

# **Adam Daniel Maarec**

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Writing Sample

Inmate Grievance Decision Drafted for the Maryland Office of Administrative Hearings

December 2007

██████████

GRIEVANT

v.

THE MARYLAND DIVISION  
OF CORRECTION

\* BEFORE ██████████,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO.: DPSC-IGO-██████████  
\* IGO NO.: ██████████

\* \* \* \* \*

**DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

On March 24, 2006, the Grievant filed a grievance with the Inmate Grievance Office (IGO) which it summarized as follows:

This grievance is an appeal from the disposition of ARP-MHCX-██████████, which is incorporated by reference herein. This grievance was administratively dismissed by a letter of Special Assistant ██████████ dated May 8, 2007. In a subsequent proceeding for judicial review, the Circuit Court for the Allegany County (██████████) vacated the administrative dismissal and remanded the matter “with the instruction that [the Inmate Grievance Office] again review [██████████] grievance and, if appropriate, conduct a hearing on the merits of the same.” In essence, ██████████ claims in this grievance that on March 24, 2006 he was improperly placed on the “special management meal” program. As relief he requested in his original ARP complaint to the Warden removal from the program or notice why he was placed on the program and for how long.

It is noted here that it has been established only for the purpose of preliminary review that administrative remedies available through the Division of

Correction Administrative Remedy Procedure (“ARP”) process have been properly exhausted. This issue is subject to reconsideration at the hearing of this grievance.

I held a hearing on December 19, 2007 via video conference pursuant to section 10-207(c) of the Correctional Services Article, Annotated Code of Maryland. I was located at the Office of Administrative Hearings in Hunt Valley, Maryland. The Grievant and Division of Correction (DOC) representatives were at the Jessup Correctional Institution, a facility of the DOC. The Grievant represented himself. [REDACTED] represented the DOC.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the general regulations of the Inmate Grievance Office and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2004 & Supp.2007); Code of Maryland Regulations (COMAR) 12.07.01.08 and .09; and COMAR 28.02.01 respectively.

### **ISSUE**

The issue is whether proper procedures were adhered to in placing the Grievant on a Special Management Meal and whether that decision was arbitrary and capricious.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The entire IGO file was incorporated into the record and contained the following documents:

- IGO Ex. # 1 - Original Grievance with attachments:
- a) Notice of Inmate Rule Violation and Disciplinary hearing, dated March 24, 2006
  - b) Special Management Meal Report, dated March 24, 2006
  - c) Second grievance in response to Warden’s answer to original grievance, dated June 11, 2006

d) Third grievance requesting a hearing, dated August 7, 2006

IGO Ex. # 2 - Letter from IGO to Grievant, dated October 25, 2006

IGO Ex. # 3 - Letter from [REDACTED] to Grievant, dated May 8, 2007

IGO Ex. # 4 - Letter from Grievant to IGO, dated May 15, 2007

IGO Ex. # 5 - Petition for Judicial Review, dated June 4, 2007

IGO Ex. # 6 - Notice of judicial review from the Circuit Court for Allegany County to IGO, dated June 8, 2007

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IGO Ex. # 9 - Letter of remand from [REDACTED], Assistant Attorney General at the Office of the Attorney General for the Department of Public Safety and Correction Services to IGO, dated August 24, 2007

IGO Ex. # 10 - Letter to reopen the grievance from [REDACTED], Assistant Attorney General at the Office of the Attorney General for the Department of Public Safety and Correction Services to IGO, dated October 2, 2007

IGO Ex. # 11 - Letter from IGO to Grievant, dated October 30, 2007

IGO Ex. # 12 - IGO letter stating issue of grievance, dated October 30, 2007

IGO Ex. # 13 - IGO letter stating issues of grievances for all IGO hearings held by OAH on December 19, 2007, dated November 20, 2007

The Grievant submitted the following exhibits which were admitted into evidence:

Griev. Ex. # 1 – Letter from Grievant to IGO, dated December 3, 2007

### Testimony

The Grievant testified on his own behalf and [REDACTED] presented argument on behalf of the DOC.

### **FINDINGS OF FACT**

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this matter, the Grievant was housed at the Jessup Correctional Institute, a DOC facility.
2. March 23, 2006, at 5:30pm the Grievant was charged for refusing a direct order to prepare for court from Corporal [REDACTED]. Two charges were filed: 1) 312 – Interfere with or resist performance of duties by an employee or refuse to be searched; and 400 – Disobey a lawful order.
3. March 23, 2006, at 8:00pm a Special Management Meal was requested by Captain [REDACTED] and approved at 8:50pm that same day by a shift commander. The approved meal program was ordered to begin March 24, 2006 and end at midnight on April 7, 2006, a total of 15 days.
4. March 24, 2006 at 1:00pm a physician found there was not a medical reason to terminate the Special Management Meal Program.
5. On March 25, 2006, Grievant was given written notice of his March 23, 2006 violation and requested a hearing on that same form.
6. The special management meal, commonly known as the loaf, is designed to provide a nutritionally balanced meal for inmates assigned to disciplinary segregation status, in conjunction with other behavior modification tools, who have failed to modify their behavior through other means.
7. Under the loaf meal assignment an inmate is given nothing but the loaf meal three times a day.
8. The loaf is designed to contain all of the inmate's dietary needs for a meal. Each loaf contains 940 calories, for a total of 2,820 calories per day.

### **DISCUSSION**

In an inmate grievance concerning an institutional administrative decision, the grievant bears the burden of proving, by a preponderance of the evidence, that the action taken was arbitrary and capricious, or inconsistent with the law. COMAR 12.07.01.09A; 12.07.01.09C(1).

COMAR 12.07.01.09C provides:

### C. Review of Institutional Administrative Decisions.

(1) In reviewing claims relating to administrative decisions, including but not limited to classification matters, the administrative law judge shall affirm the decision unless it is arbitrary and capricious, or inconsistent with the law.

(2) A failure to comply with applicable directives and regulations in reaching the administrative decision renders the decision arbitrary and capricious or inconsistent with the law only if the applicable regulation or directive was intended to confer a procedural benefit on the grievant and there is prejudice to the grievant.

The Grievant challenged the administrative decision to place him on a special management meal, also commonly known as the “loaf.”

DCD 110-18, entitled “Special Management Meal” and applicable only to MCAC, provides, in pertinent part, the following:

#### III. Purpose:

- A. To provide a nutritionally balanced meal for inmates assigned to disciplinary segregation status, in conjunction with other behavior modification tools, who have failed to modify their behavior through other means.
- B. To reduce or limit the ability of inmates to throw body waste that may pose an infection risk to inmates and staff.

#### IV. Definitions:

- A. Special Management Meal – a loaf style form of nourishment prepared with the ingredients listed in Appendix 2, designed to be consumed without the need for utensils, that is served as an alternative to regular inmate meals.
- B. Disruptive Behavior – as used in this DCD, includes but not limited to misuse of food, throwing food, utensils or body waste, refusal to return utensils, arson, cell flooding, tampering with or jamming the feed up slot, or otherwise deliberately impeding normal institutional operations to inmates on disciplinary segregation status.

V. Policy

It is the policy of the Division of Correction to use the special management meal, in lieu of the regular inmate meal and in conjunction with other behavior modification tools, to alter the behavior of inmates assigned to disciplinary segregation who have failed to modify their disruptive behavior through other means, and to ensure that the special management meal is nutritionally complete and balanced.

VI. Procedure:

- A. When an inmate's disruptive behavior justifying the use of the special management meal is observed, staff shall report it to the shift commander by completing Section I. of the Special Management Meal Report, DC form 1110-18aR (Appendix 1).
- B. The shift commander shall consider the circumstances of the reported disruptive behavior and may immediately authorize placement of an inmate on the special management meal by signing and dating the Special Management Meal Report.
- C. The special management meal shall be implemented as soon as possible after the disruptive behavior has taken place to achieve the greatest level of behavior modification.
- D. Any food or items that may be used as containers shall be removed from the inmate's cell. Inmates on special management meals may obtain water to drink and to wash their hands from their cell taps.
- E. After placement of an inmate on the special management meal, the shift commander shall consult with a physician and psychologist, within two working days (weekends and holidays excluded), to ensure that placement on the special management meal is not medically or psychologically contraindicated. A psychologist shall review the mental health status to determine if mental health placement would be more appropriate; however, mental health placement may not preclude placement of the inmate on the special management meal program.
- F. The security chief shall review the Special Management Meal Report within two (2) working days of review by medical/mental health staff.

- G. Following placement on the special management meal, the inmate may complain about the placement by utilizing the informal complaint process. The burden is on the inmate for rebutting the statement of unacceptable behavior set forth in the special management meal report.
  - 1. Utilizing the informal complaint process, the inmate may appeal directly to the warden a finding that placement on the special management meal program was proper. The warden's decision is final.
  - 2. Upon a finding by the warden that placement is improper, the special management meal program shall be immediately terminated.
- H. If the inmate continuously refuses the special management meal, they shall be monitored in accordance with MCAC's hunger strike procedures.
- I. The special management meal shall be served at the same time as the regular inmate meal, not to exceed a 14-hour interval between the dinner and breakfast meals.
- J. An inmate may be placed on the special management meal for up to 15 consecutive days without issuing a subsequent Special Management Meal Report.
- K. An inmate's progress shall be reviewed by a shift commander within seven(7) days, and if the disruptive behavior ceases prior to the expiration of the period imposed, the shift commander may return the inmate to regular meals by completing Section V. of DC form 110-18aR (Appendix 1).
- L. A designated supervisor shall monitor implementation of the special management meal in the housing unit.
- M. The officer in charge of the housing unit shall monitor the inmate's progress each day while on the special management meal and indicate the results on the Record of Segregation Confinement, DC Form 110-5aR.

- N. Commissary privileges for inmates on the special management meal shall be suspended for the period. Personal hygiene items shall be permitted in accordance with directives regarding inmates in special confinement housing.
  
- O. An inmate shall be removed from the special management meal program at any time based on the following:
  - 1. Recommendation of the chief of security and the approval of the warden/designee; or,
  - 2. Medical and/or mental health reason as determined by a physician and/or psychologist.
  - 3. No institutional directive is required.

DCD 110-18 includes, as appendices, the special management meal report that must be completed pursuant to the procedure outlined above, and the special management meal recipe, which may not be deviated from in the preparation of the special management meal.

I am convinced, based on the evidence presented by the parties and the rules set forth above in DCD 110-18, that the DOC's action placing the Grievant on the special management meal was consistent with the law and not arbitrary or capricious. DCD 110-18 includes a logical rationale for the use of the special management meal as well as strict and detailed procedures that must be adhered to in imposing the sanction.

The Grievant was charged with two violations while in disciplinary segregation on March 23, 2006: 1) 312 – Interfer[ing] with or resist[ing] performance of duties by an employee or refus[ing] to be searched; and 400 – Disobey[ing] a lawful order. COMAR 12.02.27.03(C)(13); 12.02.27.03(D)(1). The placement of an inmate on the Special Management Meal is not for the purposes of punishment, but as an inducement to change his behavior. Because the Grievant was

charged with two infractions while in disciplinary segregation, the DOC's did not act arbitrarily or capriciously in expressing further behavioral modification by following the procedures outlined in DCD 110-18 to place the Grievant on the Special Management Meal.

Under DCD 110-18, when a correctional officer believes that an inmate's behavior requires placement on the Special Management Meal, approval need only be sought from the Shift Commander, with later consultation by a physician and psychologist. Also under DCD 110-18, it matters not whether a hearing officer subsequently determines that the Grievant was guilty of the offending behavior.

The Special Management Meal Report in the file is incomplete. Both Section I, Statement of Behavior, and Section II, Placement Approval by Shift Commander, are properly completed. However, Section III requires subsequent approval by both a physician and a medical health professional. Here, only the physician's signature is on file. Section IV, Chief of Security's Review, and Section V, Warden's Review, are left blank. Because the Grievant bears the burden of proof and did not raise an issue regarding the form's adequacy, I conclude that the missing portions of the Special Management Meal Report are inconsequential to this decision.

The Grievant stated in oral testimony, on more than one occasion, that he was unable to eat the loaf because of its unappealing appearance. The Grievant further claimed that because he was unable to eat the loaf he lost weight and was thus deprived his ability to maintain a healthy life. It is clear from the definitions and the recipe included in Appendix 2 that the Special Management Meal provides adequate nutrition for the inmates who are assigned it. Because the Special Management Meal provides a standard amount of nutritional elements, the Grievant was not denied his right to a healthy life and any negative affects from not eating the loaf were self

inflicted by the Grievant. Further, DCD 110-18 explicitly safeguards the health of inmates on the Special Management Meal by requiring that any inmate refusing to eat the loaf be specially monitored in accordance with MCAC's hunger strike procedures. Because the Grievant was not placed under special monitoring by the DOC for staging a hunger strike and the Grievant did not claim a hunger strike, I conclude that the Grievant did consume adequate nutritional requirements during his fifteen day placement on the Special Management Meal.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that officials of the Division of Correction did not act arbitrarily and capriciously, or in a manner inconsistent with the law, when they placed the Grievant on a special management meal for fifteen days because of his disruptive behavior. I further conclude, as a matter of law, that the Grievant was not prejudiced or harmed by the actions of Division of Correction officials. DCD 110-18; COMAR 12.07.01.09C(1); Hopkins v. Inmate Grievance Commission, 40 Md.App. 329 (1978).

### **ORDER**

Having concluded that the grievance of [REDACTED], OAH No. DPSCS-IGO-[REDACTED], IGO Case No. [REDACTED], is without merit, I **ORDER** that it is **DENIED** and **DISMISSED**.

\_\_\_\_\_  
Date Decision Mailed

\_\_\_\_\_  
Administrative Law Judge

\*\*\*/\*\*  
# 13699 [Rev. 1/07]

[appeal rights are for final decisions only]

DRAFT

## **REVIEW RIGHTS**

You are entitled to file a petition for judicial review with the circuit court for the county in which the institution you are confined is located within thirty days of the mailing of the decision. Md. Code Ann., Corr. Serv. § 10-210(b) (1999) and Md. Rules 7-201 through 7-210. Under the provisions of Md. Code Ann., State Gov't § 10-222(h) (Supp. 2007), this decision may only be reversed or modified on appeal if any substantial right may have been prejudiced because a finding, conclusion, or decision of the agency: (1) is unconstitutional; (2) exceeds the statutory authority or jurisdiction of the agency; (3) results from an unlawful procedure; (4) is affected by any other error of law; (5) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or (6) is arbitrary or capricious. The circuit court does not accept additional evidence or reassess the credibility of witnesses who have previously testified. The Office of Administrative Hearings is not a party to any review process.

[cc's are for final decisions only]

cc: See Secretarial Manual for mailing instructions

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