

FILED

Jun 15, 2018

Office of Appeal Hearings
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 18N-00030

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative nursing home discharge hearing in the above-styled matter on May 30th, 2018, at 10:00 a.m. at the above-mentioned facility in [REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED], Petitioner's daughter.

For the Respondent: [REDACTED]

STATEMENT OF ISSUE

The petitioner is appealing the respondent's refusal to readmit him back to the facility (Jackson Memorial Long-Term Care Center) in the event that he is discharged from the hospital.

PRELIMINARY STATEMENT

The petitioner was not present, but was represented by his daughter as described above with authorization as his legal guardian.

Appearing as witnesses for the respondent were: [REDACTED] Social Worker; [REDACTED], Social Work Supervisor; [REDACTED], Nursing Manager; and [REDACTED], Risk Manager. However, only [REDACTED], Social Work Supervisor testified. Additionally, a copy of the Notice of Hearing was issued to the Agency for Health Care Administration (AHCA) to allow a representative to appear; however, nobody from AHCA had appeared, and the undersigned proceeded with the hearing.

[REDACTED] Interpreter ID # 24663 from [REDACTED] Services acted as a Spanish language interpreter for the hearing.

The petitioner did not submit any documents for consideration.

The respondent presented Exhibits one and two, which were marked into evidence.

By way of a Nursing Home Transfer and Discharge Notice dated March 10th, 2018, the respondent notified the petitioner of its intention to discharge him from the facility effective immediately due to, "your needs cannot be met in this facility." (Respondent's Exhibit 1.)

By way of a second Nursing Home Transfer and Discharge Notice dated March 19th, 2018, the respondent notified the petitioner, "your needs cannot be met in this facility. Resident is currently hospitalized at [REDACTED] There is currently no availability at this time 3/19/18." (Respondent's Exhibit 2.)

On March 30th, 2018, the petitioner filed an appeal to challenge the respondent's action not to keep a bed open.

FINDINGS OF FACT

1. The petitioner, currently 81 years of age, was a resident of [REDACTED] Term Care Center since 2010. The petitioner is an unfunded resident; he has neither Medicaid nor third-party insurance, and he does not pay privately. At the time of the hearing, the petitioner is a patient at [REDACTED]

2. The respondent issued a Nursing Home Transfer and Discharge Notice on March 10th, 2018, stating, "your needs cannot be met in this facility." A copy of the notice was provided to and acknowledged by the petitioner's daughter, who represented the petitioner at the hearing. The petitioner was discharged from the facility to [REDACTED] on March 10th, 2018, based on doctor's orders, due to severe medical conditions, the needs of which could not be met at the facility. (Respondent's Exhibit 1.)

3. On March 19th, 2018, while the petitioner was still at [REDACTED] the respondent issued a second Nursing Home Transfer and Discharge Notice stating, "your needs cannot be met in this facility" with additional comments, "there is currently no availability at this time 3/19/18." A copy of this notice was issued to the petitioner's daughter. (Respondent's Exhibit 2.)

4. The respondent does not know the petitioner's whereabouts after his discharge to [REDACTED].

5. As per the respondent, there is a requirement for an eight (8) day bed-hold; however, it only applies for Medicaid residents. Since the petitioner is an unfunded resident and not a Medicaid resident, the requirement does not apply to the petitioner. Regardless, the respondent held the bed open for the petitioner for eight (8) days after his discharge to

[REDACTED] as a courtesy, in recognition of his long residency in good standing at the facility.

6. As of March 19th, 2018, (nine (9) days after his discharge), the petitioner was not ready to be discharged from [REDACTED] to [REDACTED] Long-Term Care Center; therefore, the respondent terminated the bed hold. As per the administrator, the facility operates at maximum capacity, and it could not hold a bed open for a resident indefinitely.

7. On March 28th, 2018, the petitioner was discharged from [REDACTED] and was admitted to [REDACTED] Nursing Home.

8. On May 22nd, 2018, the petitioner was discharged from [REDACTED] Home to [REDACTED]. As of the time of the hearing, the petitioner remains at [REDACTED]. It is not clear if the petitioner will ever be in a condition to be discharged from the hospital to a nursing home. The petitioner however, wants the respondent to hold a bed open for him indefinitely at Jackson Memorial Long-Term Care, if and when he is discharged.

9. The petitioner was satisfied with the services he received at [REDACTED] Long-Term Care Center while he was resident there, and he felt like at home at the facility; therefore, would like to return there due to his emotional and physical needs. The petitioner does not want to return to [REDACTED], from which he was discharged to the hospital he is currently admitted.

CONCLUSIONS OF LAW

10. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 400.0255(15), Florida Statutes.

11. Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200 (c)(1).

12. Federal regulations 42 C.F.R. § 483.206 address “Transfers, discharges and relocations subject to appeal”, and in relevant part states:

(a) “Facility” means a certified entity, either a Medicare SNF or a Medicaid NF (See §483.5).

(b) A resident has appeal rights when he or she is transferred from—

(1) A certified bed into a noncertified bed; and

(2) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(c) A resident has no appeal rights when he or she is moved from one bed in the certified entity to another bed in the same certified entity.

13. Additionally, 42 C.F.R. § 483.15 addresses “Admission, transfer, and discharge rights, and in relevant part states:

(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**; *[emphasis added]*

(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. Non-payment applies if the resident does not submit the necessary paperwork

for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. 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.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to §431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to §431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(2) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

(B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—

(A) The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

(A) Contact information of the practitioner responsible for the care of the resident

(B) Resident representative information including contact information.

(C) Advance Directive information.

(D) All special instructions or precautions for ongoing care, as appropriate.

(E) Comprehensive care plan goals,

(F) All other necessary information, including a copy of the resident's discharge summary, consistent with §483.21(c)(2), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section; and

(iii) Include in the notice the items described in paragraph (c)(5) of this section

(4) *Timing of the notice.* (i) Except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice must be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;

(D) **An immediate transfer or discharge is required by the resident's urgent medical needs**, [*emphasis added*] under paragraph (c)(1)(i)(A) of this section; or

(E) A resident has not resided in the facility for 30 days

14. Florida Statutes 400.0255 addresses “Resident transfer or discharge; requirement and procedures”, and in part states:

(1) As used in this section, the term:

(a) "Discharge" means to move a resident to a noninstitutional setting when the releasing facility ceases to be responsible for the resident's care.

(b) "Transfer" means to move a resident from the facility to another legally responsible institutional setting.

(2) Each facility licensed under this part must comply with subsection (9) and s. 400.022(1)(p) when deciding to discharge or transfer a resident.

(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.

... (5) A resident of any Medicaid or Medicare certified facility may challenge a decision by the facility to discharge or transfer the resident.

(6) A facility that has been reimbursed for reserving a bed and, for reasons other than those permitted under this section, refuses to readmit a resident within the prescribed timeframe shall refund the bed reservation payment.

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility, and the circumstances are documented in the resident's medical records by the resident's physician; or

... (10)(a) A resident is entitled to a fair hearing to challenge a facility's proposed transfer or discharge. The resident, or the resident's legal representative or designee, may request a hearing at any time within 90 days after the resident's receipt of the facility's notice of the proposed discharge or transfer.

... (15)(a) The department's Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

... (d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

... (17) The provisions of this section apply to transfers or discharges that are initiated by the nursing home facility, and not by the resident or by the resident's physician or legal guardian or representative.

15. The above-cited rules and regulations inform that there are several reasons justifying a discharge; one of which is that the resident's need cannot be met at the facility. The facility discharged the petitioner to the hospital due to his needs cannot be met at the nursing facility. The petitioner is not challenging the discharge; rather the facility's refusal to hold a bed open for him indefinitely at the facility, should he be discharged from the hospital. Therefore, the undersigned has not considered the discharge; since that was not an issue raised by the petitioner. The petitioner's only issue is the facility's refusal to hold a bed open indefinitely, anticipating his discharge from the hospital; if and when it occurs, and the undersigned lacks jurisdiction over the subject matter.

DECISION

Based upon the foregoing Findings of Fact and the Conclusions of Law, the appeal is dismissed as non-jurisdictional.

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 15 day of June, 2018,

in Tallahassee, Florida.



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