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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1459**

Thor Kenneth Miner,  
Appellant,

vs.

Cal R. Ludeman,  
Commissioner of Human Services,  
Respondent.

**Filed January 15, 2008  
Reversed  
Klaphake, Judge**

Judicial Appeal Panel  
File No. ID/02474

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Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and  
Worke, Judge.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Appellant Thor Kenneth Miner was committed indeterminately as mentally ill and dangerous (MI&D) but has been living in the community independently since 2001, pursuant to a provisional discharge. He petitioned for full discharge from his commitment and after the judicial appeal panel affirmed the decision by the Commissioner of Human Services to deny his petition, he brought this appeal. Because the evidence supports the determination that appellant has satisfied the criteria for full discharge, we reverse.

### DECISION

An appellate court that reviews a decision by a judicial appeal panel must “determine from an examination of the record if the evidence as a whole sustains the appeal panel[’s] findings.” *Johnson v. Noot*, 323 N.W.2d 724, 728 (Minn. 1982); *Rydberg v. Goodno*, 689 N.W.2d 310, 314 (Minn. App. 2004). But where reliable evidence supports the determination that a committed person meets the standards for discharge, the appeal panel’s decision will be reversed. *Johnson*, 323 N.W.2d at 729.

A person committed indeterminately as mentally ill and dangerous (MI&D) may be discharged only as provided in section 253B.18. Minn. Stat. § 253B.18, subd. 3 (2006). This requires a showing that “the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.” Minn. Stat. § 253B.18, subd. 15 (2006). We must also consider “whether specific conditions exist to provide a reasonable degree of

protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.” *Id.*

Appellant, who is presently diagnosed with schizophrenia, paranoid type, in remission, was committed for an indeterminate period as mentally ill and dangerous in 1988 after he shot and killed his father in 1986 while acutely psychotic.

In 2001, appellant was provisionally discharged to live in the community. Appellant petitioned the Commissioner of Human Services for full discharge from his commitment as MI&D for the first time in December 2004. After the commissioner denied the petition, he petitioned the judicial appeal panel for reconsideration. He withdrew the petition after the court-appointed independent examiner, Dr. Roger Sweet, Ph.D., a licensed psychologist, recommended denial, concluding that full discharge was premature. In an effort to show his readiness for discharge, appellant reduced his contacts with his Hennepin County case manager and his mental health advocate to one per month.

Appellant petitioned again for full discharge in May 2006. Although Dr. Sweet now recommended full discharge, the special review board again recommended denial. The commissioner denied the petition, and appellant again petitioned the appeal panel for reconsideration.

According to the undisputed evidence, appellant has fully cooperated with the recommendations of mental health professionals. He attends support groups on a weekly basis, takes his prescribed medications, and keeps scheduled appointments with his psychiatrist, psychologist and psychiatric nurse. He does not exhibit any positive

symptoms of schizophrenia and has not engaged in any verbal or physical aggression since 1986.

It is also undisputed that appellant is doing very well socially. Appellant is living independently in Ramsey County in an apartment. He works part-time at RISE in its accounting department, where he has been employed since 2004. RISE provides a supportive employment program, and although his wages were originally paid by Hennepin County, RISE has now hired appellant as its own employee. Appellant handles his personal financial affairs and manages his household chores, including cooking, cleaning, and shopping. He also has a driver's license, owns a motor vehicle, and has not had any traffic violations. He has friends and sees his family on occasion.

The appeal panel considered the opinion of Dr. Sweet, who examined appellant three times for his earlier and present petition. Dr. Sweet supported full discharge, based on appellant's long-term positive adjustment in the community and improved mental status. Dr. Sweet noted that appellant had significantly improved since his interviews with appellant the previous year. He cited appellant's medication compliance, insight into his condition, ability to work, organizational skills, independence, and lack of positive symptoms of schizophrenia. He also noted that appellant has been able to handle stressful events, including the death of his mother, a break-up with a girlfriend, driving, and work stresses. Further, Dr. Sweet testified that appellant recognized the importance of retaining the structure in his life. If fully discharged, appellant intends to continue taking his medication, seeing his mental health professionals, attending support meetings,

and watching for early warning signs of problems developing. Appellant also testified to this effect.

The appeal panel also considered a report by Dr. Thomas Keul, appellant's psychiatrist from 1999 to the end of 2006, who opposed full discharge. He diagnosed appellant with schizophrenia, paranoid type, in remission. He reported that appellant functions at a high level for his condition, has been "totally compliant" with treatment, has made "remarkable progress," and he expects him to continue at his present functioning level for years "with the medication in place and the supports that he has." Dr. Keul did note that appellant continues to display "negative" deficits that are not amenable to treatment and predicted that if he went without medication, his symptoms would recur. In denying appellant's petition for full discharge, the appeal panel determined that he still needed supportive services and supervision.

A close examination of Dr. Keul's report, however, shows that it was couched in qualifying terms—"unable to accurately predict," "suspect" and "in his estimation"—that do not provide reliable support for the appeal panel's conclusions. Instead, Dr. Keul was unable to predict what would happen in the unlikely event that all of the components of appellant's support system ended. Further, based on this record, the proposition that appellant's extensive support system would end is purely speculative.

We note that appellant, in order to show that he could function well in the community, reduced his contacts with his case worker and mental health advocate to one per month with no ill effects. The appeal panel placed great weight on the need for supportive services, but the record lacks details about how long these meetings were, and

respondent's counsel was unable to provide that information to this panel at oral argument. If discharged, appellant would no longer have his Hennepin County case worker or mental health advocate, but he could continue to attend support meetings, obtain psychiatric care, go to work, and see friends and family, all significant elements of a support structure. Further, some short-term services would be available from Ramsey County, as well as other services on an as-needed basis. A monthly meeting with the case worker for an undetermined amount of time is not sufficient to support the appeal panel's conclusion that appellant's provisional discharge must be continued.

On this record, we conclude that appellant has met the standards for discharge. Appellant has complied fully with treatment and has never violated terms of his provisional discharge. He reduced his contacts with his case worker and mental health advocate to one per month with no ill effects. Dr. Sweet recommended full discharge, finding appellant's request "realistic and appropriate." Dr. Keul recognized that appellant was totally compliant with treatment and had made remarkable progress. Dr. Keul opposed discharge because he was "unable to predict" what would happen if appellant lost support, and he "suspected" appellant would deteriorate. It is undisputed that without medication appellant's condition would likely deteriorate, but there is no evidence that appellant will stop taking his medication just because he is no longer seeing a counselor once per month. The tone and import of Dr. Keul's testimony, which provides the basis for his opinion does not, in our view, constitute the "reliable evidence" that must support the appeal panel's decision to continue the commitment.

The comments by Dr. Gregory Hanson, Ph.D. and licensed psychologist, who also evaluated appellant pursuant to his position as a state forensic psychologist, are very pertinent. While he did not have a strong opinion as to discharge, he stated:

Mr. Miner has apparently done everything requested of him in respect to his provisional discharge—he has been cooperative with every aspect of his care and treatment; and he has been psychiatrically stable for years. There seems little likelihood that this will abruptly change or that Mr. Miner could not get adequate help from service providers available to him after discharge of the commitment.

There will always be a risk that a person committed as MI&D will deteriorate, but the statute envisions that when there is a reasonable degree of protection to the public, and other statutory factors are met, the committed person should be discharged. Minn. Stat. § 253B.18, subd. 15.<sup>1</sup> Further, the fact that certain negative symptoms of schizophrenia may not be amenable to treatment does not mean that one suffering from that disorder can never be discharged when the statutory standards are met. We therefore conclude that appellant has demonstrated as a matter of law that he meets the standard for discharge, and we reverse the decision by the appeal panel.

**Reversed.**

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<sup>1</sup> See *Zinermon v. Burch*, 494 U.S. 113, 131, 110 S. Ct. 975, 986 (1990) (acknowledging substantial liberty interest in avoiding civil commitment); *Vitek v. Jones*, 445 U.S. 480, 491-92, 100 S. Ct. 1254, 1263 (1980) (noting that due process protections invoked when state statute creates conditional liberty interests).