Circuit Court for Howard County
Case No. C-13-CV-21-000547

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1297

September Term, 2021

VICTOR PIECHOCKI

v.

MARYLAND DEPARTMENT OF HEALTH

Berger,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 25, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Victor Piechocki, was involuntarily committed to the Clifton T. Perkins Hospital Center ("Perkins"), an inpatient psychiatric facility operated by appellee, the Maryland Department of Health ("the Department").[1,2] In 2021, Mr. Piechocki refused to take an increased dose of a medication prescribed by his psychiatrist to treat a mental illness diagnosed as schizoaffective disorder. A Clinical Review Panel ("CRP") convened pursuant to Maryland Code (1982, 2019 Repl. Vol.), § 10-708 of the Health–General Article ("HG"), and approved the forcible administration of that medication to Mr. Piechocki. Following a hearing, an administrative law judge ("ALJ") approved the CRP's decision. Mr. Piechocki sought judicial review in the Circuit Court for Howard County, which affirmed the ALJ's ruling.

On appeal, Mr. Piechocki presents four issues for our review, which we have consolidated and rephrased as follows:

I. Is Mr. Piechocki's ongoing involuntary hospitalization illegal?

II. Did the ALJ reversibly err by approving the forcible administration of medications to Mr. Piechocki?

III. Was Mr. Piechocki denied effective assistance of counsel?

For the reasons that follow, we will affirm the judgment of the circuit court.

[1] Effective July 1, 2017, the Department of Health and Mental Hygiene was renamed the Maryland Department of Health. 2017 Md. Laws, ch. 214 (S.B. 82).

[2] Mr. Piechocki filed a "Notice of Change of Address" on August 17, 2022, according to which he was then at Spring Grove Hospital Center.

BACKGROUND[3]

Involuntary Commitments & Conditional Releases

On May 30, 2002, the State charged Mr. Piechocki in the Circuit Court for Baltimore County with, among other things, first-degree assault.[4] The court found Mr. Piechocki guilty of that crime—but not criminally responsible—and, in an order dated October 22, 2002, committed him to the Department for inpatient treatment. *See State v. Garnett*, 384 Md. 466, 474 (2004) ("In Maryland, a defendant may be found both guilty and not criminally responsible for a crime so that the defendant does not stand convicted of a crime, and no criminal sentence may ever be entered on the guilty verdict." (quotation marks and citation omitted)). *Accord Sidbury v. State*, 414 Md. 180, 193 (2010).

In April 2006, the court ordered Mr. Piechocki conditionally released from confinement for a period of five years. In August 2008, however, it revoked Mr.

[3] The Department has filed an appendix to its brief, which includes excerpts from the records in two criminal cases (Case Nos. 03-K-02-002149 & 03-K-18-001076) that prompted Mr. Piechocki's commitment and recommitment to Perkins. In its brief, the Department asks us to take judicial notice of those excerpts pursuant to Maryland Rule 5-201. Mr. Piechocki neither moved to strike the Department's appendix nor otherwise challenges the authenticity of the documents contained therein. We will therefore take judicial notice of the documents. *See* Md. Rule 5-201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). *See also Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008) (denying the appellant's motion to strike portions of the appellee's appendix where "the documents at issue [were] either part of the record below or [were] official public documents to which this [C]ourt may take judicial notice in its discretion according to Md. Rule 5-201(c)").

[4] Mr. Piechocki was charged with eight other crimes, all of which were nolle prossed.

Piechocki's conditional release because he had violated various conditions thereof, and ordered him recommitted to the Department for further inpatient treatment. In an amended order dated October 29, 2013, the court again conditionally released Mr. Piechocki for yet another five-year period, subject to conditions that included (i) immediately notifying the Department's Community Forensic Aftercare Program ("CFAP") of any "legal involvement," (ii) "obey[ing] all laws[,]" and (iii) immediately notifying both his therapist and the CFAP in the event of his arrest. The court's amended order also provided:

> If at any time during the conditional release, [Mr.] Piechocki does not comply with the conditions of release, CFAP shall immediately notify the [c]ourt and the Office of the State's Attorney and, after a hearing[,] [Mr.] Piechocki may be recommitted to [the Department].

(Paragraph number omitted.)

On March 12, 2018, the State charged Mr. Piechocki with first- and second-degree assault, as well as openly carrying a dangerous weapon with the intent to injure another (collectively, "the 2018 Charges"). Upon finding probable cause to believe that Mr. Piechocki had violated the terms of his conditional release, the circuit court issued a hospital warrant, directing any peace officer "to apprehend and transport [Mr. Piechocki] to [Perkins], a facility designated by the Department . . . , to await further proceedings." On February 27, 2019, the court found Mr. Piechocki incompetent to stand trial for the 2018 Charges and again committed him to the Department's custody and care. The court also ordered an administrative hearing within ten days of execution of the hospital warrant.

After a hearing, an ALJ issued a report on April 9, 2019, wherein he determined that the Department had met its burden of proving by a preponderance of the evidence that Mr.

Piechocki had violated the conditions of his release by failing both to "obey all laws" and to immediately notify his therapist and the CFAP of his arrest. The ALJ further found that Mr. Piechocki had not satisfied his burden (which had shifted when "the Department demonstrated [that Mr. Piechocki] violated his conditional release") of showing that "he [wa]s otherwise eligible for conditional release . . . by demonstrating he would not be a danger to himself, others, or the property of others if released with conditions." Accordingly, the ALJ recommended that Mr. Piechocki "remain committed to the Department for further inpatient care and treatment." In an order entered on May 17, 2019, the circuit court adopted the ALJ's report and ordered that Mr. Piechocki remain committed to the Department.

On March 13, 2020, the circuit court found Mr. Piechocki competent to stand trial for the 2018 Charges and remanded him to Perkins "to maintain [his] competency[.]" The State nolle prossed the 2018 Charges in November 2020, and the court ordered Mr. Piechocki's release "[a]s to this case only." He, however, remained committed to the Department's custody under the October 22, 2002, and May 17, 2019, orders.

The Clinical Review Panel

On July 19, 2021, the Department, by a Notice of Clinical Review Panel, informed Mr. Piechocki that a CRP would be convened in Perkins at 11:00 a.m. on July 21, 2021, pursuant to HG § 10-708.[5] The notice explained that the CRP would be convened because

[5] Although the Department presented the "Notice of Clinical Review Panel" to Mr. Piechocki, he evidently refused to sign it and walked away.

Mr. Piechocki had refused to take Depakote, which his attending psychiatrist, Onyinye Ugorji, MD, had prescribed to treat schizoaffective disorder, bipolar type. It further advised Mr. Piechocki that the CRP would determine "whether psychiatric medication(s) shall be given to [him] despite [his] refusal." Mr. Piechocki attended the July 21st proceeding, where he was assisted by David O'Neal, his "patient's rights advisor."[6] Dr. Ugorji and a social worker were also present.

The CRP heard from Mr. Piechocki. He denied suffering from a mental disorder and claimed that he had been prescribed Depakote to treat a diagnosed seizure disorder. According to Dr. Ugorji, however, Depakote had been prescribed to treat *both* Mr. Piechocki's seizure disorder *and* his schizoaffective disorder. When asked why it was necessary to modify Mr. Piechocki's medication regimen, Dr. Ugorji explained that as a result of "his under-treated symptoms, Mr. Piechocki is unable to engage in meaningful treatment which is leading to his inability to progress through the hospital system and prolonging his hospitalization."

In its written Decision of Clinical Review Panel dated July 21, 2021, the CRP confirmed Dr. Ugorji's schizoaffective disorder diagnosis, noting that the "[s]ymptoms necessitating [Mr. Piechocki's] inpatient care include constant delusional thought content, paranoia, disorganized thoughts, and violent verbal and physical behavior." Observing that schizoaffective disorder "is a biological condition and other modalities, including therapy are ineffective[,]" the CRP further noted that Mr. Piechocki had then been taking 1000 mg

[6] Mr. O'Neal appeared by telephone, evidently due to COVID-19 precautions.

of Depakote in the morning, as well as 500 mg of Depakote and 550 mg of Quetiapine in the evening.[7] But he had refused to take the increased dose of Depakote prescribed in April 2021. As a result, Mr. Piechocki was:

> at substantial risk for continued hospitalization due to remaining seriously mentally ill with no significant relief from . . . [, and] for a significantly longer period of time with[,] the mental illness that resulted in him being committed . . . and would cause him to be a danger to himself or others if released from the hospital.

Concluding that "[n]o alternative treatments are acceptable to both [Mr. Piechocki] and [his] treating physician" and "[g]iving the recommended medication(s) represents a reasonable exercise of professional judgment[,]" the CRP approved the forcible administration of maximum doses of 2500 mg of Depakote and 1200 mg of Quetiapine per day (as well as several other psychiatric medications) "[f]or a period . . . not to exceed 90 days."[8]

Mr. Piechocki timely requested a *de novo* administrative hearing before an ALJ to appeal the CRP's decision in accordance with HG § 10-708(l). In doing so, he also "request[ed] that legal representation be provided, at no cost to [him], by the State's designated Legal Assistance Provider and authorize[d] that the Notice of CRP, Decision of CRP, and Request to Appeal Decision of CRP be released to them." On July 23, 2021, Mr.

[7] Due to an apparent typographical error, the CRP's written decision states that Mr. Piechocki "is currently taking Depakote 100mg in the morning[.]"

[8] In addition to Depakote, which was referred to by its generic name of Divalproex Sodium, and Quetiapine, the CRP approved the forcible administration of Haloperidol, Fluphenazine, Loxapine, Risperidone, Olanzapine, Benztropine, Hydroxyzine, Lorazepam, Diphenhydramine, Chlorpromazine, and Lithium.

Piechocki received a Notice of Hearing for Refusal of Psychiatric Medication, which informed him that "a hearing ha[d] been scheduled for July 29, 2021[,] at 9:30AM at [Perkins] to determine whether [he] shall be administered psychiatric medication." The notice further advised Mr. Piechocki of his "right to request representation or assistance of a lawyer or other advocate of [his] choice."

The Administrative Hearing

At the administrative hearing on July 29, 2021, Mr. Piechocki both appeared remotely via WebEx and was represented by counsel. At the outset of that hearing, the ALJ admitted into evidence, without objection, (i) the Notice of Clinical Review Panel, (ii) the Decision of Clinical Review Panel, (iii) a Request to Appeal Decision of Clinical Review Panel, and (iv) the Notice of Hearing for Refusal of Psychiatric Medication.

As its first and only witness, Perkins called Dr. Ugorji, whom the court accepted without objection as an expert in the field of psychiatry. Dr. Ugorji testified that she had been Mr. Piechocki's attending psychiatrist since January of 2021. Based upon his medical records and her personal observations during treatment, Dr. Ugorji stated that she had diagnosed Mr. Piechocki with schizoaffective disorder, bipolar type. His symptoms included "mood instability, irritability, pressured speech, paranoid delusions, and concrete thinking[,]" meaning that he struggles to make the abstract connection "between his history of mental illness and his violent episodes or aggression[.]" According to Dr. Ugorji, Mr. Piechocki denies suffering from any mental illness, claiming that he had been prescribed Depakote—a mood stabilizer—and Quetiapine—an anti-psychotic—solely to treat his

seizure and sleep disorders, respectively. Although she acknowledged that Mr. Piechocki has "an established history of epilepsy and a seizure disorder" and that Depakote treats such disorders, Dr. Ugorji testified: "The reason that I am prescribing Depakote is for a psychiatric illness." Similarly, with respect to the Quetiapine prescription, Dr. Ugorji stated: "It is being prescribed for psychosis, which is . . . a big component of schizoaffective disorder. Sleep is a benefit but that is not the primary purpose of that medication."

According to Dr. Ugorji, Mr. Piechocki was taking 1000 mg of Depakote in the morning, as well as 500 mg of Depakote and 560 mg of Quetiapine in the evening. To that, she had, on April 7, 2021, added a 500 mg midday dose of Depakote to his medication regimen to treat his lingering irritability, combativeness, and mood instability, which Mr. Piechocki had refused to take. Dr. Ugorji explained that her desire to increase Mr. Piechocki's medications was informed during his prior hospitalizations at Perkins. When he had been more heavily medicated, Mr. Piechocki was "stable enough that his treatment [team] seemed to recommend a conditional release."

Dr. Ugorji described Mr. Piechocki as "unwilling to engage with [his] treatment team[.]" According to her, whenever the issues of his medication or psychiatric history are raised, Mr. Piechocki "becomes extremely irritable, combative, and completely unwilling to engage in any kind of meaningful dialogue." On May 21, 2021, for example, Mr. Piechocki "was noted to be irritable, hostile, [and] argumentative" about the increased Depakote dose. Dr. Ugorji also recounted an incident on June 2, 2021, when Mr. Piechocki's treatment team was forced to prematurely terminate a bimonthly meeting due

to his "escalating verbal aggression." On that occasion, the treatment team attempted to discuss his "recent aggression and violent episodes," but Mr. Piechocki denied that he had displayed any such behavior, and "demanded to move into a less restrictive environment[.]" He "ended up balling up an attendance sheet . . . and thr[owing] it down the conference table towards some of the treatment team members."

Dr. Ugorji opined, to a reasonable degree of medical certainty, that Mr. Piechocki's psychiatric symptoms render him a danger to himself and others. She characterized him as "routinely verbally aggressive toward staff and peers and less frequently physically aggressive towards peers." On April 6, 2021, for example, Mr. Piechocki was placed in physical restraints "after making explicit threats to [her] and other staff members as well as becoming physically aggressive and spitting." Dr. Ugorji also recounted an incident on July 18th, during which a verbal dispute between Mr. Piechocki and another patient "over a TV channel" escalated to a point that both patients hit each other. In her expert opinion, "the administration of the medications represents a reasonable exercise of professional judgment[,]" and that without it Mr. Piechocki would be "at substantial risk of continued hospitalization because of remaining seriously mentally ill[.]"

After Perkins had rested its case, Mr. Piechocki testified on his own behalf. He claimed that he had been prescribed Depakote since 1990 for the sole purpose of preventing seizures, and denied experiencing psychiatric symptoms of hallucinations, delusions, and paranoia. With respect to the various altercations described by Dr. Ugorji, Mr. Piechocki characterized them as unprovoked attacks by others or denied that they had ever occurred.

He attributed his refusal of Dr. Ugorji's increased dosage prescription to his belief that the Depakote levels would exceed the acceptable therapeutic range.

After closing arguments, the ALJ announced her findings, stating, in pertinent part:

> [T]he medication that has been prescribed by Dr. [Ugorji] has been for the purpose of treating a mental disorder diagnosed as schizoaffective disorder, bipolar type, most recent mania.
>
> * * *
>
> Mr. Piechocki has consistently refused to take any medication that is to treat his psychiatric disorder because he doesn't believe he needs it.
>
> * * *
>
> [W]ithout the medication Mr. Piechocki is at substantial risk of continued hospitalization and because of remaining seriously mentally ill with no significant relief of mental illness symptoms and remaining seriously mentally ill for a significantly longer period of time with mental illness symptoms that cause him to be a danger to himself or others while in the hospital, which resulted in being committed under Title III of the [C]riminal [P]rocedure [A]rticle and which cause Mr. Piechocki to be a danger to himself or others if released.
>
> * * *
>
> So for these reasons I find that the procedures for determining medication shall be administered have been met as well and in accordance with my findings I conclude as a matter of law that the hospital has shown by a preponderance of the evidence that with regard to the overriding justification, clear and convincing evidence that Mr. Piechocki should be medicated with the medications prescribed by Dr. [Ugorji] and potentially with medications on the Clinical Review Panel list for a period not to exceed 90 days.

The ALJ memorialized its ruling in a written decision dated July 29, 2021, approving the involuntary administration of the prescribed medications to Mr. Piechocki "for a period not to exceed 90 days."

Mr. Piechocki filed a *pro se* petition for judicial review of the ALJ's decision on August 9, 2021. Following a remote hearing held on September 10th, the circuit court entered an order affirming the ALJ's ruling. Mr. Piechocki noted the instant appeal from that order on October 15th.[9]

We will set forth additional facts as needed in our discussion of the issues.

STANDARD OF REVIEW

"In a case concerning the merits of a final administrative agency decision—such as that of the ALJ in this case—we review directly the administrative decision, not the decisions of the courts that previously reviewed the agency decision before it came to us." *Allmond v. Dep't of Health & Mental Hygiene*, 448 Md. 592, 608 (2016). In other words, "we 'look[] through the circuit court's . . . decision[], although applying the same standards

[9] Because Mr. Piechocki filed his notice of appeal 31 days after the circuit court entered its order affirming the ALJ's decision on September 14, 2021, he failed to comply with Maryland Rule 8-202(a), which provides that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The Supreme Court of Maryland, in *Rosales v. State*, 463 Md. 552, 568 (2019), recognized that the rule was a claim-processing rule "and not a jurisdictional limitation on [appellate courts]." Rule 8-202(a), however, remains an enforceable rule and noncompliance will "ordinarily [be] a basis for dismissal of the appeal, [but it] does not divest an appellate court of jurisdiction to hear the appeal." *Taylor v. State*, 473 Md. 205, 225 n.14 (2021). "[A]s the Rule is not jurisdictional, a reviewing court must examine whether waiver or forfeiture applies to a belated challenge to an untimely appeal." *Rosales*, 463 Md. at 568.

In this case, the Department has not moved to dismiss Mr. Piechocki's appeal as untimely filed, or otherwise raised the timeliness of his appeal. We consider the issue waived, and decline to dismiss it on our own initiative. *See Tallant v. State*, 254 Md. App. 665, 674 (2022) (declining to dismiss an untimely appeal where "the State did not include a motion to dismiss in its brief or otherwise contend that [the] appeal . . . was untimely[,]" and therefore "waived any objection to the issue of untimeliness").

of review, and evaluate[] the decision of the agency.'" *Piney Orchard Cmty. Ass'n v. Maryland Dep't of the Env't*, 231 Md. App. 80, 91 (2016) (quoting *People's Couns. for Baltimore Cnty. v. Surina*, 400 Md. 662, 681 (2007)), *cert. denied*, 452 Md. 18 (2017).

Generally, the scope of our review "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and . . . determin[ing] if the administrative decision is premised upon an erroneous conclusion of law." *W.R. Grace & Co. v. Swedo*, 439 Md. 441, 453 (2014) (quotation marks and citations omitted). The Supreme Court of Maryland has consistently defined substantial evidence as "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]'"[10] *Comm'r of Lab. & Indus. v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019) (quoting *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978)). "We treat the ALJ's decision as prima facie correct and presumed valid, as it is the agency's province to resolve conflicting evidence and to draw inferences from that evidence." *Lawson v. Bowie State Univ.*, 421 Md. 245, 256 (2011) (quotation marks and citation

[10] In *Terranova v. Board of Trustees*, 81 Md. App. 1, 13 (1989), *cert. denied*, 319 Md. 484 (1990), this Court quoted with approval the following illustration of the substantial evidence test in an administrative appeal:

> [A]ssume that in an agency hearing five witnesses testify on one side of a proposition, and one witness testifies on the other. In its findings, the agency states that it does not doubt the credibility of any of the witnesses, but that it is relying on the testimony of the one witness and disregarding that of the five. Under the substantial evidence rule, a court would be required to uphold such findings.

(Quotation marks and citation omitted.) *Accord Wright v. Baltimore Cnty.*, 96 Md. App. 474, 483 (1993).

omitted). Accordingly, "[w]e are obliged 'to review the agency's decision in the light most favorable to the agency[.]'" *Marks v. Crim. Injs. Comp. Bd.*, 196 Md. App. 37, 56 (2010) (quoting *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 204 (2009)).

DISCUSSION

I.

Mr. Piechocki challenges the legality of his involuntary commitment and, by extension, the authority to forcibly medicate to him. That challenge is premised on the circuit court's November 12, 2020, order directing his release with respect to the charges that were nolle prossed by the State. He views his legal status to be that of a pre-trial detainee as a result of the 2018 Charges. Because the State did not allege that he was "incompetent or dangerous because of a mental defect or mental disorder" in the criminal proceedings pertaining to those charges, he maintains that his adjudication of not competent to stand trial for those charges, and the court's November 12th order, required his immediate release. In addition, Mr. Piechocki argues that he was "medication compliant and . . . met the standards of his commitment[,]" and "an 'overriding justification' for treatment which required further hospitalization" did not exist.

The Department counters that Mr. Piechocki "failed to raise [the medication compliant] issue before the ALJ and is therefore barred from raising it now." Alternatively, it acknowledges that the State nolle prossed the 2018 Charges against Mr. Piechocki, but the court's order releasing him from confinement applied only to those charges. Therefore,

he "remained committed to the Department under the 2002 order and was properly the subject of an order for involuntary medication." We agree with the Department.

As a threshold matter, Mr. Piechocki would have been able to raise the purported illegality of his involuntary commitment at the administrative hearing before the ALJ, but the record does not reflect that he did so. For that reason, this issue is not preserved for appellate review. *See United Parcel Serv. v. Strothers*, 482 Md. 198, 208 n.7 (2022) ("[Q]uestions . . . that could have been but were not presented to the administrative agency may not ordinarily be raised for the first time in an action for judicial review." (quoting *Allmond*, 448 Md. at 606 (quotation marks, further citation and emphasis omitted))).

On the other hand, were this issue properly before us, we would find the argument unavailing. To be sure, the State did nolle pross the 2018 Charges on November 12, 2020, and the circuit court did order his release. But in doing so, the court expressly limited the scope of that order to those charges. In other words, the initial October 22, 2002, order committing Mr. Piechocki to the Department for inpatient care and treatment and the May 17, 2019, order revoking his conditional release therefrom remained in full force and effect. In short, Mr. Piechocki was not illegally confined, and Perkins did not lack authority to forcibly medicate him if it was approved under HG § 10-708(g).

II.

Mr. Piechocki challenges the application of HG § 10-708(g) to him. More specifically, he contends that Depakote was not prescribed to him to treat a mental disease. Instead, he states that "[t]he evidence clearly showed that [D]epakote was used to treat a

seizure disorder and was never prescribed at any time to treat any psychiatric disorder." The Department counters that Dr. Ugorji's testimony constituted substantial evidence in support of the ALJ's finding that Mr. Piechocki was prescribed Depakote for the purpose of treating his mental disorder. Again, we agree with the Department.

HG § 10-708(g) governs the forcible administration of medication to involuntarily committed patients, and provides, in pertinent part:

> (g) *Approval of medication by panel.* — The panel may approve the administration of medication or medications and may recommend and approve alternative medications if the panel determines that:
>
> (1) *The medication is prescribed* by a psychiatrist *for the purpose of treating the individual's mental disorder*;
>
> (2) The administration of medication represents a reasonable exercise of professional judgment; and
>
> (3) Without the medication, the individual is at substantial risk of continued hospitalization because of:
>
> (i) Remaining seriously mentally ill with no significant relief of the mental illness symptoms that:
>
> 1. Cause the individual to be a danger to the individual or others while in the hospital;
>
> 2. Resulted in the individual being committed to a hospital under this title or Title 3 of the Criminal Procedure Article; or
>
> 3. Would cause the individual to be a danger to the individual or others if released from the hospital;
>
> (ii) Remaining seriously mentally ill for a significantly longer period of time with the mental illness symptoms that:
>
> 1. Cause the individual to be a danger to the individual or to others while in the hospital;

> 2. Resulted in the individual being committed to a hospital under this title or Title 3 of the Criminal Procedure Article; or
>
> 3. Would cause the individual to be a danger to the individual or others if released from the hospital[.]

(Emphasis added.) Mr. Piechocki challenges the ALJ's factual finding with respect to whether he was prescribed Depakote for the purpose of treating a mental disorder.

As a preliminary matter, we note that "it is not our role to reevaluate the evidence presented to the administrative agency or to make credibility determinations anew." *Kim v. Maryland State Bd. of Physicians*, 423 Md. 523, 547 (2011). Rather, "assessing the credibility of witnesses, resolving conflicts in the evidence, and determining the proper weight to assign to the facts in evidence are tasks within the province of the fact finder." *Blaker v. State Bd. of Chiropractic Exam'rs*, 123 Md. App. 243, 259, *cert. denied*, 351 Md. 662 (1998). In other words, "'[t]he opinion of an expert witness, the grounds on which it was formed and the weight to be accorded it are for the trier of facts.'" *Id.* (quoting *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 724, *cert. denied*, 280 Md. 730 (1977)).

At the administrative hearing in this case, Dr. Ugorji, whom the ALJ found credible, testified without objection that Mr. Piechocki suffers from schizoaffective disorder, bipolar type, which is a psychiatric disorder that includes symptoms of "mood instability, irritability, pressured speech, paranoid delusions, and concrete thinking." Based upon her review of Mr. Piechocki's medical records, Dr. Ugorji testified that he was prescribed Depakote to treat his mood disorder when he was first admitted to Perkins in 2002.

Acknowledging that Mr. Piechocki does have a history of a seizure disorder and that Depakote also treats the somatic symptoms associated with it, Dr. Ugorji repeatedly and unequivocally confirmed, as Mr. Piechocki's attending psychiatrist, that she prescribed the medication to treat his psychiatric mood disorder. While Mr. Piechocki claimed that he had been prescribed Depakote solely to treat his seizure disorder, the ALJ, as factfinder, was "free to accept or reject" the witnesses' testimony "in whole or in part." *Marks*, 196 Md. App. at 73.

We hold that Dr. Ugorji's expert testimony was, without more, substantial evidence to support the ALJ's finding that Mr. Piechocki was being prescribed Depakote for the purpose of treating the symptoms of his psychiatric disorder. Absent any claim of legal error or other challenges to the ALJ's factual findings, we perceive no error in her having ordered the involuntary administration of psychiatric medication to Mr. Piechocki.

III.

Finally, Mr. Piechocki contends that he was denied effective assistance of counsel because his attorney failed (i) to elicit certain testimony, (ii) to make certain objections, (iii) to personally meet with him prior to the hearing, (iv) to attend the hearing in person, and (v) to continue to represent him thereafter. The Department responds that "[t]he record shows that [counsel's] representation did not fall below an objective standard of reasonableness."

HG § 10-708's plain language confers upon patients "the right to the assistance of counsel . . . if they first request the assistance of counsel." *Mercer v. Thomas B. Finan Ctr.*,

476 Md. 652, 695-96 (2021) (quotation marks and citation omitted). "[I]mplicit in the grant of the right to counsel is the right to effective assistance of counsel." *In re Adoption of Chaden M.*, 422 Md. 498, 509 (2011). *Accord In re J.R.*, 246 Md. App. 707, 757, *cert. denied*, 471 Md. 272 (2020). In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court set forth a two-prong test for resolving ineffective assistance of counsel claims. This Court has since adopted and applied that test to determine whether a party was denied a statutory right to counsel in civil proceedings. *In re Adoption/Guardianship of Chaden M.*, 189 Md. App. 411, 433 (2009) (adopting the *Strickland* test in termination of parental rights proceedings), *aff'd on other grounds*, 422 Md. 498 (2011); *In re J.R.*, 246 Md. App. at 758 (applying the *Strickland* test to Child in Need of Assistance proceedings).

To satisfy the first prong of the *Strickland* test, a party "must show that counsel's performance was deficient[,]" i.e., that his or her "representation fell below an objective standard of reasonableness . . . under prevailing professional norms." *Strickland*, 466 U.S. at 687-88. If a party rebuts the "'strong presumption' that counsel 'rendered adequate assistance[,]'" *State v. Wallace*, 247 Md. App. 349, 359 (2020) (quoting *Strickland*, 466 U.S. at 689-90), *aff'd*, *Wallace v. State*, 475 Md. 639 (2021), it is then necessary to show prejudice, i.e., that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[11] *Strickland*, 466 U.S. at

[11] Ineffective assistance is presumptively prejudicial when: "(1) the [party] was actually denied the assistance of counsel; (2) the [party] was constructively denied the

694. For this purpose, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* It is not enough to merely "show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693.

As a general rule, Maryland appellate courts "rarely consider ineffective assistance of counsel claims on direct appeal." *Bailey v. State*, 464 Md. 685, 703 (2019). The appropriate forum in which to pursue such a claim is a collateral evidentiary hearing because "'ordinarily, the trial record does not illuminate the basis for the challenged acts or omissions of counsel.'" *In re J.R.*, 246 Md. App. at 759 (quoting *In re Adoption/Guardianship of Chaden M.*, 189 Md. App. at 434-35). There is a narrow exception for those rare occasions when "the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim[.]" *In re Parris W.*, 363 Md. 717, 726 (2001). *See also Mosley v. State*, 378 Md. 548, 562 (2003) ("[T]here may be exceptional cases where the trial record reveals counsel's ineffectiveness to be 'so blatant and egregious' that review on appeal is appropriate." (citation omitted)).

In this case, Mr. Piechocki did not request—and the court did not hold—a collateral evidentiary hearing at which counsel could address the purported deficiencies in his representation. Mr. Piechocki did not raise an ineffective assistance of counsel claim at the administrative hearing, nor does the record "'disclose the facts necessary to decide either prong of the *Strickland* analysis.'" *Id.* at 561 (quoting *Massaro v. United States*, 538 U.S.

assistance of counsel; or (3) the [party]'s counsel had an actual conflict of interest." *Ramirez v. State*, 464 Md. 532, 573 (2019).

500, 505 (2003)). Moreover, Mr. Piechocki does not remotely articulate how counsel's alleged errors undermined the outcome of the case in order to satisfy the *Strickland* prejudice prong. In short, deficiencies in counsel's representation of which Mr. Piechocki complains are not "so blatant and egregious that review on appeal is appropriate." *Id*. at 562 (quotation marks and citation omitted).

For the foregoing reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.