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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-211207 **DATE:** November 17, 1983

MATTER OF: Liability of Federal Judiciary for Services Provided by Saint Elizabeths Hospital to Defendants Acquitted by Reason of Insanity

DIGEST:

1. The District of Columbia, rather than the United States District Court for the District of Columbia, is financially responsible for services provided by Saint Elizabeths Hospital to indigent patients committed pending restoration of competency to stand trial or after acquittal in the District Court by reason of insanity when such patients are D.C. residents.

2. The costs of care provided to indigent patients who are not residents of the District of Columbia who are committed to Saint Elizabeths Hospital pending restoration of competency to stand trial or after acquittal by reason of insanity should be paid from the Federal appropriation for Saint Elizabeths Hospital.

The General Counsel for the Administrative Office of the United States Courts has asked whether the Federal judiciary is liable for the expense of services provided by Saint Elizabeths Hospital to persons committed there by the United States District Court for the District of Columbia under section 24-301 of the District of Columbia Code. Before deciding this issue, we solicited and received the views of the Department of Health and Human Services and of Saint Elizabeths Hospital. As will be explained below, in our opinion the Federal judiciary is not liable for such expenses. The costs associated with the hospitalization of indigent[1/] D.C. residents committed by the District Court should be borne by the District, while the expenses of services provided by Saint Elizabeths to patients committed by the District Court pursuant to section 24-301 who are not District residents should continue to be charged to the Federal appropriation for Saint Elizabeths Hospital.

Section 24-301 of the D.C. Code provides for the commitment of two classes of defendants: (1) those found incompetent to stand

1/ Since D.C. Code § 24-301(f) explicitly provides that "[w]hen an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of this support in such hospital," our decision is concerned only with financial liability for the expenses of indigent patients.

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trial, and (2) those found not guilty of a criminal offense by reason of insanity. We focus first on the latter class since the submission indicates that the "vast majority" of the charges for which the Administrative Office has been billed represent inpatient care of patients committed after acquittal by reason of insanity. Subsection (d)(1) provides that any person acquitted by reason of insanity shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to subsections (d) or (e) of section 24-301. Subsection (d)(2) entitles an individual committed after an acquittal to a hearing within 50 days of his confinement to determine whether he is entitled to release from custody. The person confined must prove by a preponderance of the evidence that he is entitled to release. Subsection (e) provides for the unconditional or conditional release of an individual when the superintendent of the hospital certifies and the court agrees that such individual has regained his sanity and will not in the foreseeable future pose a threat to himself or others.

The General Counsel of the Administrative Office notes that the mandatory commitment provision of D.C. Code § 24-301(d) has been applied to persons acquitted in the courts of the United States located in the District of Columbia as well as to persons acquitted in the local courts of the District. See United States v. Henry, 600 F.2d 924, 926 (D.C. Cir. 1979). He also points out that the statute itself contemplates application to the Federal courts. See, e.g., D.C. Code § 24-301(j).

Saint Elizabeths first billed the U.S. District Court for the District of Columbia for expenses incurred during the month of October 1982. At that time, the Hospital indicated that its authority for doing so was contained in OMB Bulletin 82-9, which had an effective date of October 1, 1982. The Hospital now argues that its authority to bill and collect these charges is contained in Public Law 97-377 (December 21, 1982), which authorizes the Secretary of Health and Human Services to "bill and collect from (prospectively or otherwise) individuals, the District of Columbia, Executive agencies, and other entities" for services provided by Saint Elizabeths. (This provision has been codified at 24 U.S.C. § 168b.) Although Saint Elizabeths no longer cites OMB Bulletin 82-9 as authority for its billing procedures, we must determine whether the Bulletin provided for the billing of the courts prior to passage of Public Law 97-377 on December 21, 1982. As will be explained in the following paragraph, we believe it did not, and thus that the bills submitted to the U.S. District Court for services provided during the months of October and November 1982, and during the month of December 1982 prior to the 21st, should not be paid.

OMB Bulletin No. 82-9 (March 24, 1982) implemented 24 U.S.C. § 168a, a statutory provision originally enacted in 1947. Section 168a provides that:

> "Any executive department of the Federal Government (including any agency, independent establishment, or wholly owned instrumentality thereof, and including the District of Columbia) requiring Saint Elizabeths Hospital to care for patients for whom such department is responsible, shall, except to the extent that the expense of such care is authorized to be paid from appropriations to the hospital for the care of patients, pay by check to Saint Elizabeths Hospital, upon the Superintendent's request, either in advance or by way of reimbursement at the end of each calendar month or calendar quarter, such amounts as the Superintendent calculates to be due for such care on the basis of a per diem rate approved by the Office of Management and Budget." (Emphasis added.)

Since the statute requires payments by executive departments only, and does not mention the judicial branch, the OMB Bulletin implementing it should be viewed as being of corresponding breadth. We note that OMB has addressed Bulletin 82-9 to "the heads of executive departments and establishments", and that nothing in the language of the bulletin itself implies that OMB views its instructions as applying to the judiciary. We therefore conclude that Bulletin 82-9 does not apply to the Federal courts.

We turn next to the question of whether Public Law 97-377, authorizes the Secretary of Health and Human Services to bill the United States District Court for the District of Columbia for the cost of care provided to a defendant acquitted by reason of insanity. Our review of the legislative history of the provision authorizing the billing of "individuals, the District of Columbia, Executive agencies and other entities" reveals congressional support for the general concept proposed in the Fiscal Year 1983 Budget of requiring "full payment from Federal agencies for the cost of care provided at [Saint Elizabeths Hospital] to individuals for whom they are responsible." Major Themes and Additional Budget Details, Fiscal Year 1983, p. 102. See H. Rep. No. 97-894, 97th Cong., 2d Sess. 65 (1982); S. Rep. No. 97-680, 97th Cong., 2d Sess. 69 (1982).

In response to our request for comments on the extent to which the courts are "responsible" (as that term is used above) for defendants who are found not guilty by reason of insanity, the Secretary of Health and Human Services expressed the opinion that "the

Federal courts, which have ultimate authority for, and in fact control, both admission and discharge of the patients in question, are 'responsible' for these patients and should, in accordance with Public Law 97-377, bear the cost of care provided to them." The Secretary indicated that she had reached this conclusion based on an analysis prepared by the Chief of the Legal Office of Saint Elizabeths. A copy of this memorandum was enclosed with her letter.

The Saint Elizabeths memorandum argues that in committing a defendant to Saint Elizabeths, a Federal court "is exercising a significant degree of discretion, first in the selection of [the hospital] as the proper place of commitment, and second, in its decision (based on its consideration of evidence at a hearing) to continue the hospitalization of the defendant at [Saint Elizabeths]." We do not view a court as exercising a significant degree of discretion in selecting Saint Elizabeths as the proper place of commitment given the fact that the District does not have facilities of its own to provide for the care of its mentally ill. See District of Columbia v. Moxley, 471 F. Supp. 777, 780 (D.D.C. 1979). We agree with Saint Elizabeths that the courts are responsible for determining when a patient may be released from the hospital, but this would not appear to be the sort of responsibility that the Administration had in mind when it proposed the language regarding the reimbursement of Saint Elizabeths by Federal agencies which was enacted as part of Public Law 97-377.

In our opinion the Administration intended that only Federal agencies that have financial responsibility for individuals who are committed to Saint Elizabeths be required to reimburse the Hospital for the cost of care rendered. In proposing a reduced Federal subsidy for the Hospital for fiscal year 1984, the Office of Management and Budget projected that the Saint Elizabeths operating budget would be funded in part by "an estimated $12 million for reimbursements from Federal agencies whose beneficiaries receive care." Major Themes and Additional Budget Details, Fiscal Year 1984, p. 148. We understand this to mean that an agency which has a statutory responsibility to provide financial support to a particular class of individuals, which is relieved of a portion of that financial responsibility due to the commitment of certain members of the class to Saint Elizabeths, must reimburse the Hospital for those costs. The Federal courts are not relieving themselves of financial responsibility when they acquit a defendant on the basis of insanity and order him committed to Saint Elizabeths. The courts would not be financially responsible for the care of the individual if he were acquitted and released or convicted and sentenced to prison. We

accordingly conclude that Public Law 97-377 does not authorize the Secretary of Health and Human Services to bill the United States District Court for the District of Columbia for the cost of care to a defendant acquitted by reason of insanity.

We note also that no mention is made in the Judiciary appropriation for fiscal year 1983 of using Federal court funds to reimburse Saint Elizabeths for the cost of caring for patients committed after insanity acquittals. See S.2956 (97th Cong.), as incorporated in Public Law 97-377, § 101(d); S. Rep. No. 97-584, 97th Cong., 2d Sess. 64-71 (1982). Given the magnitude of the sums billed to the District Court for the care of patients committed to Saint Elizabeths (the Administrative Office projects that these billings will amount to approximately $2.7 million annually), we would expect to see some recognition that new financial responsibility was being added in the Judiciary appropriation bill or report.

In our view, it is the District of Columbia which is financially responsible for patients who are District residents. The District has the statutory responsibility to pay for the care and treatment of its residents who are mentally ill and indigent. D.C. Code § 32-601, 32-605; District of Columbia v. Moxley, supra, at 779-780. The District's financial responsibility is not affected by the fact that the court ordering commitment is Federal, particularly when it is enforcing a D.C. Code provision.

The District of Columbia cannot, however, be expected to reimburse Saint Elizabeths for patients who are not D.C. residents. As the Saint Elizabeths memorandum points out, section 32-601 of the D.C. Code makes the District of Columbia responsible only for the costs of District residents' hospitalization. We further note, by way of analogy, that Chapter 9 of title 21 of the D.C. Code provides for the commitment to Saint Elizabeths of mentally ill persons found in certain areas under Federal jurisdiction. Section 21-906 states, however, that:

> "This chapter does not impose upon the District of Columbia the expense of care and treatment of a person apprehended, detained, or committed under this chapter, unless the person is a resident of the District of Columbia * * *."

In other words, where a non-resident is committed to Saint Elizabeths pursuant to Federal authority, the District is not financially responsible for the costs of care.

Before closing, we further note that, in our opinion, the Administrative Office is not liable for the expenses of defendants found incompetent to stand trial and committed pursuant to section 24-301(a). We disagree with the argument raised in the Saint Elizabeths memorandum that there is no legal justification for the Administrative Office to accept financial responsibility for defendants undergoing pre-trial examinations but to refuse to pay for the care of those found incompetent to stand trial. The cost of a psychiatric examination of an indigent criminal defendant, for the purpose of establishing insanity at the time an offense is committed, is payable by the Administrative Office of the Courts from the funds appropriated for the Criminal Justice Act of 1964. 50 Comp. Gen. 128 (1970). The expense of an examination to determine a defendant's mental competency to stand trial for purposes of 18 U.S.C. § 4244, on the other hand, is payable from the Department of Justice appropriation. Id. Since there is a statutory basis for payment by the Administrative Office of the Courts of the expense of a pre-trial examination to establish insanity at the time of commission of a crime, and similar authority for charging pre-trial competency examinations to the Department of Justice, we cannot agree that there is no legal justification for distinguishing between these pre-trial examination costs and the costs of caring for a defendant who has been found incompetent to stand trial. Furthermore, we think that the reimbursement clause of Public Law 97-377 is inapplicable to defendants found incompetent to stand trial for the same reasons that it is inapplicable to those acquitted by reason of insanity.

In conclusion, we are of the opinion that the Federal courts are not legally responsible for reimbursing Saint Elizabeths Hospital for the cost of caring for indigent patients committed pending restoration of competency or after acquittal on the basis of insanity. The District of Columbia is financially responsible for those patients who are D.C. residents. The expenses of patients who are not residents of the District should continue to be paid from the Federal appropriation to Saint Elizabeths Hospital.

Harry R. Van Cleve
for Comptroller General
of the United States