

State of New Hampshire  
Supreme Court

NO. 2015-0748

2016 TERM

JULY SESSION

**Petition of Wayne Sawyer**

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RULE 11 PETITION FOR ORIGINAL JURISDICTION FROM FINAL DECISION  
OF THE ADMINISTRATIVE APPEALS UNIT OF THE NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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BRIEF OF LAKES REGION COMMUNITY SERVICES

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## QUESTION PRESENTED

When a person has been involuntarily committed, is in the custody of the State, and is physically restricted to a State-run supervised and secure living environment, does the person have voluntariness regarding his place of residence such that he may choose which agency provides his developmental disability or mental health case management services?

Preserved: FINAL DECISION (Sept. 29, 2015), *Appx.* at 131, 137; *Final Hrg.* at 66.

## STATEMENT OF FACTS AND STATEMENT OF THE CASE

Wayne Sawyer is an involuntarily committed sexually violent felon with developmental and mental health issues. Because he is dangerous to the public, he is confined to a highly supervised and secure environment resembling incarceration. It is located in Laconia, but run by the State and not connected to any local agency. Mr. Sawyer hails from Concord, but claims Laconia is where he now wants to live. He asserts that because acceptance of services is voluntary, he is free to choose an administrative attachment to wherever he likes. Lakes Region Community Services, the service agency covering the Laconia area, notes that because his commitment is not voluntary and his placement at the Laconia secure facility is not a matter of choice, for administrative purposes Mr. Sawyer retains residency in the municipality where he first entered the system.

### **I. New Hampshire's System for Care, Custody, and Treatment of Developmentally Disabled and Mentally Ill Who Are Involuntarily Committed as Dangerous**

This case is at the confluence of several statutes which establish the service delivery system for New Hampshire citizens with developmental disabilities and mental disorders, who are dangerous and subject to involuntarily commitment.

#### **A. Services for Persons Who Are Developmentally Disabled or Mentally Ill**

New Hampshire RSA 171-A, first enacted in 1975, provides services for those with developmental disabilities, largely as a response to the de-institutionalization movement of that era. RSA 135-C, enacted in 1986, provides services for the mentally ill, partly as response to a federal lawsuit. *Garrity v. Gallen*, 522 F. Supp. 171 (D.N.H. 1981); Amy Messer and Adrienne Mallinson, *The Dignity of Risk: the NH Supreme Court's Affirmation Of the Right to Live a Life of One's Own Choosing*, N.H. BAR. J. (Aug. 2009); *The Civil Bureau: Soup to Nuts*, N.H. BAR. J. (Spring

2004); REQUEST TO GOVERNOR & COUNCIL (June 19, 2013), *Appx.* at 4.<sup>1</sup> Treatment of the developmentally disabled and mentally ill are not substantially different, even though governed by separate statutes. *See Northern New Hampshire Mental Health Housing, Inc. v. Town of Conway*, 121 N.H. 811 (1981) (construing prior statute).

These services are administered by ten non-profit “area agencies” (AA) which span the state, each AA covering specified municipalities, funded through contracts with the State. Region IV, served by the area agency “Community Bridges” (CB), serves the vicinity of Concord. Region III, served by the AA “Lakes Region Community Services” (LRCS) – the party authoring this brief – serves the vicinity of Laconia. N.H. CODE ADMIN. R. (He-M) 523.11; REQUEST TO GOVERNOR & COUNCIL, *Appx.* at 4.

Each “client” has an “individual treatment plan” or “individual service plan,” to which the client must agree in order to receive treatment. RSA 135-C:15 & -C:19; RSA 171-A:12; RSA 135-C:57; He-M 526.02(g).

AAs provide “case management” services for clients, which consist of “[c]ase coordination ... including client evaluation, individual treatment planning, discharge planning, and linkage with appropriate community services.” He-M 526.07; FINAL DECISION (Sept. 29, 2015), *Appx.* at 132. When one AA replaces another for a client, within 10 days the prior AA is required to transfer to the receiving AA information about the client, funding for the client’s services, and a written report regarding the client’s treatment. The AAs are required to cooperate and to convene a meeting to discuss the client and the transfer documents. He-M 503.08, .10, .14

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<sup>1</sup>References to record documents appear in the appendix to this brief, and are cited to “*Appx.*” A transcript of the pre-hearing conference, held on February 24, 2015, is cited herein as “*Pre-Hrg. Conf.*” A transcript of the final hearing, held on September 10, 2015, is cited herein as “*Final Hrg.*”



& .15; REQUEST TO GOVERNOR & COUNCIL, *Appx.* at 4. There is an internal complaint procedure if the client is dissatisfied. *Final Hrg.* at 58; *Pre-Hrg.Conf.* at 38-39.

## **B. Involuntary Civil Commitment for Those Who Are Dangerous**

RSA 171-B, enacted in 1994, provides for involuntary civil commitment of the developmentally disabled who are charged with crimes but incompetent to stand trial. *See, e.g., State v. Lavoie*, 155 N.H. 477 (2007) (requiring finding of dangerousness). RSA 135-E, enacted in 2006, provides for involuntary civil commitment, and long-term care and treatment, of sexually violent predators. Anita S. Becker, *New Sexual Predator Law Raises More Questions Than There Are Answers*, N.H. BAR NEWS (Jan. 5, 2007); Anita S. Becker, *HHS Emergency Rules in Effect - Involuntary Commitment of Predators Costly, Legal Gray Area*, N.H. BAR NEWS (Jan. 19, 2007). Commitment orders are limited to five years and can be renewed. RSA 171-B:13.

RSA 622:41 through :52, enacted in 1985, establishes the secure psychiatric unit (SPU), located on the state prison grounds in Concord, “to receive and provide appropriate treatment” for those involuntarily committed who “present a serious likelihood of danger.” *See In re Fasi*, 132 N.H. 478, 487 (1989). The final relevant statute, RSA 135-C:26, is part of the more general statute discussed above which provides services for the mentally ill; this section establishes a designated receiving facility<sup>2</sup> (DRF), “for the care, custody, and treatment of persons subject to involuntary admissions.” RSA 135-C:2 & 26; *see Region 10 Client Mgmt., Inc. v. Town of Hampstead*, 120 N.H. 885 (1980); *Northern New Hampshire Mental Health Housing*, 121 N.H. at 811.

The DRF, secluded abaft the former Laconia State School, consists of two moderately maintained modest dwellings, occupying a lot adequate for moderately sized grass yards on all

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<sup>2</sup>“Designated receiving facility” is the statutory term, but the actual place, no name having been bestowed, is commonly called “the DRF.” *Pre-Hrg.Conf.* at 22.

sides, its curtilage enclosed by a 12-foot tall in-facing fence topped with cameras. *Final Hrg.* at 37, 54; *Pre-Hrg.Conf.* at 16. As its function is the custody of its internees, He-M 526.02(e), the DRF is secured by round-the-clock guards and a steel buzz-in gate; its occupants cannot leave unescorted. The DRF houses six, with routine schedules for waking, eating, and sleeping, though privileges can be earned relaxing those rigors. If someone were to elope, he would be arrested and delivered to the SPU. *Final Hrg.* at 37-44; *Pre-Hrg.Conf.* at 65.

Although the DRF is geographically located within Region III, it is operated and staffed by the State, under the aegis of the Department of Health and Human Services (HHS), Bureau of Developmental Services (BDS), and is New Hampshire's only such facility. Accordingly, the DRF's residents may come from anywhere. RSA 171-A:20; He-M 526.02(e); LRCS FoF&RoL ¶¶ F, O (Sept. 10, 2015), *Appx.* at 104; *Final Hrg.* at 11, 53-54; *Pre-Hrg.Conf.* at 10, 23.

While the Constitution does not mandate a least-restrictive alternative, *Garrity v. Gallen*, 522 F. Supp. at 236-39; *In re Brown*, 126 N.H. 309, 314 (1985), the statutes and regulations ensure that those involuntarily committed be situated in an environment “[l]east restrictive of the person’s freedom of movement and ability to function normally in society while being appropriate to the person’s individual capacity.” RSA 135-C:1, II(b); RSA 171-A:6.

## **II. Because of Mental Illness and Dangerousness, Wayne Sawyer is in State Custody, Living in a Restrictive Environment**

Wayne Sawyer, 52 years old, has a mental condition which makes him uncontrollably and sexually violent toward random women. In 1990 he plead guilty to aggravated felonious sexual assault, and was sentenced to 3½ to 15 years. After some re-offenses and loss of parole, he served the maximum time. INVOLUNTARY ADMISSION OF WAYNE SAWYER ORDER (Apr. 18, 2014), *Appx.* at 36-41 (describing mental condition and sexually violent incidents). He is on the sex offender registry. OFFENDER REGISTRATION INFORMATION, *Appx.* at 1.

**A. Wayne Sawyer is Involuntarily Committed**

The State attempted to commit Mr. Sawyer under RSA 135-E as a sexually violent predator, but defaulted a jurisdictional deadline. *See State v. Fournier*, 158 N.H. 441 (2009); ORDER ON MOTION TO DISMISS FOR LACK OF JURISDICTION, *State v. Wayne Sawyer*, No. 08-E-145 (Hills.Cnty.Super.Ct. Apr. 9, 2009) (not included in appendix). In 2009 Mr. Sawyer stipulated that due to mental illness, and pursuant to RSA 135-C, he:

presents a potentially serious likelihood of significant danger to himself or to others if he is not involuntarily admitted to the SPU for a period of five years, with the possibility of transfer to a less restrictive inpatient facility, and/or conditional discharge as soon as appropriate.... BDS shall continue to make best efforts to arrange an appropriate placement for him outside of the [New Hampshire Hospital] and SPU.

STIPULATION (Apr. 21, 2009), *Appx.* at 2. Thus Mr. Sawyer remained at SPU. FINAL DECISION, *Appx.* at 131.

The previous committal term elapsing, in 2014 the State sought re-commitment. The Concord Probate Court appointed Mr. Sawyer counsel from the Disability Rights Center (DRC), and a psychologist who prepared an updated assessment found Mr. Sawyer is still dangerous. UPDATE PSYCHOSEXUAL TREATMENT AND RISK MANAGEMENT EVALUATION (June 11, 2013) (not in record). In 2014, the probate court “conclude[d] that Mr. Sawyer’s mental condition makes it likely that he will pose a definite and extreme danger to the public, in particular women, if his civil commitment is not renewed.” ORDER, *Involuntary Admission of Wayne Sawyer*, No. 2014-IN-034 (Concord Prob.Ct. Apr. 18, 2014), *Appx.* at 32, 46. It found:

[B]y clear and convincing evidence ... Wayne Sawyer is in such mental condition as a result of mental illness as to create a potentially serious likelihood of danger to others and that commitment is the least restrictive treatment option available. The court hereby orders ... involuntary commitment ... be extended for a period not to exceed five ... years, with a conditional discharge and/or transfer to the ... DRF, or other appropriate residential facility that provides the security, staffing,

and treatment requirements necessitated by Mr. Sawyer's mental condition when an appropriate bed is available.

*Id.*, *Appx.* at 45. The probate court further held:

[I]t seems clear that Mr. Sawyer should be placed in an environment that is less restrictive than the SPU. In fact, no one suggests that SPU is the appropriate placement for Mr. Sawyer. This order is therefore not intended to be a five year commitment to SPU.

*Id.*, *Appx.* at 47. Summarizing its holding: "The court orders that Mr. Sawyer's commitment be extended for a period of five ... years, subject to a conditional discharge/transfer to a less restrictive placement." *Id.*, *Appx.* at 32.

In March 2015 Mr. Sawyer expressed an interest in relocating from the SPU to the DRF, and in April when a bed was available he moved. AFFIDAVIT OF WAYNE SAWYER (Mar. 24, 2015), *Appx.* at 69; ORDER, *Involuntary Admission of Wayne Sawyer*, No. 2014-IN-034 (Concord Prob.Ct. June 25, 2014), *Appx.* at 32; UPDATE ON DISCHARGE FROM THE SPU (Apr. 13, 2015), *Appx.* at 89.

As part of the relocation, Mr. Sawyer entered an "agreement" with the DRF. It provides that upon relocation from the SPU, which the agreement calls "conditional discharge," Mr. Sawyer would accept the constitutionally and statutorily required individual service plan then being prepared, would obey the rules of the DRF, and the consequence of any failure would be return to the SPU. AGREEMENT REGARDING CONDITIONAL DISCHARGE (Apr. 7, 2015), *Appx.* at 85; INDIVIDUAL SUPPORT PLAN (May 5, 2015), *Appx.* at 91.

## **B. Wayne Sawyer is in State Custody With Little Choice of Residence**

Before he went to prison in 1990, Mr. Sawyer concedes he was a resident of Concord, and therefore upon entering the service delivery system, he was a Region IV client. *Final Hrg.* at 27; FINAL DECISION, *Appx.* at 313. Mr. Sawyer also conceded, and HHS found, that he is in the

custody of the State, lives in a highly supervised and secure environment resembling incarceration, is not at liberty to walk away, and that if he tried he would be returned to the SPU. *Final Hrg.* at 14; FINAL DECISION, *Appx.* at 136.

Though he calls it “voluntary,” UPDATE ON DISCHARGE FROM THE SPU, *Appx.* at 89, Mr. Sawyer acknowledges that he has at most two choices of where to live – the SPU or the DRF. *Final Hrg.* at 18-21; *Pre-Hrg.Conf.* at 43-44, 48; OBJECTION TO LAKES REGION COMMUNITY SERVICES’ MOTION TO DISMISS ¶ 2 (Mar. 25, 2015), *Appx.* at 71-72 (“Mr. Sawyer was presented with two options to effectuate a conditional discharge: either accept treatment at [the DRF] or seek other appropriate residential services through [BDS].”). HHS noted that “his choice of where he wants to be is dictated by a court order.” *Final Hrg.* at 15. LRCS characterized Mr. Sawyer’s “choice” as “a no-brainer.” *Final Hrg.* at 17-18.

### **III. Wayne Sawyer Likes Laconia**

Wayne Sawyer says he wants to live in Laconia. He has no prior contact with the locality, and no relationships with the service providers there. He has not pursued an HHS internal complaint alleging Concord’s Region IV is inadequate, and has not suggested any grounds. Rather, he merely asserts, “I want to move,” and, “I want and plan to reside in Laconia.” AFFIDAVIT OF WAYNE SAWYER (Sept. 2, 2015), *Appx.* at 102. He says he “wishes to transfer,” LETTER FROM DRC TO LRCS (Oct. 28, 2014), *Appx.* at 52, and “wants Laconia.” *Pre-Hrg.Conf.* at 55. He makes these assertions at the same time as the State, under orders of the probate court, was relocating him to the DRF, situate in Laconia. AFFIDAVIT OF WAYNE SAWYER (Mar. 24, 2015), *Appx.* at 69; AFFIDAVIT OF WAYNE SAWYER (Sept. 2, 2015), *Appx.* at 102.

Accordingly, in October 2014, DRC notified LRCS that Mr. Sawyer “wishes to transfer his area agency services to Lakes Region from Community Bridges.” LETTER FROM DRC TO

LRCS (Oct. 28, 2014), *Appx.* at 52. LRCS twice declined, on the grounds that Mr. Sawyer's presence in Laconia was merely "a placement" and not a transfer. LETTER FROM LRCS TO DRC (Oct. 30, 2014), *Appx.* at 53; LETTER FROM LRCS TO DRC (Oct. 31, 2014), *Appx.* at 54.<sup>3</sup>

Mr. Sawyer, through DRC, appealed to HHS. LETTER FROM DRC TO HHS (Nov. 24, 2014), *Appx.* at 55. In February 2015, HHS's administrative appeals unit held a pre-hearing conference conducted on offers of proof, *Pre-Hrg.Conf, passim*, and in September 2015 held a hearing on the transfer, at which some evidence was taken. *Final Hrg. passim*.

Mr. Sawyer's argument is that his move is voluntary. This is based on phrasing in the probate court's 2014 summary of its involuntary re-commitment: "subject to a conditional discharge/transfer to a less restrictive placement." ORDER, *Involuntary Admission of Wayne Sawyer*, No. 2014-IN-034, *Appx.* at 32; DRC BRF. at 23-25. He combines that with his "agreement" to leave the SPU, AGREEMENT REGARDING CONDITIONAL DISCHARGE, *Appx.* at 85; DRC FoF&RoL ¶ 6 (Sept. 21, 2015), *Appx.* at 111 (Denied: "Mr. Sawyer voluntarily agreed to go to the [DRF] as part of the terms of his conditional discharge."), and with his apparent view – optimistic but probably unrealistic – that his discharge to the community is imminent. See OBJECTION TO LAKES REGION COMMUNITY SERVICES' MOTION TO DISMISS (Mar. 25, 2015), *Appx.* at 71; RULING ON MOTION FOR LATE ENTRY (Mar. 12, 2015) at 2 n.2, *Appx.* at 62. Thus DRC takes the position that Mr. Sawyer has made a voluntary choice of Laconia as his residence, and that because LRCS is the Region III area agency, the mental health treatment system should shuffle itself accordingly.

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<sup>3</sup>Currently Mr. Sawyer's case management is being handled by the Brain Injury Association, a non-profit entity capable of such services. *Final Hrg.* at 62-63. Mr. Sawyer concedes he is currently receiving all services and benefits to which he is entitled. DRC BRF. at 32.

In its order, after reviewing his various debilities and predilections, HHS noted Mr. Sawyer's "freedoms and liberty ... are still constrained ... by the terms of a court order." FINAL DECISION, *Appx.* at 131, *passim*. HHS thus ruled:

Until such time as [Mr. Sawyer] truly is able to choose freely where he wishes to reside when released from the commitment authority of the [probate] court, he remains subject to the statewide policy of area agencies regarding treatment of "persons in institutional care," i.e., [Mr. Sawyer] remains the responsibility of Region IV, Community Bridges. It is unclear how application of the policy abridges [Mr. Sawyer's] legally protected fundamental rights. His participation with CB is voluntary and he is not required to accept their services, however, he cannot require another area agency to take him on, by virtue of his institutional placement in their locale.

FINAL DECISION, *Appx.* at 137. After his motion to reconsider was denied, APPELLANT'S MOTION FOR RECONSIDERATION (Oct. 28, 2015), *Appx.* at 157; RULING ON MOTION TO RECONSIDER (Nov. 30, 2015), *Appx.* at 178, Mr. Sawyer, through DRC, appealed.

## **SUMMARY OF ARGUMENT**

Although the DRF is a more appropriate living situation for Mr. Sawyer than the SPU, LRCS notes that Mr. Sawyer does not live in Laconia voluntarily. He has been *involuntarily* committed to the State's custody, and does not have any real choice about where he lives. LRCS then points to state law confirming that people receiving state services are deemed to be members of the municipality from which they entered the service delivery system, and that the system should not be required to perpetually reorganize itself at Mr. Sawyer's whim.



## ARGUMENT

### I. Wayne Sawyer Does Not Have Any Real Choice About Where He Lives

There is no real voluntariness in Mr. Sawyer's situation. A probate court commitment order restricting his behavior necessarily implies some curtailment of rights, and his liberty is to some degree under control of the State, for the protection of himself and others. In his brief Mr. Sawyer parses the order in an attempt to construe it as something less restrictive, DRC BRF. at 16-19, but it cannot be read to constitute any kind of discharge – conditional or otherwise. Rather, the order recognizes Mr. Sawyer's limited living choices, either the SPU or the DRF.

Mr. Sawyer also attempts to transform the conditional discharge agreement he entered with the DRF accepting services, which by statute must be willingly accepted, into something greater than merely an acceptance of services. DRC BRF. at 12-16. His acceptance *was* voluntary, but only within the confines of the involuntary commitment order. Moreover, the regulations repeatedly define conditional discharge as release into “community-based treatment.” He-M 527, 527.02; He-M 609.02, .03, & .06; LRCS FoF&RoL ¶¶ A, B, C, D, E (Sept. 10, 2015), *Appx.* at 104, 109-110.

To the extent Mr. Sawyer claims he is not involuntarily committed, or that the involuntary commitment was not lawfully imposed, DRC BRF. at 22, neither his 2009 commitment nor his 2014 re-commitment were appealed.

Mr. Sawyer's alternatives are extremely limited, such that there is no real choice. Although the law does not go so far as to mandate a least-restrictive alternative, it does not allow more confinement than is necessary. *Garrity v. Gallen*, 522 F. Supp. 171, 236-39 (D.N.H. 1981); *In re Brown*, 126 N.H. 309, 314 (1985); RSA 135-C:1, II(b); RSA 171-A:6. The probate court recognized the SPU is more restrictive than is appropriate, and New Hampshire has only one

other facility – the DRF – capable of meeting Mr. Sawyer’s security needs. Unless by bad behavior he forces the State to move him back to the SPU, the DRF is Mr. Sawyer’s only available alternative. Thus, Mr. Sawyer’s presence at the DRF is a placement or geographical transfer, not a choice.

When Mr. Sawyer might reacquire the ability to chose his residence is not a question this court need address, but the record and regulations suggest it will be either when his involuntary commitment terminates, or when he is discharged (conditionally or absolutely) to a non-restrictive community placement. *Final Hrg.* at 31-32.

## II. Operation of Service Delivery System Anchored by Recipient's Place of Origin

For its citizens with developmental disabilities or mental disorders who are dangerous and subject to involuntarily commitment, New Hampshire has a service delivery system to run.

The legislature can determine whether it is best to locate duplicative facilities in all ten administrative regions, or more efficient to establish a single state-wide facility for services it dispenses. Whatever burdens are associated with hosting a state-wide facility, such as, for example, the prisons in Concord and Berlin, requiring the hosting community to become the inmates' or internees' official residence would create additional burdens for those communities. FINAL DECISION (Sept. 29, 2015), *Appx.* at 131, 137 n.24; *Final Hrg.* at 27. The DRF is a State facility that happens to be located in the Region III catchment area, but it has no administrative connection to Region III, Laconia, or LRCS.

For adults having choices and the capacity to form an intent, their residence is where the person physically dwells and intends to dwell. *Nichols v. United States*, \_ U.S. \_, 136 S. Ct. 1113 (2016); *White v. Vermont Mut. Ins. Co.*, 167 N.H. 153 (2014); RSA 21:6 & :6-a. For minors, if they are emancipated their residence is their own; if unemancipated, their residence is that of their parents. *Concord Group Ins. Co. v. Sleeper*, 135 N.H. 67 (1991). For children whose minority or mental capacity renders them incapable of forming an intent, their residence is that of their custodial adult. *In re Gary B.*, 124 N.H. 28 (1983).

When considering a person whose residence is determined by a parent or custodian, passage of time does not affect the municipality of residence. In *Gary B.*, 124 N.H. at 28, this court held that when a person is confined to a state facility, regardless of the time transpired since the person lived in the originating town, the municipality in which the person "most recently lived outside the facility" is the place of residence.

Applying these principles in a variety of contexts, both the legislature and this court have repeatedly deemed a person’s originating municipality their residence. Education: *Lisbon School District v. Landaff School District*, 75 N.H. 324 (1909) (district where parents reside and not location of school responsible for paying child’s education). Special Education: RSA 186-C:13 (community where child’s parents live responsible for costs of special education for disabled child); *In re Gary B.*, 124 N.H. 28 (1983) (town of parent’s residence liable for cost of education for disabled child); *In re Bryan L.*, 123 N.H. 420 (1983) (town of parent’s residence liable for costs of education in youth detention facility). Child Delinquency: *In re Tammy S.*, 126 N.H. 734 (1985) (town of parent’s residence liable for costs of child’s delinquency); *In re Robert C.*, 120 N.H. 221 (1980) (city of child’s residence, not the State, liable for cost of child’s delinquency detention). Sex Offender Registry: RSA 651-B:1, III & XIII (address is registrant’s municipality of origin). Prison Voters: RSA 654:2-a, I (inmate suffrage in “town or city . . . in which such person had his or her domicile immediately prior to such confinement”).<sup>4</sup>

These examples show that the place of residence, for those whose residence does not follow their geography, is anchored either by the adult or guardian to whom they are attached, or to the place of origin before the State took custody. Mr. Sawyer’s custodian is essentially the State, and he was a resident of Concord when he last had the ability – before incarceration and involuntary commitment – to determine the place he intended to live. Thus, he must still be considered a

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<sup>4</sup>Mr. Sawyer cites federal cases regarding state citizenship for purposes of diversity jurisdiction, noting that while there is a presumption that a prisoner’s original state is their residence, that presumption is rebuttable. *Hall v. Curran*, 599 F.3d 70, 72 (1st Cir. 2010) (“In cases involving prisoners, the courts presume that the prisoner remains a citizen of the state where he was domiciled before his incarceration, even if he is subsequently incarcerated in a different state.”); *Stifel v. Hopkins*, 477 F.2d 1116 (6th Cir. 1973). The rebuttability of the presumption, however, is a matter of federal law stemming from constitutional jurisdiction considerations, and does not exist in New Hampshire law.

resident of Concord, and therefore of Region IV, until such time as he regains the ability to meaningfully chose his residence. Accordingly, Community Bridges remains his area agency.<sup>5</sup>

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<sup>5</sup>In his brief Mr. Sawyer alleges a constitutional right to chose where he lives. DRC BRF. at 29-33. The issue was not preserved below, and also does not appear in his petition for writ of certiorari which commenced this appeal.

Other than a citation to a single federal case, Mr. Sawyer nowhere invoked the federal or state constitutions in the record. That citation, which appears in passing, arises in the context of suggesting an explanation for certain language in the regulations, but does not discuss rights, infringements, or rules of constitutional construction. *See* OBJECTION TO LAKES REGION COMMUNITY SERVICES' MOTION TO DISMISS ¶ 18 (Mar. 25, 2015), *Appx.* 71, 78. Moreover, that one citation is to *Acosta v. Gaffney*, 558 F.2d 1153 (3d Cir. 1977), which involves immigration difficulties faced by a family where the baby was an American citizen but the adults were not.

Beyond a mention of conflating commitment with incarceration, no constitutional matters appear in Mr. Sawyer's requests for rulings of law, in either of his two lengthy memoranda of law filed in the HHS proceeding, or in his request for reconsideration. *See* DRC FoF&RoL (Sept. 21, 2015), *Appx.* at 111; APPELLANT'S MEMORANDUM OF LAW (Sept. 21, 2015), *Appx.* at 115; APPELLANT'S MEMORANDUM OF LAW (Oct. 28, 2015), *Appx.* at 142; APPELLANT'S MOTION FOR RECONSIDERATION (Oct. 28, 2015), *Appx.* at 157. Neither the opposing party nor the decision-maker perceived Mr. Sawyer as having raised any constitutional issues below, demonstrated by the absence of constitutional matters in any pleadings or rulings.

To the extent a constitutional issue exists, Mr. Sawyer has not alleged, and cannot show, any prejudice. *See Appeal of Richards*, 134 N.H. 148, 155 (1991). He has conceded he receives all services and benefits to which he is entitled, and the only conceivable difference he might see by a change in area agencies is who signs his case management documents. DRC BRF. at 32.

Accordingly, LRCS declines to respond to the constitutional arguments offered in Mr. Sawyer's brief.

### **III. Floodgates of Whimsy**

New Hampshire maintains a service delivery system for its citizens with developmental disabilities and mental disorders who are dangerous and subject to involuntarily commitment. The system exists by funding non-profit area agencies to manage cases and administer services. When a person changes area agencies, administrative events occur – transferring documents, shuffling funding, appointing case management, convening a meeting – all within short deadlines.

The position advanced by DRC is that an involuntarily committed person who does not like his area agency can simply declare a new residence at the place the State put him, and that the system is then required to recalibrate.

**CONCLUSION**

By operation of law, the DRF is Mr. Sawyer’s only alternative to the SPU, and until he is deemed well enough to fully re-enter the public community, living there is not really a choice. The State is his custodial agent, and therefore his place of origin must be considered his administrative home. Allowing people in Mr. Sawyer’s situation to change that home on a whim would create havoc for the system. For these reasons, this court should affirm.

**REQUEST FOR ORAL ARGUMENT**

Lakes Region Community Services requests that Scott D. McGuffin, Esq. or Joshua L. Gordon, Esq., be allowed oral argument because the issues this case raises are of general concern to the entire disabilities and mental health service delivery system.

Respectfully submitted,

Lakes Region Community Services  
By its Attorney,  
Law Office of Joshua L. Gordon

Dated: July 5, 2016

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**CERTIFICATIONS**

I hereby certify that the decision being appealed is addended to this brief.

I further certify that on July 4, 2016, copies of the foregoing will be forwarded to Aaron Ginsberg, Esq., Disability Rights Center.

Dated: July 5, 2016

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Joshua L. Gordon, Esq.

**ADDENDUM**

1. FINAL DECISION OF HHS ADMINISTRATIVE APPEALS UNIT (Sept. 29, 2015)... . . . 19