

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

Jun 13, 2018

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 18N-00024

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned on May 18, 2018 at 11:00 a.m. at the [REDACTED] Center located in Naples, Florida.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's wife

For the Respondent: Bradley Schucker, Administrator

ISSUE

At issue is whether or not the nursing home's action to discharge the petitioner is an appropriate action based on the federal regulations. The nursing home is seeking to discharge the petitioner because his health has improved and he no longer needs nursing home services.

The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. § 483.15 and Section 400.0255, Florida Statutes.

PRELIMINARY STATEMENT

By notice dated March 19, 2018, the respondent informed the petitioner that it was seeking to discharge/transfer him from its facility because his health had improved and he no longer required nursing home services. The notice was also signed by a physician. The petitioner timely requested a hearing on the matter.

Appearing as witnesses for the respondent were [REDACTED] Director of Social Services, and [REDACTED], MDS Coordinator.

The petitioner did not submit any documents as evidence for the hearing.

The facility's notice of discharge was entered into evidence as Respondent Exhibit 1.

After the hearing was concluded, the Agency for Health Care Administration (AHCA) submitted a letter dated May 17, 2018 which indicated that it found no violations during an unannounced visit on May 3, 2018 to the facility. This was entered into the record as the Hearing Officer's Exhibit I.

FINDINGS OF FACT

1. The petitioner was admitted into the skilled nursing facility in June, 2016. He needed extensive assistance at that time with his activities of daily living (ADLs). His

condition has since improved and he is now independent in his daily living activities. He is currently 62 years of age.

2. The petitioner's wife agreed that her husband is much improved, but she stated he still has memory problems and he currently has a urinary infection. His primary diagnosis is [REDACTED], which causes him to display symptoms of [REDACTED]. The petitioner's wife wants to make sure he can remain safe at home because she works outside the home. The petitioner has been approved for Social Security Disability benefits and is covered by both Medicare and Medicaid.

CONCLUSIONS OF LAW

3. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

4. Federal Regulations appearing at 42 C.F.R. § 483.15 set forth the reasons a facility may involuntarily discharge a resident, as follows: Admission, transfer and discharge rights.

(c) Transfer and discharge---(1) Facility requirements---(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--

(A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(F) The facility ceases to operate.

5. Section 400.0255, Florida Statutes, explains that discharge notices indicating a medical reason for discharge must be signed by the treating physician or facility medical director or include an attached written discharge order. The authority reads in pertinent part:

(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. **Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.**

(emphasis added)

6. Based on the evidence presented, the nursing facility has established that the petitioner no longer needs nursing home services. This is one of the six reasons provided in federal regulation (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident.

7. Based upon the evidence presented, the undersigned concludes that the nursing facility has established by clear and convincing evidence that the petitioner's condition has sufficiently improved so that he no longer needs nursing home services.

8. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

9. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the appeal is denied. The facility may proceed with discharge of the petitioner.

NOTICE OF RIGHT TO APPEAL

The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is

located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Office of Appeal Hearings, Bldg. 5, Rm.255, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 13 day of June, 2018,

in Tallahassee, Florida.



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Copies Furnished To [REDACTED], Petitioner
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Respondent
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Agency for Health Care Administration
[REDACTED]