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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3048-20**

JASON WALSH,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted May 9, 2023 – Decided May 31, 2023

Before Judges Messano and Perez-Friscia.

On appeal from the New Jersey Department of Corrections.

Jason Walsh, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Christopher C. Josephson, Deputy Attorney General, on the brief).

PER CURIAM

Jason Walsh appeals from an April 8, 2021 final agency decision by the Special Treatment Unit (STU) at the Adult Diagnostic and Treatment Center (ADTC) in Avenel, which denied Walsh's request to possess an air purifier. The STU denied Walsh's request, finding an air purifier was not authorized property for a resident. We affirm.

Walsh is a civilly committed resident at the STU pursuant to the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. Walsh suffers from gastrointestinal issues, which allegedly developed after a 2002 bariatric surgery. Specifically, Walsh has a medical condition known as "dumping syndrome." The condition causes flatulence, which is frequently accompanied by an odor that is offensive to the olfactory senses of parties in Walsh's vicinity. Walsh is housed at the ADTC with other committed residents.

Sandra Connolly, M.D., evaluated and treated Walsh at the STU for his ailments. Walsh, based on a verbal suggestion of Dr. Connolly, applied on December 10, 2020 to purchase an air purifier. The STU has property oversight for unit residents under the delegated authority of the Department of Corrections (DOC) and Department of Health (DOH). Walsh had not obtained approval to possess the air purifier from the designated property committee. Dr. Connolly, on December 18, 2020, treated Walsh for a sick visit and wrote in a medical

note: "I have written an order that [Walsh's] emotional distress, secondary to dumping syndrome, may be improved by use of an air purifier on unit." In a general surgery consultation report, dated January 12, 2021, Dr. Connolly stated: "I believe he needs an air purifier for his room in order to make everyone's life a little bit happier." Walsh allegedly suffered "abuse and discrimination" from other residents because of the offensive flatulence odor.

Walsh purchased the air purifier, and it was shipped to the ADTC, but the STU administration would not release the air purifier to Walsh.

On December 30, 2020, Walsh submitted the first of several grievances seeking the release of the air purifier he purchased. Walsh acknowledged in the grievance, "[Dr. Connolly] suggested that while she cannot issue the device through her department, she feels it would be of substantial benefit for myself as well as DOC and DOH staff and residents." The STU denied the first grievance on January 25, 2021. The STU's administration advised Walsh an air purifier for a "medical condition . . . is something that you need to address directly with that department." Walsh filed multiple grievances and appeals seeking release of the device, all of which were denied.

By letter dated February 26, 2021, a deputy public advocate representing Walsh requested the DOC consider approval of the air purifier. However, the

DOC denied approval. Notably, no order prescribed by medical personnel, and no document in the record, demonstrated Walsh required an air purifier as medically necessary. In fact, Walsh requested the medical department provide an air purifier, but the medical department denied the request.¹ On April 8, 2021, the STU denied Walsh's appeal, stating, "This purchase is denied. Please contact the Mailroom to return the item. Thank you."

This appeal followed. The DOC moved for a remand to permit amplification of the record with the reasons for the denial by the STU administrator. We granted the request. The administrator provided the reasons for the denial as follows:

[Y]our possession of an air purifier is denied for the following reasons:

1. The air purifier creates a security concern because it could be taken apart and used to create an improvised weapon. Additionally, this item could be manipulated in an effort to conceal contraband inside the machine.
2. The air purifier is not an approved possessions item for use in any DOC facility.

On appeal Walsh argues:

¹ On April 20, 2021, Walsh requested by letter a "reasonable accommodation" under the Americans with Disabilities Act, 42 U.S.C. 12101, and sought either reconstruction of his room with a "high power exhaust" or the air purifier. It is unclear whether any response was received from the STU.

POINT I: THIS COURT SHOULD BASE ITS DECISION ON THE COMPLETE RECORD INCLUDING THE CERTIFICATION, MEDICAL RECORDS, GRIEVANCES, AND OTHER RELATED CORRESPONDENCE AS REQUIRED TO BE CONTAINED IN THE APPENDIX TO THIS BRIEF UNDER RULE [SIC] 2:6-1 BECAUSE THEY PROVIDE NECESSARY INFORMATION AND ARE MATERIAL TO THE ISSUES ON APPEAL AS REQUIRED UNDER N.J.C.R. 2:5-4(a).

POINT II: THE DENIAL OF THE AIR PURIFIER IS ARBITRARY AND CAPRICIOUS[.] POSSESSION OF THE DEVICE PRESENTS NO SECURITY THREAT, IS MEDICALLY NECESSARY AND HAS BEEN PAID FOR BY THE RESIDENT. NO COMPELLING STATE INTEREST WOULD BE AFFECTED BY THE APPELLANT'S RETENTION AND USE OF THE DEVICE.

POINT III: THE DENIAL OF THE AIR PURIFIER VIOLATES THE NEW JERSEY CONSTITUTION ARTICLE I RIGHTS AND PRIVILEGES PARAGRAPH I NATURAL AND UNALIENABLE RIGHTS "OF ACQUIRING, POSSESSING AND PROTECTING PROPERTY AND OF PURSUING AND OBTAINING SAFETY AND HAPPINESS."

POINT IV: THE DECISION OF THE STU/DOC VIOLATES APPELLANT'S SUBSTANTIVE RIGHTS, RIGHTS PROTECTED BY ACTS OF THE NEW JERSEY LEGISLATURE UNDER BOTH THE NEW JERSEY STATUTES AND THE NEW JERSEY ADMINISTRATIVE CODE.

Our scope of review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011); Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186,

190 (App. Div. 2010). "We [therefore] defer to an agency decision and do not reverse unless it is arbitrary, capricious[,] or unreasonable or not supported by substantial credible evidence in the record." Jenkins v. N.J. Dep't of Corr., 412 N.J. Super. 243, 259 (App. Div. 2010) (citing Bailey v. Bd. of Rev., 339 N.J. Super. 29, 33 (App. Div. 2001)). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

A reviewing court "may not substitute its own judgment for the agency's, even though the court might have reached a different result." Stallworth, 208 N.J. at 194 (quoting In re Carter, 191 N.J. 474, 483 (2007)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)). In our review of the DOC's exercise of authority, we must acknowledge "[t]he breadth and importance of the Commissioner's expertise and discretionary authority in matters of prison policy, regulation and administration." Ortiz v. N.J. Dep't of Corr., 406 N.J. Super. 63, 70 (App. Div. 2009). But our review is not "perfunctory[.]" nor is "our function . . . merely [to] rubberstamp an agency's decision[.]" Figueroa,

414 N.J. Super. at 191. Instead, "our function is to engage in a 'careful and principled consideration of the agency record and findings.'" Ibid. (quoting Mayflower Sec. Co. v. Bureau of Sec. in Div. of Consumer Affs. of Dep't. of Law & Pub. Safety, 64 N.J. 85, 93 (1973)).

The DOC administers the STU under a joint statutory arrangement with the DOH. N.J.S.A. 30:4-27.24. The DOC operational rules and regulations, set forth in N.J.S.C. 10A:1 through 10A:30, apply to STU residents pursuant to N.J.A.C. 10A:1-2(c), which states:

Pursuant to the Sexually Violent Predator Act (N.J.S.A. 30:4-27.24 et seq.), the Department of Corrections shall be responsible for the operation of any Special Treatment Unit designated for the custody, care, control and treatment of sexually violent predators; therefore, when deemed necessary by the Commissioner of the Department of Corrections or designee, operational, custodial, security and medical care rules set forth within N.J.A.C. 10A:1 through 10A:30 shall be applicable to Special Treatment Units. Unless otherwise stated, N.J.A.C. 10A:35 shall be applicable to Special Treatment Units under the jurisdiction of the Department of Corrections.

The STU is authorized to govern "internal management procedures and policies," including over "personal property." N.J.A.C. 10A:35-1.2(a)(3), (6).

"A written list of permissible personal property items . . . which may be retained

in the possession of the resident" is maintained by the STU. N.J.A.C. 10A:35-3.1(b).

We have recognized, "Individuals are civilly committed under the [SVPA] because they pose a danger to the public health and safety due to their behavior." In re Civil Commitment of J.H.M., 367 N.J. Super. 599, 610 (App. Div. 2003) (citing Kansas v. Hendricks, 521 U.S. 346, 357 (1997)). There is an established safety purpose for the STU to control residents' property to provide, "A secure environment for involuntarily civilly committed sexually violent predators which encourages participation in sex offender treatment." N.J.A.C. 10A:35-1.2(2).

We are satisfied from the record the administrator's denial of the air purifier was not arbitrary, capricious or unreasonable. It is uncontested the STU is authorized to create a "written list of permissible personal property items" and maintains the list to provide for the safety of residents. N.J.A.C. 10A:35-1.2(a)(2) clearly charges the STU with the responsibility of applying the list to ensure a safe environment. Here, the DOC has established the air purifier is not on the "Authorized Property List for Male Residents," and there is a "security concern" it could be "used as a weapon" and opened to "conceal contraband." The DOC notes the STU permits an alternative item, an air freshener, which can

assist in addressing Walsh's malodorous occurrences. We accept there are legitimate security concerns prohibiting the device, and the denial of the air purifier was rightfully within the purview of the STU.

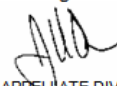
As to the issue of medical necessity, it is uncontroverted Walsh, as a resident of the STU, has "[t]he right to receive essential medical treatment as recommended by [a] health care provider." N.J.A.C. 10A:35-2.2(a)(5). The record does not support Walsh's argument the air purifier is an essential medical device for necessary medical treatment. Notably, after Walsh directly requested the Medical Department provide an air purifier, Walsh was advised, "We do not provide air purifier[s], that is DOC policy." We conclude possession of an air purifier, to remedy olfactory offense from Walsh's flatulence, does not qualify as a medically essential device for treatment.

Accordingly, we discern no basis in the record to conclude the STU's decision, prohibiting the air purifier, was arbitrary, capricious or unreasonable.

To the extent we have not addressed any of the other arguments raised by Walsh, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

We affirm.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION