

2021 WL 4471393 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts,
Civil Action.
Bristol County

Kenneth JUNIER, Petitioner,
v.
Carol A. MICI,¹ and others,², Respondents.

No. 2073CV00696.
July 21, 2021.

Decision and Order on Petitioner's Motion for Judgment on the Pleadings

William M. White, Jr., Judge.

*1 Petitioner Kenneth Junier (“Junier”) now moves for judgment on the pleadings against the respondents: Carol Mici (“Commissioner”); David Duarte, Superintendent of the Massachusetts Treatment Center (“Superintendent”); and Thomas A. Turco, III, Secretary of the Office of Public Safety (“Secretary”) (collectively, the Respondents). The Respondents cross-move for judgment on the pleadings. Following the Commissioner's denial of his application for medical parole, Junier pursued certiorari relief before the Supreme Judicial Court, SJ-2020-0618. The Supreme Judicial Court transferred the matter to the Superior Court (Paper #11). Junier contends that the denial of his motion was arbitrary, capricious, and an abuse of discretion because the Commissioner omitted “critical facts and applied incorrect standards in determining his entitlement to parole.” Upon review, this court **DENIES** Junier's motion for judgment on the pleadings and **ALLOWS** the Respondents' cross-motion for judgment on the pleadings.³ The Commissioner's decision is **AFFIRMED**.

DISCUSSION

I. Standards of Law

“On certiorari review, the Superior Court's role is to examine the record ... and to correct substantial errors of law apparent on the record adversely affecting material rights.” *Doucette v. Massachusetts Parole Bd.*, 86 Mass. App. Ct. 531, 540-541 (2014) (internal quotations omitted), quoting *Firearms Records Bureau v. Simkin*, 466 Mass. 168, 180 (2013). “In reviewing the decisions of administrative bodies which, like the parole board, are accorded considerable deference, ... the arbitrary and capricious standard of review applies.” *Doucette*, 86 Mass. App. Ct. at 541 (citations omitted). “A decision is arbitrary or capricious such that it constitutes an abuse of discretion where it ‘lacks any rational explanation that reasonable persons might support.’” *Frawley v. Police Comm'r of Cambridge*, 473 Mass. 716, 729 (2016), quoting *Doe v. Superintendent of Schools of Stoughton*, 437 Mass. 1, 6 (2002). Certiorari relief is warranted where plaintiff shows substantial and material errors that, if allowed to stand, will result in manifest injustice to a petitioner who is without another available remedy. *Johnson Products, Inc. v. City Council of Medford*, 353 Mass. 540, 541 n.2 (1968).

“General Laws c. 127, § 119A, the medical parole statute, prescribes a detailed procedure under which committed offenders who are terminally ill or permanently mentally or physically incapacitated may apply for release on parole.” *Malloy v. Department of Correction*, 487 Mass. 482, 484 (2021). Under the statute, “[i]f the commissioner determines that a prisoner is terminally ill

or permanently incapacitated such that if the prisoner is released the prisoner will live and remain at liberty without violating the law and that the release will not be incompatible with the welfare of society, the prisoner shall be released on medical parole.” *Buckman v. Commissioner of Correction*, 484 Mass. 14, 19 (2020), quoting G. L. c. 127, § 119A(a) (internal quotation omitted). “In essence, in deciding whether to allow medical release, the statute requires the commissioner to make three determinations: (1) is the prisoner ‘terminally ill’ or ‘permanently incapacitated’? (2) if released, will the prisoner live and remain at liberty ‘without violating the law’? and (3) is the prisoner’s release ‘incompatible with the welfare of society’? If the commissioner determines that the answer to the first two questions is ‘yes,’ and the answer to the third is ‘no,’ ‘the prisoner shall be released on medical parole.’” *Id.*

II. Analysis

*2 The court reviewed the Commissioner’s decision and the entire Administrative Record (“AR”) in light of the medical parole statute, G.L. c. 127, §119A. In short, Junier claims he qualifies as a terminally ill or incapacitated person under the statute.⁴

Dr. Bruce Patsner, the Medical Director of the Massachusetts Treatment Center, examined Junier’s request for medical parole. In his opinion, memorialized in a letter, dated May 19, 2020 (“Dr. Patsner’s Report”, Dr. Patsner stated that Junier “does not meet the current MEDICAL criteria for eligibility for medical parole” (emphasis in original). At the time of his application, Junier was seventy-four years old and his medical history included COVID-19 infection and “multiple medical problems.” Dr. Patsner’s examination was in accord with G. L. c. 127, §119A, and specifically considered whether his existing medical condition satisfied the medical standard for medical parole.⁵ On July 23, 2020, Dr. Steven Descoteaux prepared an addendum to Dr. Patsner’s Report. Dr. Descoteaux described Junier’s medical restrictions and further detailed his medical condition.⁶ While Junier suffers from osteoarthritis in his left knee, the condition only partially incapacitates him and, therefore, he does not satisfy the standard of permanent and total incapacitation. Cf. *Malloy*, 487 Mass. at 487 (allowing medical parole where petitioner “is currently seventy-six years old and wheelchair bound; several portions of his feet are amputated, and his hands are atrophied so that he has no functional ability to grasp objects” and “[h]e suffers from cardiac and kidney disease, neuropathy, vision and hearing deficits, and memory loss”).

*3 This court’s review is limited to correcting substantial errors of law on the record adversely affecting material rights, not to weigh evidence, find facts, or substitute this court’s judgment. See *Police Comm’r of Boston v. Robinson*, 47 Mass. App. Ct. 767, 770 (1999). Here, the record establishes that the Commissioner’s decision rested on substantial evidence and, therefore, was not arbitrary, capricious, or an abuse of discretion.⁷ In considering Junier’s request for medical parole, the Commissioner considered statements of the Bristol County District Attorney to the effect that the medical conditions described by Drs. Patsner and Descoteaux were not uncommon in seventy-four-year-old men, and Junier’s medical conditions are stable and not life threatening. The Commissioner gave great weight to the medical opinions of both Drs. Patsner and Descoteaux, which clearly stated that Junier did not meet the statute’s requirements for medical parole.⁸ See *Malloy*, 487 Mass. at 484; *Buckman*, 484 Mass. at 18. Accordingly, this court does not consider the Commissioner’s decision to be arbitrary, capricious, or against the substantial evidence.

ORDER

For the foregoing reasons, it is **ORDERED** that the Petitioner’s Motion for Judgment on the Pleadings is **DENIED**, and the Respondents’ Motion for Judgment on the Pleadings is **ALLOWED**. The decision of the Commissioner of the Department of Corrections is **AFFIRMED**. **JUDGMENT to enter** for the Respondents.

So ordered,

<<signature>>

William M. White, Jr.

Associate Justice

New Bedford Superior Court

July 21, 2021

Footnotes

- 1 Commissioner of the Department of Corrections
- 2 And David Duarte, Superintendent Massachusetts Treatment Center, and Thomas A. Turco, III, Secretary of the Office of Public Safety & Security.
- 3 The Respondents additionally moved to strike references to documents not contained within the Administrative Record. As the motions for judgment on the pleadings are resolved on the following grounds, the court does not reach the motion to strike.
- 4 *G. L. c. 127, §119A(a)*, provides:
“Permanent incapacitation” constitutes “a physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician, and that is so debilitating that the prisoner does not pose a public safety risk
and,
“Terminal illness” constitutes “a condition that appears incurable, as determined by a licensed physician, that will likely cause the death of the prisoner in not more than 18 months and that is so debilitating that the prisoner does not pose a public safety risk.”
See also *Buckman*, 484 Mass. at 18.
- 5 The record notes: Junier has “fatty changes in the liver, pancreatic and renal cysts, diverticulosis of the colon, multiple mild ear issues and hypertension. His medical conditions all appear to be stable and not life threatening in their degree, including his questionable thoracic aortic aneurysm. He is on more than 20 over-the-counter and prescription medications, none of which is life threatening. Mr. Junier is neither permanently incapacitated with limited ability to perform basic activities of daily living nor does he have a shortened life expectancy of 18 months.”
- 6 This medical note reads: “Mr. Junier’s medical restrictions include: bottom bunk, rolling walker (3/9/20-9/9/20), hearing aids for both ears, T1 housing and feed-in, as he is hard of hearing [and] elderly, and has balance problems. An x-ray performed on 12/18/19 showed that Mr. Junier has osteoarthritis in his left knee. Though physical therapy treatments were initiated prior to the COVID pandemic, they have been placed on hold. For the time being Mr. Junier uses a rolling walker for support and balance. His osteoarthritic knee does partially incapacitate him, but he does not meet the standard of permanent and total incapacitation.”
- 7 The Commissioner also made findings that Junier would be remain a potential threat to public safety. Because the court affirms the Commissioner’s decision as it relates to Junier’s health records, the court does not consider these findings.
- 8 Attached to Junier’s application for medical parole, he included an affidavit from Danielle C. Ompad, Ph.D., an associate professor of epidemiology at New York University’s School of Global Public Health. The affidavit discussed the high risk of transmission of COVID-19 in correctional settings and of severe COVID-19 health complications and death among older incarcerated individuals with underlying health conditions. To the extent that the petitioner requests the court to infer that the COVID-19 pandemic elevated his underlying medical conditions to permanent incapacitation or terminal illness, the court declines to do so. On review, this court cannot weigh such evidence or supplant the Commissioner’s judgment. See *Diatchenko v. District Attorney for Suffolk Dist.*, 471 Mass. 12, 33 (2015) (limited review “does not authorize judges to substitute their judgment with respect to the parole release decision”); *Doe*, 437 Mass. at 6 (“It is not the place of a reviewing court to substitute its own opinion” for that of the underlying decisionmaker). Further, Dr. Descoteaux’s report, upon which the Commissioner relied, noted Junier’s history of COVID infection.

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