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May 15, 2024

Honorable Chief Justice and
Associate Justices of the
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: M.R. v. New Jersey Department of Corrections
Appellate Docket No. A-2825-22

Please accept this letter in lieu of a more formal petition for review of the Appellate Division's published decision affirming the denial of M.R.'s application for a Certificate of Eligibility for compassionate release. M.R. v. New Jersey Department of Corrections, No. A -2825-22 (App. Div. 2024) (Ppa1 to 18).[1] M.R. is seeking review of the arguments raised in his Appellate Division briefs and incorporates those arguments by reference.

[1] Ppa = M.R.'s Petition for Certification appendix
Psb = M.R.'s Appellate Division supplemental brief
Prb = M.R.'s Appellate Division reply brief
Pa = M.R.'s Appellate Division appendix
Psca = M.R.'s Appellate Division supplemental confidential appendix

This case required the Appellate Division to interpret New Jersey's compassionate release statute, N.J.S.A. 30:4-123.51e. The Appellate Division's overly restrictive interpretation will preclude otherwise eligible inmates from qualifying for compassionate release, rendering the statute essentially meaningless. Therefore, this petition must be granted so that New Jersey's sickest inmates can obtain the statute's intended relief. See Rule 2:12-4 ("Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court[.]").

As background, the compassionate release statute, effective on February 1, 2021, repealed and replaced the existing medical parole law. (Ppa2; Psb8) The compassionate release statute changed medical parole by (1) transferring the release decision from the Parole Board to the superior court; (2) adding procedures to facilitate release; and (3) eliminating medical parole's exclusion of inmates convicted of murder and other serious crimes. (Psb8) The statute was based on a recommendation from the Criminal Sentencing and Disposition Commission's November 2019 Report, which found that the old medical parole law was not being used effectively to release those with severe medical needs. (Psb14; Pa35)

The compassionate release statute "reflect[s] the Legislature's intent to show compassion to people with serious medical needs" and "decrease the prison population" by increasing the number of people released. State v. A.M.,

252 N.J. 432, 438 (2023); (Psb8). Specifically, the "structure and history of" the statute "reveal that the Legislature intended to expand the use of compassionate release." A.M., 252 N.J. at 458, 60. Thus, the new statute should be liberally -- not strictly -- construed. T.H. v. Div. of Developmental Disabilities, 189 N.J. 478, 480 (2007) (acknowledging that humanitarian statutes "should be liberally construed to achieve their beneficent purposes"); Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012) (noting that courts should be guided by "the legislative objectives sought to be achieved by enacting the statute.").

However, in construing the statute, the Appellate Division made two critical and consequential errors. First, the Appellate Division misinterpreted the statute in finding that the DOC is not required to physically examine inmates, like M.R., when determining medical eligibility. And second, the Appellate Division improperly found that the DOC's barebones reasoning for M.R.'s denial was sufficient. (Ppa14-18) Contrary to the Legislature's humanitarian goals of increasing release and showing compassion to our sickest inmates, the Appellate Division's erroneous interpretation will instead bar sick inmates -- who are otherwise eligible for release – from even bringing their claim in court, let alone obtaining release.

Under the compassionate release statute, an inmate can only apply for compassionate release once he obtains a Certificate of Eligibility ("Certificate")

from the Department of Corrections ("DOC"). N.J.S.A. 30:4-123.51e(d)(2). The Certificate is based on a determination by two DOC physicians that the inmate meets the medical criteria for compassionate release, i.e., that he is "terminal" or suffers from a "permanent physical incapacity." N.J.S.A. 30:4-123.51e(b), (d)(2), (l). Critically, the inmate must obtain a "medical diagnosis" of medical eligibility. N.J.S.A. 30:4-123.51e(b). The medical diagnosis:

> shall be made by two licensed physicians designated by the commissioner. The diagnosis shall include, but not be limited to:
>
> > (1) a description of the terminal condition, disease or syndrome, or permanent physical incapacity;
> >
> > (2) a prognosis concerning the likelihood of recovery from the terminal condition, disease or syndrome, or permanent physical incapacity;
> >
> > (3) a description of the inmate's physical incapacity, if appropriate; and
> >
> > (4) a description of the type of ongoing treatment that would be required if the inmate is granted compassionate release.
>
> [Ibid., (emphasis added).]

M.R. maintains that, in making the required medical diagnosis, the compassionate release statute requires the two DOC physicians to conduct an in-person examination of the applicant. (Psb10-18) Additionally, M.R. maintains that

the DOC physicians failed to provide the information required by the statute for the medical diagnosis. (Psb19-21)

In finding that no in-person examination is required, the Appellate Division concluded that "the statute says nothing about a physical examination." (Ppa14) But the Appellate Division ignored that, in order to satisfy the statute's requirements for a "medical diagnosis" of whether an inmate has a terminal condition or a permanent physical incapacity at the time of the application (rather than at the time of their most recent medical record), the physicians must physically examine the inmate. (Psb11-13) The Appellate Division also ignored that this medical diagnosis requires information unique to the compassionate release statute that will not be gleaned from medical records; the physicians cannot determine whether the inmate meets the statute's criteria without examining their current condition. (Psb12-13)

Moreover, the Appellate Division disregarded M.R.'s reliance on a dictionary definition of "diagnosis," which includes "a judgment made . . . after an examination," even though "it is appropriate to look to dictionary definitions" when "determining the common meaning of words" left undefined by the statute. (Ppa14-15; Psb11); Matthews v. State, 187 N.J. Super. 1, 7–8 (App. Div. 1982). Similarly, the Appellate Division ignored how the DOC's own regulations distinguish the DOC physicians' "required examinations" when making the

medical diagnosis from the medical director's "review of the medical records." (Psb17-18); N.J.S.A. 30:4-123.51e(f)(1); see Delanoy v. Twp. of Ocean, 245 N.J. 384, 401 (2021) ("Traditional principles of statutory construction require courts to give meaning to all words used in a statute").

Furthermore, the Appellate Division failed to consider the Legislature's primary goal: to increase the number of people released and show compassion to our state's sickest inmates. Instead, the Appellate Division's interpretation of the medical diagnosis was guided by an idea that requiring the DOC to physically examine inmates would "delay[] and complicat[e] the process" and undermine the Legislature's goal of "a streamlined process." (Ppa2-3, 17) But a holding that all inmates who apply for compassionate release are entitled to a physical examination would not delay or complicate the process. If an inmate is part of the narrow group of people who are medically eligible on the face of their medical record, they can waive the in-person examination requirement to further expedite the process. Therefore, the Appellate Division's "streamlined process" without any physical examination is wholly unnecessary and only serves to exclude inmates who are otherwise eligible for release. (Prb6-7) While the compassionate release statute is admittedly designed for a select group of inmates, the Appellate Division's overly restrictive interpretation cannot be squared with the Legislature's intent.

Critically, for sick inmates whose eligibility is not obvious on the face of their medical records, no physical examination will only streamline the wrongful denial of their applications, create an even more exclusive eligibility pool, and handicap the statute's ability to accomplish its goals. These inmates will be forced to wait until they are even sicker -- when their eligibility is finally clear on the face of their medical records -- to start the process. The Appellate Division's interpretation of the "streamlined process" will make it less likely that inmates will live long enough to obtain relief. Surely, this is not what the Legislature intended in passing a compassionate release statute designed to increase the number of inmates released.

What's more, the DOC determination that someone is medically eligible for release is only the first step in obtaining compassionate release. If an inmate obtains a Certificate of Eligibility, the trial court must still decide whether "the inmate is so debilitated or incapacitated by [the diagnosis] as to be permanently physically incapable of committing a crime if released and, in the case of a permanent physical incapacity, the conditions [of release] established in accordance with subsection h . . . would not pose a threat to public safety." N.J.S.A. 30:4-123.51e(f)(1). And even when an inmate meets all of the statutory criteria, the trial court still has discretion in deciding whether to grant release. Ibid.; A.M., 252 N.J. at 457. In sum, by setting the bar so high at this first hurdle,

the Appellate Division decision precludes extraordinarily sick inmates from even being considered for release. The statute must be interpreted to avoid this "absurd result." Wilson ex rel. Manzano, 209 N.J. at 572.

Lastly, the Appellate Division's decision rubberstamped the DOC's barebones reasoning for the denial of M.R.'s application. (Ppa18; Psb19-21) The DOC must "disclose its reasons for any decision, even those based upon expertise, so that a proper, searching, and careful review by this court may be undertaken." Balagun v. Dep't of Corr., 361 N.J. Super. 199, 203 (App. Div. 2003) (emphasis added). But the Appellate Division found the DOC physicians' attestations -- which provide virtually no explanation for their findings that M.R. does not have a terminal condition or permanent physical incapacity -- were sufficient. (Ppa18; Psca4-5) Requiring the DOC to provide reasons for their conclusion allows for meaningful appellate review and ensures that eligible inmates are not passed over. The Appellate Division's holding -- that barebones reasoning is enough when determining eligibility -- does not "streamline" the process for sick inmates, but instead increases their chances of dying before they can obtain relief. This holding makes meaningful review of eligibility virtually impossible for M.R. and similarly situated inmates, further limits release for sick inmates, and undermines the Legislature's intent to increase release and show compassion.

Having served over half of his sentence in prison, M.R.'s body is now failing him due to various health issues arising from stage-four brain cancer. Put simply, M.R. is exactly the type of person who the Legislature contemplated for compassionate release. And, at the very least, the DOC must physically examine M.R.'s condition to determine his medical eligibility. In affirming the denial of his application, the Appellate Division not only arrived at the wrong decision for M.R., but also created published case law that leaves the compassionate release statute unable to serve its intended purpose. Accordingly, this Court should grant certification to clarify that all inmates who apply for compassionate release are entitled to an in-person examination and that the DOC must provide sufficient reasoning to explain their eligibility decisions.

Respectfully submitted,

JENNIFER N. SILLETTI
Public Defender
Attorney for Petitioner

BY: ___/s/ Colin Sheehan___
COLIN SHEEHAN
Assistant Deputy Public Defender
Attorney ID: 363632021

Dated: May 15, 2024

CERTIFICATION

I hereby certify that the foregoing petition presents a substantial issue of law and is filed in good faith and not for purposes of delay.

/s/ Colin Sheehan
COLIN SHEEHAN

INDEX TO APPENDIX

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2825-22

M.R.,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

———————————————————

APPROVED FOR PUBLICATION
April 19, 2024
APPELLATE DIVISION

Argued March 6, 2024 – Decided April 19, 2024

Before Judges Accurso,[1] Vernoia, and Gummer.

On appeal from the New Jersey Department of Corrections.

Colin Sheehan, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Colin Sheehan, of counsel and on the briefs).

Christopher Josephson, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sara M. Gregory, Assistant Attorney General, of counsel; Christopher Josephson, on the brief).

[1] Judge Accurso did not participate in oral argument. She joins the opinion with the parties' consent. R. 2:13-2(b).

The opinion of the court was delivered by

GUMMER, J.A.D.

M.R. appeals from a final agency decision of the New Jersey Department of Corrections (DOC), denying his application for a certificate of eligibility for compassionate release under the Compassionate Release Act (CRA), N.J.S.A. 30:4-123.51e.[2] M.R. contends the DOC's decision was arbitrary, capricious, and unreasonable because the physicians opining about his condition were required to but failed to physically examine him and failed to make requisite findings when determining M.R.'s medical eligibility for compassionate release. We disagree and affirm.

I.

The Legislature enacted the CRA in 2020. The CRA repealed an existing medical parole statute, formerly codified at N.J.S.A. 30:4-123.51c, and replaced it "with a streamlined process to apply for compassionate release." A.M., 252 N.J. at 439-40; see also State v. A.M., 472 N.J. Super. 51, 58 (App. Div. 2022) (finding State commission recommended Legislature replace medical parole statute with a compassionate release statute having

[2] We use initials to refer to M.R. because we discuss his medical condition. State v. A.M., 252 N.J. 432, 444-47 (2023) (finding "if a court details a defendant's medical condition in a compassionate release proceeding, it cannot identify the defendant by name").

similar standards "but with different procedural mechanisms intended to accelerate the decision-making process" (citing N.J. Crim. Sent'g & Disposition Comm'n, Annual Report: November 2019 30-32 (2019))), aff'd as modified, 252 N.J. 432 (2023).

The CRA called on the Commissioner of Corrections to:

> establish and maintain a process by which an inmate may obtain a medical diagnosis to determine whether the inmate is eligible for compassionate release. The medical diagnosis shall be made by two licensed physicians designated by the commissioner. The diagnosis shall include, but not be limited to:
>
> > (1) a description of the terminal condition, disease or syndrome, or permanent physical incapacity;
> >
> > (2) a prognosis concerning the likelihood of recovery from the terminal condition, disease or syndrome, or permanent physical incapacity;
> >
> > (3) a description of the inmate's physical incapacity, if appropriate; and
> >
> > (4) a description of the type of ongoing treatment that would be required if the inmate is granted compassionate release.
>
> [N.J.S.A. 30:4-123.51e(b).]

See also A.M., 252 N.J. at 440.

The Legislature defined a "[t]erminal condition, disease or syndrome" as "a prognosis by the licensed physicians designated by the Commissioner of

Corrections pursuant to subsection b. of this section that an inmate has six months or less to live." N.J.S.A. 30:4-123.51e(l); see also A.M., 252 N.J. at 440. It defined a "[p]ermanent physical incapacity" as a prognosis by the designated licensed physicians "that an inmate has a medical condition that renders the inmate permanently unable to perform activities of basic daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing." N.J.S.A. 30:4-123.51e(l); see also A.M., 252 N.J. at 440. "[T]he term 'activities of basic daily living' in N.J.S.A. 30:4-123.51e(l) includes eating, mobility, bathing, dressing, using a toilet, and transfers, and excludes instrumental activities such as shopping, house cleaning, food preparation, and laundry." State v. F.E.D., 251 N.J. 505, 529 (2022). To demonstrate a "'permanent physical incapacity'" under the CRA, an inmate must prove by clear and convincing evidence his medical condition "renders him permanently unable to perform two or more activities of basic daily living." Id. at 531 (quoting N.J.S.A. 30:4-123.51e(1)).

"If an inmate is diagnosed with a terminal condition or permanent physical incapacity, the [DOC] 'shall promptly issue to the inmate a Certificate of Eligibility for Compassionate Release.'" A.M., 252 N.J. at 441 (quoting N.J.S.A. 30:4-123.51e(d)(2)). "With that certificate, the inmate 'may petition

the court for compassionate release' or ask the Public Defender to do so." Ibid. (quoting N.J.S.A. 30:4-123.51e(d)(2) to (3)).

II.

In 2015, M.R. pleaded guilty to first-degree racketeering, N.J.S.A. 2C:41-2(c) and -2(d), and was sentenced to a sixteen-year term of imprisonment subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. Forty-years old, he currently has a parole eligibility date of March 18, 2027.

The parties do not dispute M.R. at some point was diagnosed with medulloblastoma, a malignant form of brain cancer. When he received that diagnosis is not clear from the documents provided in the appellate record, which does not appear to contain a complete set of M.R.'s medical records. A chart note states medulloblastoma typically begins in the cerebellum. According to a neurological-consultation record dated September 10, 2020, doctors recommended M.R. be sent to a hospital for a "more complete neurological evaluation" after a cervical spine magnetic resonance imaging (MRI) performed on M.R. showed an "indication . . . that there seems to be an abnormality in the cerebellum."

Some of M.R.'s medical records show he underwent surgery and other treatment for the medulloblastoma, but when that occurred is unclear. A February 4, 2021 chart note states M.R. has a "[past medical history] of

[diabetes mellitus], medulloblastoma [status post] tumor resection and C1 and partial C2 laminectomy on 1/14/21." A September 1, 2022 chart note states M.R. has a history of "medulloblastoma [status post] midline craniotomy, C1 laminectomy and partial superior C2 laminectomy on 6/21/22." A November 16, 2022 office-visit record lists under "Diagnosis" "medulloblastoma – mid[-]line craniectomy [status post] chemo and radiation treatment" and "craniectomy suboccipital resection cerebellar tumor." Under an "Oncology Follow-up Visit" heading in that record, "[c]urrent treatment" is described as "none." Under a "Chronic Care Assessment & Plan" heading, the following information is provided: "[n]o evidence of any mass lesion in last MRI brain in 9/2022," "[n]o evidence of any metastasis in MRI spine in 9/2022," and "[h]as [follow up] MRI head order in for 3 month [follow up] in 12/2022."

On or about February 9, 2023, M.R. submitted to the DOC a request to determine his eligibility for compassionate release under the CRA. A copy of the request was not included in the appellate record. Pursuant to N.J.S.A. 30:4-123.51e(b), two licensed physicians, Drs. Jeffrey Pomerantz and Ruppert Hawes, issued reports in response to M.R.'s request. Drs. Pomerantz and Hawes were affiliated with Rutgers University Correctional Health Care (UCHC), which is responsible for providing medical care to incarcerated

persons in DOC facilities. See McCormick v. State, 446 N.J. Super. 603, 607-08 (App. Div. 2016).

In his February 9, 2023 report, Dr. Pomerantz identified medulloblastoma, type two diabetes, and hyperlipidemia as M.R.'s diagnoses. He found M.R. had a terminal condition with six months or less to live. He concluded M.R. did not have a permanent physical incapacity, meaning he did not believe M.R. was unable to perform two activities of daily living such that he needed twenty-four-hour care. Dr. Pomerantz acknowledged a "neurologist [had] document[ed] 'progressive neurological deficits with ataxic gait, speech dysarthria, and loss of dexterity on his hands predominantly on the right'" and that M.R. used a walker and wheelchair. Regarding M.R.'s continuing care needs, Dr. Pomerantz opined he would need "oncologic [and] neurologic care as well as generalist control of [his diabetes and] hyperlipidemia."

Unlike Dr. Pomerantz, Dr. Hawes in his February 16, 2023 report concluded M.R. did not have a terminal condition. He also found M.R. did not have a permanent physical incapacity. He identified the same diagnoses: diabetes, hyperlipidemia, and medulloblastoma. He described M.R.'s continuing care needs as ongoing oncology and neurology follow-up evaluations, "continued management of his diabetes and hyperlipidemia," and

physical and speech therapy "due to residual neurologic deficits (dysarthria, cranial 7 palsy, lack of coordination)."

In a February 22, 2023 memorandum, Dr. Herbert Kaldany, who identified himself as the "Director of Psychiatry, in lieu of DOC Medical Director," advised the DOC's commissioner that he had reviewed the reports provided by Drs. Pomerantz and Hawes and determined "[b]ased on those attestations reflecting the electronic medical record, there is no evidence that [M.R.] is suffering from a terminal condition, disease or syndrome, or permanent physical incapacity." Incorrectly reporting both doctors had found M.R. did not have a prognosis of six-months or less to live, Dr. Kaldany concluded M.R. was not eligible for compassionate release.

In a February 27, 2023 letter, Lisa Palmiere, who was the Director of Classification of the DOC's Division of Operations, advised M.R. "the medical diagnosis and prognosis prepared in [his] case . . . did not indicate that [he was] suffering from a terminal condition, disease, or syndrome, or a permanent physical incapacity." She also stated that "based on [his] medical evaluation, there [was] no indication that [he was] eligible for a compassionate release." She also advised him to contact medical staff or the administrator's office at his facility if his medical condition changed.

M.R. filed with this court a notice of appeal of that decision. The DOC moved for a remand so M.R.'s request for compassionate release could be reevaluated "in light of the fact that the two doctors who [had] evaluated M.R. . . . reached different conclusions about his eligibility." With M.R.'s consent, we granted that motion, retaining jurisdiction.

In an August 22, 2023 report, Dr. Pomerantz described M.R.'s diagnosis as: "[status post] midline craniectomy, C1 laminectomy and partial superior C2 laminectomy for medulloblastoma resection; [treatment] includes adjuvant chemo with craniospinal [radiation therapy] . . . no evidence of recurrence on MRI thus far; [patient] has moderate to severe dysarthria [and] voice impairment." Dr. Pomerantz found M.R. did not have a terminal condition or permanent physical incapacity, noting "no documented grave illness" and that M.R. did not require twenty-four-hour care. As for continuing care needs, Dr. Pomerantz concluded M.R. would "need regular neurosurgical [and] oncological [follow up] for medulloblastoma [and] routine medical care for [type two diabetes and] hyperlipidemia."

In his August 22, 2023 report, Dr. Hawes provided the following information under "[d]iagnosis":

> The patient is a 39-year-old man with a history of Diabetes Mellitus, Hyperlipidemia and Medulloblastoma. The patient is [status post] midline craniectomy, C1 laminectomy and partial superior C2

> laminectomy for mass resection. He is undergoing adjuvant chemo with craniospinal [radiation therapy]. As of 7/17/23, there was no evidence of recurrence on MRI. Repeat MRI will continue imaging every 3 months until October 2023 at which point imaging will be done every 6 months. The patient has moderate-severe dysarthria and suspected voice impairment, as evidenced by imprecise articulation, decreased secretion management, irregular/slow rate of speech, and strained and breathy vocal quality. He also presents with moderate cognitive-linguistic impairment with deficits in the areas of memory, problem solving/ reasoning and orientation.

Dr. Hawes concluded M.R. did not have a terminal condition or a permanent physical incapacity and did not need twenty-four-hour care.[3] He identified the same continuing care needs he had listed in his prior report.

In an August 23, 2023 memorandum, Dr. Kaldany advised the DOC commissioner he had reviewed the new reports and found "no evidence that [M.R.] is suffering from a terminal condition . . . or permanent physical incapacity." He noted M.R. was "currently undergoing adjuvant chemotherapy with craniospinal radiation treatment," a July 17, 2023 MRI had shown no evidence of recurrence, and M.R. would "need repeated MRIs to monitor his condition." He concluded M.R. was not eligible for compassionate release.

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[3] M.R. complains the physicians relied on dated medical records. The record does not support that assertion. Instead, the record shows they reviewed a recent MRI, among other records, in rendering their conclusions.

In an August 24, 2023 letter, Palmiere advised M.R. that according to the recent reports, he did not have a terminal prognosis or a permanent physical incapacity and "there [was] no indication that [he was] eligible for a compassionate release." She told him he could "reapply" if he could "provide evidence that [his] current medical condition has changed."

M.R. amended his notice of appeal to include the August 24, 2023 denial of his request.[4] He argues the DOC failed to comply with the CRA and related regulations by not physically examining M.R. and by failing to make requisite findings in determining his medical eligibility for compassionate release. Unpersuaded by those arguments, we affirm.

III.

We are mindful of the standard we apply in reviewing a final agency decision. "The scope of our review of an agency decision is limited." Mejia v. N.J. Dep't of Corr., 446 N.J. Super. 369, 376 (App. Div. 2016). We "recognize that state agencies possess expertise and knowledge in their particular fields." Caucino v. Bd. of Trs., Tchrs.' Pension & Annuity Fund,

[4] The DOC concedes the August 24, 2023 denial was its "final decision denying M.R.'s request for a certificate of compassionate release" and does not dispute our jurisdiction. See R. 2:2-3(a)(2); State v. F.E.D., 469 N.J. Super. 45, 59 n.9 (App. Div. 2021) (presuming an inmate could seek our review of a denial of a request for a certificate of eligibility for compassionate release under the CRA as a final agency decision), aff'd as modified, 251 N.J. 505 (2022).

475 N.J. Super. 405, 411 (App. Div. 2023) (quoting Caminiti v. Bd. of Trs., Police & Firemen's Ret. Sys., 431 N.J. Super. 1, 14 (App. Div. 2013)). "As a general matter, we will disturb an agency's adjudicatory decision only if we determine that the decision is 'arbitrary, capricious or unreasonable' or is unsupported 'by substantial credible evidence in the record as a whole.'" Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 302 (App. Div. 2022) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)).

"The burden of proving that an agency action is arbitrary, capricious, or unreasonable is on the challenger." Parsells v. Bd. of Educ. of Borough of Somerville, 472 N.J. Super. 369, 376 (App. Div. 2022). In determining whether an agency action is arbitrary, capricious, or unreasonable, we consider "(1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether, in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion." Conley v. N.J. Dep't of Corr., 452 N.J. Super. 605, 613 (App. Div. 2018). We are not bound by an agency's statutory interpretation or other legal determinations. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). Thus, we review de novo legal determinations about the meaning of the CRA. A.M., 252 N.J. at 442.

We are equally mindful of the guiding principles of statutory construction. The paramount goal of "statutory interpretation is to 'determine and give effect to the Legislature's intent.'" A.M., 252 N.J. at 450 (quoting State v. Lopez-Carrera, 245 N.J. 596, 612 (2021)). To achieve that goal, we "begin with the language of [the] statute, 'which is typically the best indicator of intent.'" Ibid. (quoting State v. McCray, 243 N.J. 196, 208 (2020)). We read the "[w]ords and phrases in a statute . . . not . . . in isolation" but "in context, along 'with related provisions[,] . . . to give sense to the legislation as a whole.'" Id. at 451 (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

When interpreting a statute, "[w]e must presume that every word in [the] statute has meaning and is not mere surplusage." Cast Art Indus., LLC v. KPMG LLP, 209 N.J. 208, 222 (2012) (quoting In re Att'y Gen.'s "Directive on Exit Polling: Media & Non-Partisan Pub. Int. Grps.", 200 N.J. 283, 297-98 (2009)). We also "cannot presume the Legislature 'intended a result different from what is indicated by the plain language or add a qualification to a statute that the Legislature chose to omit.'" Simadiris v. Paterson Pub. Sch. Dist., 466 N.J. Super. 40, 49 (App. Div. 2021) (quoting Trumpson v. Farina, 218 N.J. 450, 467-68 (2014)). Nor can we "engage in conjecture or surmise which will circumvent the plain meaning of the act." DiProspero, 183 N.J. at 492 (quoting In re Closing of Jamesburg High Sch., 83 N.J. 540, 548 (1980)). Our

function is not "to 'rewrite a plainly-written enactment of the Legislature [] or presume that the Legislature intended something other than that expressed by way of the plain language.'" Ibid. (quoting O'Connell v. State, 171 N.J. 484, 488 (2002) (alteration in the original)). "Our duty is to construe and apply the statute as enacted." Ibid. (quoting In re Closing of Jamesburg High Sch., 83 N.J. at 548).

"If a statute's plain language is clear, we apply that plain meaning and end our inquiry." Garden State Check Cashing Serv., Inc. v. Dep't of Banking & Ins., 237 N.J. 482, 489 (2019). "If the language is ambiguous, courts can turn to extrinsic materials to determine the Legislature's intent," including "[l]egislative history, committee reports, and other sources[, which] can 'serve as valuable interpretive aid[s].'" A.M., 252 N.J. at 451 (quoting In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 19 (2020)).

Applying those principles, we reject M.R.'s interpretation of the CRA. M.R. asserts the plain language of N.J.S.A. 30:4-123.51e(b) "demonstrates that the physicians must physically examine the inmate." The problem with that contention is that the statute says absolutely nothing about a physical examination of the inmate. Instead, the statute requires the designated licensed physicians to make a "medical diagnosis" and then enumerates the requisite elements of that diagnosis, none of which is a physical examination. M.R.

relies on a non-medical dictionary definition of "diagnosis," which is not proof a "medical diagnosis" must include a physical examination or of a legislative intent to require a physical examination, especially when the Legislature did not include a physical examination in its list of requirements for the medical diagnosis to be rendered by the designated licensed physicians.

M.R. also relies on subparagraphs (i) and (j) of the CRA, but neither of those subparagraphs references or requires a physical examination. Subparagraph (i) addresses the procedures for the compassionate release of an inmate and authorizes the State Parole Board to "require an inmate to submit to periodic medical diagnoses by a licensed physician" "as a condition of compassionate release." N.J.S.A. 30:4-123.51e(i). Subparagraph (j) addresses the possible return of a released inmate to confinement:

> If, after review of a medical diagnosis required under the provisions of subsection i. of this section, the State Parole Board determines that a parolee granted compassionate release is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity as to be physically incapable of committing a crime or, in the case of a permanent physical incapacity, the parolee poses a threat to public safety, the State Parole Board shall so notify the prosecutor, who may initiate proceedings to return the inmate to confinement in an appropriate facility designated by the Commissioner of Corrections. . . .

In each of those subparagraphs, the Legislature expressly used the phrase "medical diagnosis," not "physical examination."

M.R. looks beyond the statute and relies on a regulation to support his position, N.J.A.C. 10A:16-8.6(a),[5] which provides:

> The two designated physicians will complete the required examinations and forward their attestations, and all related medical records, to the health services unit medical director for review. Following review of the medical records, the medical director shall make a medical determination of eligibility or ineligibility and issue a memo to the Commissioner of the Department of Corrections detailing the same.

Courts interpret regulations in the same way as they interpret statutes. In re Eastwick Coll. LPN-to-RN Bridge Program, 225 N.J. 533, 542 (2016). Just as with a statute, a court "cannot insert qualifications into a . . . regulation that are not evident" from the regulatory language. U.S. Bank, N.A. v. Hough, 210 N.J. 187, 202 (2012). A regulation that is "at odds" with its related statute must be set aside. Piatt v. Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 101 (App. Div. 2015) (quoting Lourdes Med. Ctr. of Burlington Cnty. v. Bd. of Rev., 197 N.J. 339, 376 (2009)). Applying the same principles of statutory construction we apply to the CRA, the regulation cited by M.R. is not at odds with the statute. Like the CRA, the regulation says nothing about a "physical

[5] M.R. also cites N.J.A.C. 10A:16-8.5, which contains some of the language of N.J.S.A. 30:4-123.51e(b).

examination." The regulation goes on to require the physicians to forward to the medical director "relevant medical records." N.J.A.C. 10A:16-8.6(a). A comprehensive reading of the actual language of the regulation leads us to conclude "examination" is a reference to a medical-record examination and not a requirement for a physical examination.

We perceive no ambiguity in the statutory language at issue. If we did perceive an ambiguity, a review of the legislative history also would lead us to conclude the Legislature did not intend in the CRA to require physical examinations of inmates seeking compassionate release. As our Supreme Court held in A.M., 252 N.J. at 439-40, the Legislature enacted the CRA to put into place "a streamlined process" with fewer, not more, hurdles in the path of inmates applying for compassionate release. Requiring inmates to undergo physical examinations before the designated physicians render their medical diagnoses would have the effect of delaying and complicating the process, not streamlining it.

By reviewing medical records to render a medical diagnosis, the designated physicians consider information "of a type reasonably relied upon by other experts in the particular field." James v. Ruiz, 440 N.J. Super. 45, 65 (App. Div. 2015) (quoting N.J.R.E. 703). And if a designated physician – the expert entrusted by the Legislature with this responsibility – believes the

medical records about an applying inmate do not provide sufficient information for the physician to render an accurate medical diagnosis, nothing in the CRA prevents the physician from requesting or performing a physical examination before giving the diagnosis.

We find no merit in M.R.'s argument "the DOC physicians failed to provide statutorily required information in their attestations." The designated physicians addressed each of the four subject matters the Legislature in N.J.S.A. 30:4-123.51e(b) required designated physicians to address and the reasons for their conclusions are clear. MRIs have shown no evidence of a recurrence of the medulloblastoma since M.R.'s surgery nor was there evidence of a permanent physical incapacity as defined by the statute.

The DOC's decision is supported by substantial credible evidence and is based on a correct legal interpretation of the CRA. M.R. has failed to demonstrate it was arbitrary, capricious or unreasonable. Accordingly, we affirm.

Affirmed.