

the trial court’s decision and the reversal of termination, B. P. had aged three years and developed a stable and secure attachment to the foster parents. However, the appeals process reviews the court records to form an opinion, rather than weighing contemporary evidence. In this case, such review may have indicated that a reversal of parental termination would not have been in the best interest of the child’s current emotional well-being.

It is paradoxical that, although the state had argued on behalf of the child’s best interest that B. P. remain with her foster parents to provide immediate and necessary permanence at two and a half years of life, the appellate court’s decision did not consider the child’s mental health needs. This approach resulted in significant relational disruption for the child in the court’s effort to protect the mother’s rights. The decision underscores the mismatch between the pace of the courts and the rapid development of a very young child. Courts must determine how much to consider the mental health of the child when weighing the often conflicting needs of the child and the legal rights of the parent.

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Involuntary Administration of Medication in Mental Health Facilities

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The Maryland Statute for Involuntary Administration of Medication in Mental Health Facilities is Not Unconstitutional and Authorization for Involuntary Medication May Only Be Constitutionally Carried Out When There Is an “Overriding Justification”

In *Allmond v. Department of Health and Mental Hygiene*, 141 A.3d 57 (Md. 2016), Mr. Allmond challenged Maryland Code Health-General Article (HG) § 10-708(g) (2010), which provides the crite-

ria for authorizing involuntary medications for an individual committed to a mental health facility. A panel, pursuant to the statute, approved the involuntary administration of medication to Mr. Allmond, and he appealed by requesting an administrative hearing. An Administrative Law Judge (ALJ) of the Office of Administrative Hearings found that authorization for involuntary medication was satisfied under certain criteria; that decision was affirmed by the Circuit Court for Howard County. The Court of Appeals of Maryland granted a writ of *certiorari* to review the constitutionality of certain provisions of Maryland’s procedures.

Facts of the Case

Mr. Allmond, diagnosed with schizophrenia since his mid-20s, was charged with first-degree murder after his girlfriend’s strangled body was found on September 1, 2011. After an evaluation by the Department of Health and Mental Hygiene (DHMH), the Circuit Court of Baltimore City determined that Mr. Allmond was incompetent to stand trial, committing him to Clifton T. Perkins Hospital Center.

During his hospitalization, Mr. Allmond repeatedly refused psychotropic medications, despite exhibiting symptoms such as paranoia, delusions, hallucinations, and disorganized thinking. He preferred nondrug treatments, including psychotherapy and group therapy. Although he remained symptomatic, he maintained good behavior until a medical treatment meeting on September 3, 2014. During that meeting, after it was suggested that he receive psychotropic medications, Mr. Allmond became agitated and attempted to assault a staff member.

Following this incident, Mr. Allmond’s psychiatrist requested that a clinical review panel be convened, pursuant to HG § 10-708, to assess the possibility of involuntary administration of medications to Mr. Allmond. The panel approved the request for involuntary administration of medications for 90 days; he did not appeal.

Mr. Allmond’s psychiatrist requested a reconvening of the clinical panel shortly before the 90-day period expired. The panel again approved involuntary administration of medications to Mr. Allmond for 90 days. After this decision, Mr. Allmond requested an administrative hearing before an ALJ to appeal the panel’s decision. The ALJ concluded that sufficient criteria for involuntary medication were met; this decision was affirmed by the Circuit Court for Howard County.

Mr. Allmond appealed to the Court of Appeals of Maryland and a writ of *certiorari* was granted.

Ruling and Reasoning

The Court of Appeals of Maryland held that the Maryland statute authorizing the involuntary administration of medications in mental health facilities was not unconstitutional on its face and that authorization of involuntary administration of medication may be constitutionally carried out only when there is an “overriding justification.”

The statute at issue, HG § 10-708(g), provides criteria for the involuntary medication of persons in mental health facilities. The first two prongs of the statute are not at issue in this case: that “the medication is prescribed by a psychiatrist for the purpose of treating the individual’s mental disorder” and “the administration of medication represents a reasonable exercise of professional judgment.” The language in question concerns the third part of the criteria, § 10-708(g)(3), which consists of seven alternative criteria that must be satisfied to authorize involuntary medication of an individual. Three of those criteria are not in question in this case. They involve a finding that, without the medication, the individual’s mental disorder causes the individual to be (1) a danger to self or (2) danger to others in the facility, or without medication, the individual would (3) relapse into a condition in which the individual is unable to provide for his essential human needs.

The four criteria in question in this case are HG § 10-708(g)(3)(i)(2), (g)(3)(i)(3), (g)(3)(ii)(2), and (g)(3)(ii)(3). These four subsections discuss situations other than those in which the individual is a danger to self or others in the facility or unable to provide essential human needs. They concern involuntary medication in situations where an individual’s mental illness results in commitment to a hospital or the mental illness presents a danger to self or others if the patient is released from the hospital.

Mr. Allmond challenged these provisions on the basis that they violate Article 24 of the Maryland Declaration of Rights, the counterpart to the Due Process Clauses found in the Fifth and Fourteenth Amendments to the United States Constitution. He asserted a facial challenge to the statute, arguing that the law was invalid. The court applied a “no set of circumstances” test, meaning “a facial challenge to the relevant provisions of the statute can succeed only if there is no set of circumstances under which these

provisions authorize involuntary medications of an individual and doing so is constitutional” (*Allmond*, p 71). They found that there are potential scenarios in which the statute could be used to medicate an individual forcibly; accordingly, Mr. Allmond’s facial challenge failed.

To illustrate this point, the court provided a hypothetical scenario in which the state desires to make a pretrial detainee competent to stand trial for a serious crime and meets the requirements enunciated in *Sell v. United States*, 539 U.S. 166 (2003), for involuntarily medicating this individual. In *Sell*, the Court stated that “the Constitution permits the government to administer antipsychotic drugs involuntarily to a defendant with mental illness facing serious criminal charges to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests” (*Allmond*, p 69, quoting *Sell v. United States*, 539 U.S.). In addition, suppose that this hypothetical detainee, while not dangerous within the facility without medication, was at significant risk of continued hospitalization because of his serious mental illness and committed to a hospital. Under this scenario, one of the challenged provisions of HG § 10-708(g) could be constitutionally used to medicate this prisoner forcibly.

The *Allmond* decision cited *Washington v. Harper*, 494 U.S. 210 (1990), for the principle that a substantive due process right allows refusal of psychotropic medications. They further provided that there must be “a finding of overriding justification and a determination of medical appropriateness” to provide involuntary psychotropic medications (*Allmond*, p 69, quoting *Riggins v. Nevada*, 504 U.S. 127 (1992), 135). None of the justifications provided by DHMH were found to satisfy the requirement of overriding justification. These unsatisfactory justifications included an interest in providing medical care to those committed to its custody, obligations under the Americans with Disabilities Act, and the principle of optimal resource allocation. To meet the standard of overriding justification, the State must meet the standards set forth in *Harper*, *Riggins*, and *Sell* before authorizing involuntarily medicating a pretrial detainee. The state interests that meet these standards include preventing harm to the individual

or others or making the individual competent to stand trial. Thus, provided that the state interest meets the overriding justification requirement, the Maryland statute can provide the statutory authorization for involuntary medication.

Discussion

In this case, the Court of Appeals of Maryland sought to reconcile an individual’s due process right to refuse psychotropic medications with a state’s interest in providing such medications for reasons it considers justified. Their reasoning underscored the importance of the due process right to refuse psychotropic medications while also acknowledging that there may be certain overriding justifications in which the state’s interest may outweigh that right to refuse. They comprehensively reviewed the precedents established by significant cases such as *Harper*, *Riggins*, and *Sell* to analyze the Maryland statute at issue, HG § 10-708(g), and concluded that it is constitutional, provided that the State present appropriate justification. As the Court stated, “For a pretrial detainee like Mr. Allmond, *Riggins* and *Sell* approve the State interests in preventing harm to the individual or others and in making the individual competent to stand trial” (*Allmond*, p 73). We agree with the court that the State’s proposed justifications, which include providing medical care for those in its custody, obligations under the Americans with Disabilities Act, and optimizing its use of resources, are not appropriate justifications to override an individual’s right to refuse psychotropic medications. A rationale provided by the state must be examined with the framework of *Riggins* and *Sell*, and the state is not permitted to use any justification it may deem appropriate. In this context, the state’s proposed justifications fail to establish the necessary overriding justification to provide involuntary psychotropic medication to an individual in a mental health facility.

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Eligibility for Special Education Services Under the Individuals with Disabilities Education Act

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District Court Errs in Decision to Disqualify an A Student from Receiving Special Education Services Under the Individuals with Disability Education Act

In *Doe v. Cape Elizabeth School District*, 832 F.3d 69 (1st Cir. 2016), the parents of a middle school student receiving special education for a reading disability challenged an administrative officer’s determination that the student was no longer eligible for services under the Individuals with Disability Education Act (IDEA) because of the student’s excellent overall academic record. The United States District Court for the District of Maine affirmed the determination of ineligibility and the parents appealed to the Court of Appeals for the First Circuit.

Facts of the Case

In preschool, Jane Doe struggled with reading and learning to talk. During the second grade, Jane’s Individualized Education Program (IEP) team concluded that Jane suffered from a reading fluency deficiency, a special learning disability (SLD), and was eligible for special education services under the IDEA. Jane’s special education program focused on improving her reading skills, and over the course of several academic years, Jane’s reading skills, academic grades, and standardized test scores improved. During the seventh grade in March 2012, Jane’s IEP team terminated her special education instruction because she had been performing well academically. Jane’s parents expressed concern that she could regress academically without the special education program. Consequently, the IEP team administered monthly reading-fluency probes to monitor Jane’s reading fluency.

In January 2013, the IEP team concluded that Jane no longer qualified as a student with an SLD and no longer needed special education because of her adequate reading fluency and overall academic performance in the absence of educational interventions. In reaching its conclusion, the IEP team considered Jane’s excellent academic record of straight-A grades and her state standardized test scores. The IEP team also considered Jane’s average to above-average