this Section.

(a) Possession and use of certain classes of property may be restricted by the facility director when necessary to protect the recipient or others from harm, provided that notice of such restriction shall be given to all recipients upon admission.

(b) The professional responsible for overseeing the implementation of a recipient's services plan may, with the approval of the facility director, restrict the right to property when necessary to protect such recipient or others from harm. (405 ILCS 5/2-104).

(a) Whenever any rights of a recipient of services that are specified in this Chapter are restricted, the professional responsible for overseeing the implementation of the recipient's services plan shall be responsible for promptly giving notice of the restriction or use of restraint or seclusion and the reason therefore to:

(1) The recipient and, if such recipient is a minor or under guardianship, his parent or guardian;

(2) A person designated under subsection (b) of Section 2-200 upon commencement of services or at any later time to receive such notice;

(3) The facility director;

(4) the Guardianship and Advocacy Commission, or the agency designated under "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, if either is so designated;

(5) The recipient's substitute decision maker, if any. The professional shall also be responsible for promptly recording such restriction or use of restraint or seclusion and the reason therefor in the recipient's record.

(b) The facility director shall maintain a file of all notices of restrictions of rights, or the use of restraint or seclusion for the past 3 years. The facility director shall allow the Guardianship and Advocacy Commission, the agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named," approved September 20, 1985, and the Department to examine and copy such records upon request. Records obtained under this Section shall not be further disclosed except pursuant to written authorization of the recipient under Section 5 of the Mental Health and Developmental Disabilities Confidentiality Act. (405 ILCS 5/2-201).

An adult recipient of services or the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if



any, must be informed of the recipient's right to refuse medication. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication. *If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available.* The facility director shall inform a recipient, guardian, or substitute decision maker, if any, who refuses such services of alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services. (405 ILCS 5/2-107a).

### **ILLINOIS ADMINISTRATIVE CODE**

The Illinois Administrative Code (59 Ill. Admin. Code 112.30) Recipient Physical and Dental Examinations and Informed Consent for Services states:

#### d) Informed consent

Informed consent is defined as permission for a procedure freely granted by a person or persons authorized by law to give consent to services and treatment plans, i.e., the recipient, guardian (if the recipient is under guardianship) or parent (if the recipient is under age 18). Informed consent is based on the full disclosure to the authorized person of the information required to make the decision intelligently, including a description of the procedure, the possible benefits and the risks and the alternative(s) to the procedure.

1) For the purposes of this Section, the person(s) authorized to give consent shall be informed of the treatment plan for medical and dental services, and shall be provided with the information necessary to give informed consent. The documented agreement to the individualized services plan will obviate the need for specific agreement to the treatment plan for medical and dental services.

2) The person(s) authorized to give consent shall be informed of the method whereby he or she can exercise the right to refuse medical and dental services.

3) For services listed below, the person(s) authorized to give consent shall be informed that if an objection is not received prior to performance of services, consent shall be implied for the treatment plan.... (B) Medical - non-psychotropic medication, endoscopy not involving anesthesia, exercise regimens and sutures.

4) A written consent, signed by the person authorized to give consent, shall be required for all other procedures, including general anesthesia, surgery (both medical and dental) and radiation therapy. The written consent shall be specific to the procedure or course of therapy to be used and shall only apply to a particular procedure performed at a particular time or to a course of therapy of which the procedure is a part. An additional consent shall be obtained for each subsequent procedure. A consent authorizing a specific Department staff person to perform a procedure is specific to that staff person.

5) If consent is denied by the person authorized to consent, medical or dental procedures shall not be provided except pursuant to subsection (d) (6) of this Section. Such refusal shall be documented in the recipient's clinical record.

6) In accordance with Section 2-111 of the Code, *when a medical or dental emergency exists, if the physician or licensed dentist who examines the recipient determines that the recipient is not capable of giving informed consent, essential medical or dental procedures may be provided without consent. No physician nor licensed dentist shall be liable for a non-negligent good faith determination that a medical or dental emergency exists.* The nature of the emergency shall be documented in the recipient's clinical record and notice shall be given to the recipient, the legal guardian or parent(s).

## **PART 2 CONCLUSION**

According to the Code, a recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible. Every recipient who resides in a Center shall be permitted to receive, possess and use personal property. The possession and use of certain classes of property may be provided that notice of such restriction shall be given to all recipients upon admission. The professional responsible for overseeing the implementation of a recipient's services plan may, with the approval of the facility director, restrict the right to property when necessary to protect such recipient or others from harm.

Informed consent is defined as permission for a procedure freely granted by a person to give consent to services and treatment plans. Informed consent is based on the full disclosure to the authorized person of the information required to make the decision intelligently, including a description of the procedure, the possible benefits and the risks and the alternative(s) to the procedure.

The record documents that the consumer is assigned to a vegetarian diet that includes a restriction of calories and that he does not agree with the diet and that the Center offers about four meals per month that contain what may be considered "ethnic food." The consumer's family brings a frozen ethnic dinner that the Center keeps for the consumer and allows him to eat that meal every Thursday night in place of the scheduled meal.

The HRA notes that the Center is currently offering peanut butter to the consumers.

The second allegation, that a consumer who, because of medical reasons, requires a special diet is denied choices is substantiated on the grounds that the consumer's ongoing refusals of facility recommendations have not been addressed in his treatment plan.

The Physician Progress notes section of the record discusses the diagnosis of diabetes and appropriate diet and it also notes the consumer's objections, yet further documentation regarding the course of treatment for diabetes and the issues of refusal of treatment are not clearly addressed in the treatment plan.

The HRA acknowledges and applauds the facility's efforts to balance the medical and psychiatric treatment while adhering to consumer's rights. Staff have made an extra effort to accommodate some of the consumer's preferences; however, the consumer has stated his desire to refuse the special diet.

The part of the allegation regarding restriction of property is not substantiated because the consumer is allowed to have his property (frozen dinners). The HRA is concerned that access to the property is restricted and that it must replace scheduled meals.

### **RECOMMENDATIONS**

The HRA recommends that the Center:

1. Convene the treatment team and determine the plan of action regarding diet, medication, and health monitoring. Ensure consumer participation in treatment planning, to the extent feasible.
2. Document that the consumer's objection to a diabetic diet was addressed.

### **SUGGESTION**

The HRA suggests that, through the treatment planning process, review with the consumer the issue of the frozen meals, the impact of the additional frozen meals on his diet and any resolution to the consumer's concern that the frozen meal must replace scheduled meals.

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## **RESPONSE**

**Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.**

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Pat Quinn, Governor

Michelle R.B. Saddler, Secretary

Greater Illinois Regions 3 & 4 ● Jordan Litvak, Executive Director  
Andrew McFarland Mental Health Center ● Karen Schweighart, Hospital Administrator

August 25, 2010

Ms. Debbie Weiner, Chairperson  
Regional Human Rights Authority  
4500 College Avenue, Suite 100  
Alton, Illinois 62002-5051

RE: HRA Cases # 09-050-9012

Dear Ms. Weiner,

We are in receipt of the recommendations in HRA cases #10-050-9014 & 9017 and are not in agreement with these findings. We respectfully request that our response to the recommendations be included as part of the public record.

In response to Recommendations in Part 1:

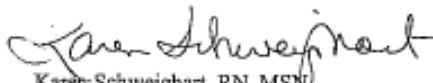
- *The HRA recommends that the Center address individual dietary needs in individual treatment and dietary plans.*  
McFarland Mental Health Center takes the responsibility of addressing individuals' dietary needs very seriously and believes there is evidence of this documented in the medical records. A full-time Dietitian on staff reviews all admissions for dietary needs and meets with individuals and the treatment teams as indicated throughout their stay to ensure that dietary needs are met.

Our current policy is a reasonable compromise, which allows consumption of foods that have been determined to be at high risk for serious allergies while maintaining safety for all individuals. A variety of snack items are available in the vending machines and through the incentive program.

In response to Recommendations in Part 2:

- *Convene the treatment team and determine the plan of action regarding diet, medication, and health monitoring. Ensure consumer participation in treatment planning, to the extent feasible.*  
As noted in the report, the consumer has been involved in his plan of care to the extent that he has been willing.
- *Document that the consumer's objection to a diabetic diet was addressed.*  
This will be addressed and documented in the Treatment Plan Reviews.

Sincerely,

  
Karen Schweighart, RN, MSN  
Hospital Administrator

c: Natalie Katauski, Quality Manager, McFarland MHC

901 Southwind Road, Springfield, IL 62703-5125

217-786-6994 McFarland  
217-786-6866 Network Office

217-786-7241 TTY

SPRINGFIELD REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 10-050-9014 & 9017

SERVICE PROVIDER: ANDREW MCFARLAND MENTAL HEALTH CENTER

Pursuant to Sections 725 and 726 of the Guardianship and Advocacy Act, we have received the Human Rights Authority's report of findings and recommendations. We ask that the following action be taken.

I request that our response to the recommendation/s, suggestions be included as part of the public record.

I do not wish to include our response to the recommendation/s, suggestions in the public record at this time.

No recommendations were contained in the report, and no response from my agency is required

Karen Schweigert  
NAME

Hospital Administrator  
TITLE

8-25-10  
DATE

Note: Human Rights Authority reports may be made available to the public, upon request, and are sometimes forwarded to regulatory agencies for their review. Service providers are notified when a request for a copy of the report is made, however, the identity of the individual or entity making the request is kept anonymous.