UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1730

September Term, 2013

GORDON OVERBY

v.

STATE OF MARYLAND

Wright,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 27, 2016

In 2003, the Circuit Court for Howard County found appellant Gordon Overby not criminally responsible for the murder of his stepfather. *See* Md. Code (2001, 2008 Repl. Vol.), § 3-109 of the Criminal Procedure Article ("CP"). Pursuant to CP § 3-112(a), the court committed Overby to the care of the Department of Health and Mental Hygiene ("DHMH"), the appellee in this matter.

In 2013, Overby filed an application for conditional release under CP § 3-114(c). After a hearing, an ALJ recommended that Overby be released, subject to 17 conditions. The State filed exceptions with the circuit court, which sustained the exceptions and held that the ALJ's recommendations were not supported by substantial evidence.

On June 29, 2015, this Court granted Overby's application for leave to appeal the circuit court's ruling under CP § 3-119(d). Overby's one question, which we rephrase slightly, is as follows:

> Did the circuit court err in ruling that there was not substantial evidence to support the ALJ's determination that, pursuant to § 3-114(c) of the Criminal Procedure Article, Overby was eligible for conditional release from commitment with DHMH?

Because we conclude that the record contained substantial evidence to support the ALJ's recommendation, we affirm that recommendation, reverse the circuit court's ruling, and remand to the circuit court with instructions to grant Overby's release under the conditions recommended by the ALJ.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background Information

Overby, a 38-year-old veteran, began experiencing symptoms of mental illness in 1999 while serving on active duty. He suffered from depression and then from repeated paranoid delusions, symptoms that worsened when his medications were discontinued. In 2001 Overby was hospitalized at Walter Reed Army Medical Center, in Washington, D.C., where he was diagnosed with schizophrenia, paranoid type. Walter Reed treated Overby and later discharged him into the care of his mother.

Over the next year or so, Overby's delusions and hallucinations continued, requiring further psychiatric treatment. Overby isolated himself in his apartment and sporadically took his medications. In October 2002 he committed an assault and a handgun violation in Baltimore City. In December 2002, suffering from the delusion that his mother and stepfather were trying to make him commit suicide, Overby took a handgun to his mother's home and fatally shot his stepfather several times.

Following his commitment to DHMH pursuant to CP § 3-112, Overby was placed in the maximum-security unit at Clifton T. Perkins Hospital Center ("Perkins"), an inpatient facility maintained by DHMH, where he remained until 2013, when he was transferred to the Eastern Shore Hospital Center. On January 22, 2013, Perkins' Clinical/Forensic Review Board ("CFRB") recommended Overby's conditional release. On January 28, 2013, Overby filed an application under CP § 3-119(b), seeking conditional release under CP § 3-114(c). DHMH joined in Overby's request.

B. ALJ Hearing and Recommendations

Under CP § 3-114(c), one may be eligible for conditional release from commitment "only if [he or she] would not be a danger, as a result of mental disorder or mental retardation, to self or to the person or property of others if released from confinement with conditions imposed by the court." Overby had the burden to establish his eligibility for conditional release by a preponderance of the evidence. CP § 3-114(d).

Under CP § 3-119, Overby had the option of selecting an administrative adjudication before an ALJ (under subsection (b)) or a court proceeding (under subsection (c)). He selected an administrative adjudication.

On April 11, 2013, an ALJ convened a hearing. Overby was present with counsel. An assistant attorney general appeared for DHMH, which presented eight exhibits, including the CFRB Findings and Recommendations and the CFRB Case Report, both from January 22, 2013, as well as a draft proposal of numerous conditions to which Overby would be subject upon release. Overby testified, as did two witnesses acting on DHMH's behalf: Amanda Cook-Zivic, M.D., Overby's treating psychiatrist, who was accepted as an expert in the field of psychiatry; and Amy Morgan, a licensed clinical social worker and the Discharge Coordinator at Perkins. Counsel for the State's Attorney's Offices for Howard County and Baltimore City appeared in opposition and examined the witnesses, but presented no evidence or witnesses of their own.[1]

[1] The State's Attorney for Baltimore City participated in the hearing because, in a separate proceeding in the City, Overby had been found not criminally responsible for the assault and handgun violation that he committed there in October 2002.

Dr. Cook-Zivic, who had been treating Overby since 2011, testified that she had reviewed Overby's full medical history. She gave her evaluation of his current condition, affirming the diagnosis of paranoid schizophrenia, with a history of alcohol and drug abuse. She said that Overby was currently being injected on a bi-weekly basis with long-acting antipsychotic medication, to good results, and that Overby self-administered his other medications. Dr. Cook-Zivic also said that Overby had been living in Perkins's minimum-security unit since January 2011, where he had been working in the maintenance department; that he regularly had been going on escorted trips into the community; and that he had gone on unescorted visits with his mother every weekend since September 2011. Overby had acted well on these visits, and there had been no issues or recurrence of symptoms.

Dr. Cook-Zivic also testified that Overby was currently "open and compliant with treatment," that he showed a significant understanding of his illness, and that he recognized that he requires medication for his illness for the rest of his life. She said that Overby had been very involved in developing a wellness recovery action plan, the goal of which was to educate him about steps to take in the community were he to experience psychiatric triggers or warning signs of oncoming symptoms. Dr. Cook-Zivic concluded, to a reasonable degree of medical certainty, that Overby would not be a danger to himself or to the person or property of others if he were released under the conditions proposed by Perkins.

Dr. Cook-Zivic drew heavily from the extensive CFRB Case Report, which she co-authored with the social worker, Ms. Morgan. The CFRB Case Report detailed

Overby's progress at Perkins: his early struggles, including severe symptoms and his inability to acknowledge his illness or his need to treat it; followed by several years of improvement and greater insight into his illness, subject to occasional "decompensations,"[2] which included failures to take medication or suffering through breakthrough symptoms that required adjustment of medication; and, a final period, over the course of about two years, in which Overby's medication regimen was steady and his insight into his illness full and mostly unwavering, and in which he had continual successes when released temporarily into the community. In the section on "current mental status," the Case Report described Overby as a "pleasant man" whose "affect was . . . stable, calm, and appropriate," and who "did not evidence" any "current hallucinations[,]. . . delusions, paranoia, or suspiciousness."

The Case Report referred to an "updated risk assessment," conducted in 2012 by one of Overby's treating doctors. The risk assessment concluded that the "current assessment of clinical/dynamic factors indicate [that] Mr. Overby's risk of violent re-offending in the *short-term* is quite *low*[,]" but that "long-term risk for violent re-offending is likely to increase to a *low-moderate* level, if his present treatment support structure is loosened without careful monitoring." (Emphases in original.) The risk assessment declared that the proposed discharge plans for Overby "are safe, reliable, and realistic."

[2] A "decompensation," in the field of psychiatry, is defined as an "inability to maintain defense mechanisms in response to stress, resulting in personality disturbance or psychological imbalance." *See* http://www.thefreedictionary.com/decompensate (last visited Jan. 12, 2016).

In direct reference to the proposed conditions, the CFRB "recommend[ed] Overby for conditional release," asserting that he "is ready for continued treatment in a lesser [sic] restrictive environment." In its separate, one-page document titled "Findings and Recommendations," the CFRB observed that Overby had been accepted into an intensive, 24-hour residential and case-management program with the Department of Veterans Affairs ("VA"). The CFRB concluded: "Mr. Overby would not be a danger as a result of his . . . mental disorder to himself and/or the person or property of others if released with [these] conditions."

In her testimony, Ms. Morgan outlined those conditions, which, among other things, included: an in-house residential manager who would supervise Overby and ensure his compliance with the release conditions and his oral medication regimen; a mental-health management team that would visit Overby at least once a week to monitor and assess his mental health, and inject, on a bi-weekly basis, his long-acting antipsychotic medication; and an "Aftercare Program" that retained the authority to approve changes in Overby's residential and treatment program, request toxicology screens or proof of attendance at meetings of 12-step programs, and require Overby to submit to periodic blood tests to monitor the levels of his prescribed medications.

Ms. Morgan, echoing both Dr. Cook-Zivic and the CFRB, also testified that, under the proposed conditions, Overby "would not be a danger" to himself or to the person or property of others.

The State's Attorneys opposed Overby's release, arguing, among other things, that the highly-controlled environment at Perkins was an inadequate predictor of how Overby

might act in the community; that alcohol would be available in the community; that the conditions did not provide enough oversight for Overby should any of his sudden and rapid decompensations occur; that guns, which were involved in his two criminal acts, would be readily available; and that Overby would be living too close to family members who had been directly affected by Overby's killing of his stepfather.

On April 19, 2013, the ALJ issued an 18-page "Report on Release Eligibility," in which he arrived at 42 findings of fact and recounted the full history described above. The ALJ determined that Overby had gained "significant insight" into his illness, had invested in individual and group therapy, "understands what stressors and triggers can cause symptoms . . . to surface, and has become skilled at recognizing those symptoms and addressing them to ensure they do not affect him." The ALJ also determined that Overby was "behaviorally and psychiatrically stable" and that he "is on the maintenance staff at [Perkins], and has the run of the facility and grounds, unsupervised[.]"

In what appears to be an implicit incorporation of the balance of risk factors from the "formal risk assessment" noted above, the ALJ made the following finding:

> 29. *The risk of future violence if the Patient is released into the community is low. There is no way to be certain the risk of future violence is zero*. The Patient has not demonstrated any dangerous behaviors since 2008, though has experienced some episodes of decompensation. The decompensations, and the Patient's history of minimizing his illness and its symptoms, present increased risk if the Patient is released into the community. Since 2011, the Patient has shown significant improvement in recognizing the extent of his illness, has been cooperative, candid, and less defensive with his treatment team, and understands [that] minimizing his illness and its symptoms is counterproductive. He takes his medications without questioning the need for them, and understands the potential that he will be returned to Perkins Hospital if he violates any condition of release. The Patient has been away from Perkins Hospital on numerous

> occasions on staff outings into the community, all without incident. These facts weigh in the Patient's favor in the future risk assessment.

(Emphasis added.)

Similarly, in his final finding, the ALJ wrote that *"[t]he Patient presents a low risk of danger to himself or the persons or property of others* if released from confinement at Perkins Hospital, with conditions." Immediately thereafter, the ALJ added that "[t]he Patient is qualified and ready for release, with conditions."

Among the remaining findings of fact, the ALJ found: that "[Overby's] success . . . away from [Perkins] suggests he will do well in a highly regulated environment other than [Perkins]"; that Overby had neither "had any reported problems . . . for almost two years[ ]" nor "had any demerits or been a discipline problem for the staff at [Perkins] in two years[ ]"; and that Overby "is fully compliant with" his medication requirements.

In light of these findings, the ALJ reached his conclusion, first by quoting verbatim the governing statutory language from CP § 3-114(c): "A committed person is eligible for conditional release from commitment *only if that person would not be a danger*, as a result of mental disorder or mental retardation, to self or to the person or property of others if released from confinement with conditions imposed by the court." (Emphasis added.) After weighing the testimony and evidence, including Overby's testimony in his own support, the ALJ concluded that "[Overby] has sustained his burden[,]" in satisfaction of § 3-114(d). The ALJ concluded: "[C]onsistent with my findings of fact, [I] recommend that the Patient be released from confinement subject to the following conditions, all of which shall remain in effect for five years."

The ALJ attached 17 conditions of release, which, for the sake of completeness, we append to this opinion. The conditions, while affording Overby a measure of freedom that he had not enjoyed at Perkins, nevertheless maintained significant oversight and psychiatric and medical treatment. In addition to the many layers of individual monitoring described above, DHMH retained the authority to notify the circuit court if Overby failed to comply with these conditions, so that, following a hearing, he would be subject to being re-committed under the law. *See* CP § 3-121.

C. Circuit Court Ruling

The State filed exceptions with the circuit court. In a memorandum opinion dated August 14, 2013, the court sustained the exceptions and ordered Overby's continued confinement based on its conclusion that "there was no substantial evidence in the record as a whole to support the ALJ's findings and recommendations."

After reciting the applicable legal standards, the court rested its conclusion on the ALJ's use of the phrase "low risk" as part of his many findings of fact. The court stated:

> The ALJ found that the Petitioner presents a low risk of danger to himself or the persons or property of others, if released from confinement at [Perkins], with conditions. However, the ALJ also found that the Petitioner is qualified and ready for release with conditions. The ALJ's recommendation is not consistent with the statute. [Section] 3-114(c) allows for the conditionally [*sic*] release **only if** that person would not be a danger if he is released with conditions. For this reason alone, the Court finds that there is not substantial evidence in the record to support the ALJ's findings and recommendation for a conditional release . . . .

(Internal citations to ALJ Report omitted) (emphasis in original).

Remarking that "[e]ven though the analysis can end here," the court went on to consider "the ALJ's Report, the testimony and exhibits presented, as well as an evaluation of the conditions recommended for the conditional release." The court emphasized the violent nature of Overby's crimes, the severity of his conditions when he was first admitted to Perkins, and the episodes of "non-compliance" and decompensations over the course of Overby's first several years there.

In addition, the court questioned whether the proposed conditions would sufficiently mitigate the risks of community danger. It noted that Condition 1, which dictated that Overby shall reside "in an assisted living program" organized by the VA, failed to recognize that the victim's family members (including Overby's mother) would be living nearby, which could be a stressor for Overby. The court added: that despite the requirement that Overby be injected with antipsychotic medication, "there are no blood tests available to measure compliance[;]" that despite the condition giving various members of Overby's treatment team the power to request breathalyzers or other tests for prohibited drugs or alcohol, the people who would monitor Overby on a daily basis lacked this power themselves; and that, despite the condition prohibiting Overby from owning or possessing firearms, "there is no way to enforce this condition[,]" as "[n]o one is allowed to check for guns . . . or to check [the] residence for guns or any other type of weapons."

All of these factors, the court concluded, "clearly show that [Overby] is a risk for violence and is a danger to himself or others, as a result of his mental illness, even with

the conditions imposed by the Court" and that Overby "does not satisfy the requirements of [§] 3-114(c).

DISCUSSION

As noted above, this Court granted Overby's application for leave to appeal the circuit court's ruling. But although the State opposed Overby's application,[3] it has filed no brief in support of the circuit court's decision. Meanwhile, the only appellee, DHMH, has submitted a brief in which it *agrees with* Overby that the circuit court erred, that there was sufficient evidence on the record justifying the ALJ's recommendation of conditional release, and that this Court should reverse the circuit court's judgment. In reviewing the full record below in light of the applicable law, we agree with both parties that the circuit court erred in sustaining the State's exceptions and committing Overby to continued confinement with DHMH.

A. Legal Standards

A decision on conditional release under CP § 3-114(c) involves what this Court has called a "curious" "hybrid" of executive and judicial action. *Byers v. State*, 184 Md. App. 499, 511 (2009). Although an ALJ makes a recommendation about conditional release, the ALJ's decision is not self-executing. *Id.* at 512. Instead, the decision must be reviewed and, in some way, approved by a court. *Id.* Even if no one files exceptions to the ALJ's recommendation, the court may conduct a hearing (CP § 3-117(a)(1)) to

[3] Although Overby filed his application for leave to appeal on September 12, 2013, the State did not file its response in opposition to the application until 18 months later, on March 13, 2015. Overby has remained committed to the custody of DHMH during the appellate process.

determine whether to order conditional release. CP § 3-118(a)(2). If "timely exceptions are filed," as they were in this case, the court must conduct a hearing "unless the committed person and the State's Attorney waive the hearing." CP § 3-117(a)(2).

The court must "hold the hearing on the record that was made before [the ALJ]," CP § 3-117(b)(1), but may remand the case to the ALJ "to take additional evidence." CP § 3-117(b)(3). Within 15 days after the end of the hearing, the court must "determine whether the evidence indicates that the committed person proved by a preponderance of the evidence eligibility for release." CP § 3-118(a).

It is less than clear whether § 3-118(a) means that the judge must be persuaded by a preponderance of the evidence, or whether the judge "must simply decide, as a matter of law, whether the evidence before the ALJ was 'substantial' enough to have permitted the ALJ to have been persuaded by a 'preponderance of the evidence.'" *Byers*, 184 Md. App. at 517; *see also id.* at 505 (the statute "does not always turn square corners"); *id.* at 518 ("[t]his statute urgently cries out for legislative clarification").

Nonetheless, after an exhaustive review of the statutory scheme in its entirety, this Court, in an opinion by Judge Moylan, concluded that the judge's role "is that of providing a mandatory judicial review of this particular variety of administrative decision (in this case, a recommendation) and not that of making a judicial decision on the ultimate merits." *Id.* at 515. In other words, the judicial proceedings involve an "administrative appeal." *Id.*; *see also id.* at 519 ("[b]oth the mandated judicial review of the administrative decision at the circuit court level and the subsequent discretionary review by this Court constitute an administrative appeal"). The judicial role "is only to

determine, as a matter of law, whether the evidence before the ALJ was substantial enough to support" the ALJ's recommendation. *Id.* at 515. "To approve" the recommendation "is not necessarily to agree with it." *Id*. at 532.

Under this standard, the scope of judicial review is quite narrow. *See Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005) (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999) (citation omitted)). The circuit court "decides whether a reasoning mind reasonably could have reached the factual conclusion the [ALJ] reached" and "should defer to the [ALJ]'s fact-finding and drawing of inferences if they are supported by the record." *Banks*, 354 Md. at 68 (internal quotation marks and citations omitted). "[T]he appellate court looks not so much at the trial judge as it looks through the trial judge to the antecedent administrative decision itself." *Byers*, 184 Md. App. at 532.

B. Analysis

In light of the narrow scope of judicial review, the question before us is whether there was substantial evidence in the record to support the ALJ's recommendation that Overby be released, subject to the 17 conditions that he enumerated. We reverse the circuit court because, while professing to adhere to the governing standard, it overlooked significant evidence supporting the ALJ's recommendation.

As noted in detail above, the evidence before the ALJ was replete with indications that Overby had demonstrated significant psychiatric progress since being committed to Perkins. His treating professionals outlined this recent progress on a number of fronts: from the improvement and stabilization of his medication regimen, to his increasing

insight into his illness and its warning signs, to his clear progress living in lower-security units, working in maintenance with increased responsibility, and going on regular community releases – all without incidents of violence or occurrence of the decompensations that sporadically had interfered with his treatment in the earlier years of his confinement. Dr. Cook-Zivic, Ms. Morgan, and the CFRB itself all concluded, to a reasonable degree of certainty, that Overby had sufficiently demonstrated that if he were released subject to the CFRB's numerous proposed conditions, he would not be a danger to himself or to the self or property of others.

The ALJ noted this evidence of progress, while also noting those times in Overby's history in which his treatment progress had stalled. Upon balancing all evidence, the ALJ concluded that "[Overby] has sustained his burden" of showing that he would not be a danger if released under the conditions and that he warranted conditional release for a five-year period. Upon our own review we cannot say that these conclusions were unreasonable or were unsupported by substantial evidence. The evidence was such that a "reasoning mind" could reasonably have reached the determination that the ALJ reached. *Banks*, 354 Md. at 68.

The circuit court considered it to be dispositive that the ALJ repeated the language of a risk assessment, that Overby posed a "low risk of danger," and that the ALJ's factual findings did not employ the statutory phrase that Overby "would not be a danger." The court concluded the ALJ recommended conditional release in disregard of the statutory requirement that Overby "would not be a danger" to himself or others. The court, however, did not note that, in his final recommendation, the ALJ recited the statutory

language verbatim ("would not be a danger . . . to self or . . . others if released from confinement with conditions imposed") and concluded that Overby had shown, by a preponderance of the evidence, that he had satisfied that standard. That conclusion was supported by the unanimous and uncontradicted opinion of Overby's psychiatrist, Overby's social worker, and the Perkins CFRB, that Overby would not pose a risk to himself or others if he were released under the conditions that the ALJ recommended.

In this respect, the case bears some resemblance to *Hawkes v. State*, 433 Md. 105 (2013), which was decided just after the hearing in the circuit court but before the circuit court issued its opinion. In *Hawkes*, 433 Md. at 126, the ALJ found that the patient was not currently a danger to himself or others even though a risk assessment established only that he "presented a low to moderate risk of violence." Because of the evidence that the patient "presented a low to moderate risk of violence," both the circuit court and this Court rejected the ALJ's conclusion that he was not currently a danger to himself or others. *See id.* at 127-28. The Court of Appeals, however, reversed, reasoning that "the elimination of all risk is not a precondition of" conditional release under § 3-114(c). *Id.* at 133. The Court explained that conditional release is "'part of a continuing course of treatment.'" *Id.* at 133 (quoting *Bergstein v. State*, 322 Md. 506, 516 (1991)). Yet, "[r]equiring that a patient demonstrate that he or she will be *no risk* for violence before being conditionally released eliminates conditional release as part of a 'continuing course of treatment.'" *Id.* at 133-34 (emphasis in original). Indeed, were a patient required to demonstrate that he or she would pose no risk of violence before being conditionally released, "it would conflate the standard for [unconditional] discharge under subsection

(b) with that [for] conditional release under subsection (c) and render the latter a nullity." *Id.* at 134.

The correct analysis, therefore, requires a consideration of whether the patient would pose a danger to him- or herself or others, taking into account the specific conditions of release that were designed to mitigate any risk. *Id.* The ALJ employed this analysis, and the record contains substantial evidence to support his conclusion that Overby would not pose a danger to himself or others, taking into account the 17 recommended conditions of release. The ALJ did not undermine that conclusion by quoting a risk assessment, which might not have "explicitly take[n] into account conditions of release." *Hawkes*, 433 Md. at 111 n.8.

Also unavailing is the court's attack on the evidence. The court focused on Overby's various decompensations and incidences of noncompliance while at Perkins, which the ALJ noted as well. In addition, the court opined that the conditions did not rule out the possibility that Overby might gain access to alcohol or weapons and that the system of screening for anti-psychotic medication and alcohol or drug use was sufficiently strong.

These concerns, while not at all unreasonable, simply illustrate that reasoning minds can disagree upon review of the same facts. They are not enough to conclude, as the circuit court appears to have done, that the ALJ's recommendation was not supported by substantial evidence. The presence of evidence undermining the ALJ's recommendation does not mean that the record lacked substantial evidence in support of that recommendation. Under the governing standard, the ALJ was not required to find

proof, beyond a reasonable doubt, that Overby had met the requisite standard of eligibility for conditional release.[4]

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR HOWARD COUNTY WITH INSTRUCTIONS TO GRANT APPELLANT'S CONDITIONAL RELEASE IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE AND UPON THE CONDITIONS ENUMERATED BY THE ADMINISTRATIVE LAW JUDGE. APPELLEE TO PAY ALL COSTS.

[4] Shortly before oral argument, DHMH moved to stay these proceedings pending the Court of Appeals' decision on whether to accept certification from this Court in *Merchant v. State*, No. 906, Sept. Term, 2015. In *Merchant*, the Circuit Court for Prince George's County, on its own motion, held that it violated the doctrine of separation of powers to require a court to defer to an ALJ's recommendation on conditional release unless it is unsupported by substantial evidence. Because no one raised the issue of separation of powers either in the proceedings below in this case or in the briefs in this Court, we denied DHMH's motion to stay.

ALJ CONDITIONS OF CONFINEMENT

A. Gordon Overby shall reside in an assisted living program under the supervision of Jones-Williams Family Care Assisted Living (Address: 3716 Park Heights Avenue Baltimore, Maryland 21215; Owner: Gloria Williams; Telephone: (443) 416-5782) or in other housing approved by the Department of Health & Mental Hygiene (DHMH). He shall comply with all of the housing provider's rules and requirements, and he shall discuss any proposed changes in residence or a change in level of supervision with his mental health provider, including the assisted living unit director. Thereafter, any change in residence or level of supervision proposed by the treatment team shall be approved in writing by the DHMH's Representative, the Community Forensic Aftercare Program (CFAP), before the change and, upon approval by CFAP, CFAP shall notify the State's Attorney for Howard County and the State's Attorney for Baltimore City.

B. Gordon Overby shall be seen for mental health treatment by a psychiatrist and case manager at the Veteran's Administration Maryland Health Care System Mental Health Intensive Case Management (MHICM) program (Address: VA Maryland Health Care System Baltimore Annex 209 W. Fayette Street Baltimore, Maryland 21201; Team Leader: Jessica Campbell, LCSW-C; Telephone: (410) 637-1268 or (443) 690-6937), or in other community or private mental health clinic as approved by the Department of Health & Mental Hygiene (DHMH), as often as deemed necessary. He shall be seen monthly by his treating psychiatrist and weekly by his case manager. Thereafter, any change in therapist, case manager, clinic, or frequency of appointments must be approved in writing by his case manager, and notice of the change must be sent to the CFAP before the change.

C. Gordon Overby will take psychiatric medications as prescribed by his psychiatrist and shall comply with treatment recommendations and monitoring of medications as requested by his psychiatrist. He shall submit to periodic blood tests to monitor the presence and levels of prescribed medication, if requested. Gordon Overby shall agree, if necessary, to the payment of the cost of analysis of samples.

D. Gordon Overby shall attend and participate in the Baltimore Veteran's Administration Annex Psychosocial Rehabilitation & Recovery Center (PRRC) (Address: 209 West Fayette Baltimore, Room 430, 4th Floor, Maryland 21201, Director: Ron McGinn, RN; Telephone: (410) 637-1284), or in other day programming as approved by the Department of Health & Mental Hygiene (DHMH), as often as deemed necessary by his mental health treatment providers. He shall comply with the program's rules and requirements. His mental health treatment providers must approve any change

in daytime activity in writing and notice of the change must be sent to the CFAP before the change. Gordon Overby shall attend and participate in all such additional programs and activities as may be recommended and arranged by his case manager or by the CFAP. If Gordon Overby is employed, the CFAP shall be allowed under this Order to have contact with his employer.

E. Gordon Overby shall not take illicit drugs, abuse prescription medication, or use alcohol. His therapist, the CFAP, his case manager or the Department shall have the right to request breathalyzer tests or toxicology samples at any time, and Gordon Overby shall agree, if necessary, to the payment of the cost of the analysis of the specimens.

F. Gordon Overby shall attend and participate in Narcotics Anonymous or Alcoholics Anonymous at least three times per week, or as often as deemed necessary by his mental health treatment providers. If asked for proof, Gordon Overby shall submit proof of attendance. Any change in frequency of meetings must be approved in writing by his case manager and sent to the CFAP before the change.

G. Gordon Overby shall have no contact with the victim(s) of the offense that resulted in the finding of not criminally responsible. Contact includes face-to-face, telephone, mail or e-mail contact or indirect contact through unauthorized parties. Gordon Overby shall faithfully observe the terms of any current "no contact" or restraining orders.

H. Gordon Overby shall not own, possess or use, or attempt to own, possess or use a firearm or weapon of any kind.

I. Gordon Overby shall immediately discuss with his mental health therapist and agree to abide by any resulting reasonable recommendations made in respect to the following:

a. change in residence, employment or daytime activity
b. change in marital status or family composition
c. change in physical or mental health
d. legal involvements
e. trips outside the State of Maryland
f. failure to meet clinic or program appointments

J. Gordon Overby shall immediately notify CFAP (410-724-3031) if any of the conditions in Section 9a-f. occur. Gordon Overby shall obey all laws and in the event he is arrested or convicted or receives a probation before judgment, he shall immediately notify his therapist and the CFAP.

K. Gordon Overby agrees that the Department will have the right to order an independent psychiatric evaluation at any time, and he further shall participate in and fully cooperate with such an evaluation.

L. If Gordon Overby's mental illness becomes active, he may seek voluntary admission to a hospital for the purpose of inpatient treatment. Any such hospitalization shall not be construed to be a violation of conditional release.

M. If Gordon Overby's mental illness becomes active such that the treating mental health personnel recommend inpatient treatment and he is unwilling to be voluntarily admitted to a hospital for psychiatric treatment, this shall be deemed a violation of conditional release.

N. The CFAP shall be responsible for monitoring the conditions of Gordon Overby's release, including notification to all of the necessary parties that will be expected to provide services to Gordon Overby.

O. The CFAP shall be permitted to frequently communicate with any person, including the therapist, having knowledge of Gordon Overby's clinical condition, and shall be furnished with all documentation concerning his status that may be necessary to monitor his ongoing clinical condition. Gordon Overby agree to waive the confidentiality of his medical/psychiatric records and information to the parties and entities involved in overseeing his conditional release.

P. During the period of conditional release, five (5) years, Gordon Overby shall remain subject to this Court, to the general supervision of the Department, and to the reasonable requirements of the Department pertaining to the conditions of the release.

Q. If at any time during the conditional release, Gordon Overby does not comply with the conditions of release, CFAP shall notify the Court and the Office of the State's Attorney and, after a hearing Gordon Overby may be recommitted to DHMH. Md. Code Ann., Crim. Proc. § 3-121 (2008).

IT IS FURTHER ORDERED THAT:

A. The Director of the Mental Hygiene Administration shall be responsible for

1. Coordinating, supervising and monitoring compliance with the treatment plan and conditions set forth in this Order, including notifying all necessary agents expected to provide treatment or services; and

2. Promptly notifying the State's Attorney and the Circuit Court judge if Gordon Overby fails to comply with any of the aforestated conditions.

B. A copy of this Order shall be delivered to the Director of the Mental Hygiene Administration, Spring Grove Hospital Center, 55 Wade Avenue, DIX Building, Catonsville, Maryland 21228.

C. A copy of this Order shall be delivered to the Community Forensic Aftercare Program, Clifton T. Perkins Hospital Center, 8450 Dorsey Run Road, Jessup, Maryland 20794

D. A copy of this Order shall be delivered to Gordon Overby and those additional persons listed to receive copies.