

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT NO. 2284CV01392

██████████
Plaintiff

v.

CAROL MICI
Commissioner of the Massachusetts Department of Correction
Defendant

PLAINTIFF'S MOTION TO EXPAND THE ADMINISTRATIVE RECORD

The Plaintiff, ██████████, hereby moves, pursuant to Superior Court Rule 9A and Superior Court Standing Order 1-96 (2), for the Court to require the Defendant, Commissioner of Correction Carol Mici, to supplement the administrative record of this certiorari action with all relevant documentation of Mr. ██████████'s present condition and all documents generated in response to his July 15, 2022 request for reconsideration no later than one business day after her decision on his request. Commissioner Mici's decision on the request is due on August 29, 2022. Plaintiffs make the aforementioned requests for the following reasons:

1. Mr. ██████████ is 74 years old and is in very poor health. He suffers from numerous medical issues that render him both permanently cognitively and physically incapacitated¹, including dementia, severe rheumatoid arthritis, seizure disorder, heart and lung

¹ Individuals are eligible for medical parole on the basis of terminal illness or permanent incapacitation, which are defined under M.G.L. c. 127 § 119A(a) as follows:

“Permanent incapacitation”, 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.

“Terminal illness”, 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.

conditions, and auditory and visual impairments. His condition has been steadily deteriorating over the past few years.

2. Mr. [REDACTED]'s underlying medical parole petition was filed on February 14, 2022. On April 7, 2022, Mr. [REDACTED] supplemented his petition with an affidavit from Dr. Nicole Mushero – a licensed physician with board-certifications in internal medicine and geriatric medicine – certifying that he meets the medical qualifications for medical parole based on both permanent cognitive and physical incapacitation. On March 7, 2022, the Superintendent of Old Colony Correctional Center (where Mr. [REDACTED] is incarcerated) Stephen Kennedy submitted to the Commissioner a medical evaluation of Mr. [REDACTED] signed by nurse practitioner Ihuoma Arikibe, FNP-C, and Dr. John Straus, the Statewide Medical Director for Wellpath (the Department of Correction's contract health services provider). Although the medical parole statute states that individuals may be eligible based on permanent cognitive incapacitation, and Dr. Mushero found him to be medically eligible on that basis, the DOC evaluation contained no mention of Mr. [REDACTED]'s cognitive impairment due to dementia or the impact of his dementia on his ability to engage in activities of daily living, aside from the observation that he was "alert and oriented." On April 21, 2022, Dr. Elana Sullivan, Associate Regional Medical Director for Wellpath submitted a letter to Commissioner Mici reviewing and commenting on Dr. Mushero's medical assessment and recommending further examination and evaluation of Mr. [REDACTED] in a timely manner. On April 21, 2022, Commissioner Mici denied Mr. [REDACTED]'s medical parole petition. The complaint in the above-captioned case was filed on June 20, 2022.
3. On July 15, 2022, Mr. [REDACTED] submitted to Commissioner Mici a request for reconsideration of her earlier decision, based on 1) the Commissioner's failure to either

accept the evaluation and finding of Dr. Mushero that Mr. [REDACTED] is both permanently cognitively and physically incapacitated or obtain further medical evaluation of Mr. [REDACTED] that considered his cognitive impairment; 2) the Commissioner's failure to obtain and consider an assessment of Mr. [REDACTED]'s current risk of violence that complies with the medical parole regulations; and 3) the Commissioner's failure to obtain and consider a medical parole plan that complies with the medical parole regulations.

4. In a letter dated August 3, 2022, the Commissioner stated that she will render her decision on Mr. [REDACTED]'s request for reconsideration on or before August 29, 2022.
5. Any additional materials considered by the Commissioner in deciding Mr. [REDACTED]'s request for reconsideration – including a medical evaluation that considers cognitive incapacitation, and a risk of violence assessment and medical parole plan that complies with the regulations – should be included in the administrative record in this matter because the Commissioner was required by the statute and regulations to review these materials as part of her original decision.
6. In addition, in order for the Court to ensure the ability to appropriately address the case and efficiently use its time, the Court must have all available information about the proceedings when making its decision, including the materials considered by the Commissioner in deciding Mr. [REDACTED]'s request for reconsideration. These materials will contain the most recent information regarding Mr. [REDACTED]'s medical condition, including any supplemental medical parole evaluations by a licensed physician obtained by the Commissioner. The Court should therefore expand the administrative record to include any materials considered by the Commissioner in deciding Mr. [REDACTED]'s request for reconsideration.

7. In order for Plaintiff to incorporate facts and allegations regarding the request for reconsideration into his Motion for Judgment on the Pleadings (due August 31, 2022) Plaintiff will need sufficient time to review and reference an updated administrative record that includes all documents considered by the Commissioner in deciding the request for reconsideration. Requiring the Commissioner to file the updated administrative record no later than one business day (August 30, 2022) after her decision will be no burden on the Commissioner, as all documents generated in response to the request for reconsideration will have been assembled by the DOC by the time the Commissioner makes her decision.

For these reasons, Plaintiff respectfully requests that the Court GRANT his motion to require Defendant to supplement the administrative record of this certiorari action with all relevant documentation of Mr. [REDACTED]'s present condition and those documents generated in response to his July 15, 2022 request for reconsideration no later than August 30, 2022.

Dated: August 18, 2020

Respectfully submitted,

Plaintiff,

[REDACTED],
By his attorneys,

/s/ Ada Lin

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon counsel of record for the Defendant by email on August 18, 2022.

/s/ Ada Lin

Ada Lin, #710270