

Sep 25, 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-00039

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on August 29, 2018 at 1:43 p.m., at [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED], wife

For the Respondent: [REDACTED], Nursing Home Administrator

STATEMENT OF ISSUE

At issue is whether the respondent's intent to discharge the petitioner from the facility because the health of the other individuals in the facility is endangered is correct. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found at 42 C.F.R. § 483.15.

PRELIMINARY STATEMENT

On April 20, 2018, the petitioner's representative requested a hearing to challenge the respondent's intent to discharge the petitioner from its facility. Appeal number 18N-00039 was assigned to the petitioner. After reviewing the Discharge Notice, it was determined that the notice was inadequate as it was not signed by a physician. On May 10, 2018, the undersigned issued a Preliminary Order to Dismiss the request for hearing allowing 10 days for either party to object to the dismissal. On May 18, 2018, the respondent provided a valid Nursing Home Transfer and Discharge Notice. A hearing was scheduled to convene on June 14, 2018 at 9:00 a.m. The hearing officer and the respondent appeared. The petitioner's representative did not appear. An Order of Dismissal Due to Abandonment was issued on June 19, 2018. On July 10, 2018, the petitioner requested another hearing. A second appeal number, 18N-00080, was assigned to the petitioner and a hearing scheduled to convene on August 29, 2018 at 1:00 p.m.

On August 29, 2018, prior to discussing the merits of the case, the undersigned had to determine whether the petitioner's representative had good cause for not appearing for the scheduled hearing on June 14, 2018. The undersigned determined that the petitioner had good cause as her father was ill and was admitted to the hospital on June 14, 2018, the same date of the hearing. The undersigned proceeded to hear the merits of the case.

Present as witnesses for the petitioner was [REDACTED], niece. The petitioner was also present.

Present as wittiness for the respondent were [REDACTED] Risk Manager, [REDACTED] Unit Manager. [REDACTED] Director of Nursing, appeared by telephone.

[REDACTED], Maintenance Director at the nursing facility, interpreted.

At the hearing, the respondent presented one exhibit which was entered into evidence and marked as Respondent's Composite Exhibit 1. The petitioner did not present any exhibits. The hearing officer received a letter from the Agency for Health Care Administration (AHCA) which stated that a representative from AHCA completed an unannounced visit at [REDACTED] on July 20, 2018 and found no violations. This was entered into evidence and marked as Hearing Officer's Exhibit 1.

The record was held open until September 10, 2018, for the petitioner's representative to provide supporting evidence for good cause. No evidence was received but the undersigned proceeded to decide on the issue at hand because the representative's statement was given under oath at the hearing. The record was closed on September 10, 2018.

Appeal 18N-00080 is closed out as invalid and appeal 18N-00039 was reopened.

FINDINGS OF FACT

1. The petitioner (age 65) was admitted to the respondent's nursing facility on June 13, 2017, as a hospice resident. He was diagnosed with [REDACTED] and was unable to care for himself.
2. In early April 2018, the petitioner showed signs of aggression towards staff and residents. He is combative and yells profanity at staff and residents.

3. On April 14, 2018, the petitioner struck a resident. Law enforcement was called to the facility but no charges filed. On April 20, 2018, he attempted to hit the same resident again.
4. On April 23, 2018, the petitioner was [REDACTED]. On the same day, he was readmitted to the facility and assigned one to one staff monitoring. The facility developed a care plan but his behavior continued. He is receiving [REDACTED] treatment. The petitioner is currently residing at the facility, but the facility believes that it is in the petitioner's best interest for him to be in a locked unit (Respondent's Composite Exhibit 1).
5. On April 20, 2018 and May 18, 2018, the facility issued Nursing Home Transfer and Discharge Notices. The reason checked on the notices were "The health of other individuals in this facility is endangered." In the explanation section of the Discharge Notices the comment "Resident continues to be verbally/physically aggressive and combative towards staff and other residents" (Respondent's Composite Exhibit 1).
6. The respondent alleged that the petitioner's behavior continued even after he was issued the Discharge Notice. On May 31, 2018, the petitioner spat on a staff member and on July 19, 2018, he was observed taunting a resident.
7. The respondent submitted progress notes for the petitioner by the facility for the period February 16, 2018 through June 26, 2018 (Respondent's Composite Exhibit 1).
8. On April 20, 2018 and July 10, 2018, the petitioner's representative requested a hearing to challenge the respondent's intent to discharge the petitioner.
9. The petitioner claimed that he does not recall hitting anyone or spitting on anyone. He admitted to getting agitated when staff teased him.

CONCLUSION OF LAW

10. The jurisdiction to conduct this hearing is conveyed to the Department of Children and Families by Federal Regulations appearing at 42 C.F.R. § 431.200. 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.

11. The Code of Federal Regulation at 42 C.F.R. § 483.15, limits the reasons a nursing facility may discharge a Medicaid or Medicare patient.

(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 (emphasis added),

(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.

12. In this case, the petitioner was given a notice on May 18, 2018, indicating that he would be discharged from the facility, stating the health of other individuals in this facility is endangered. The above-cited authorities set forth the conditions which must exist for a nursing home to involuntarily discharge a resident.

13. Section 400.0255, Florida Statutes, Resident transfer or discharge; requirements and procedures; hearings, states in relevant 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...

(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident's legal guardian or representative, except, in the following circumstance, the facility shall give notice as soon as practicable before the transfer or discharge:

(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

(b) The resident's health or safety or other residents or facility employees would be endangered, and the circumstances are documented in the resident's medical records by the resident's physician or the medical director if the resident's physician is not available.

14. The respondent's reason for the discharge was the petitioner's aggression towards residents as well as staff. This was happening after he was warned about his behavior and a care plan developed. He was put on a one to one staff monitoring. The facility asserts that it has a responsibility to keep all residents and staff safe. The facility's representative explained that it would not be in the petitioner's best interest to keep him medicated.

15. After careful review of the entire record as well as the controlling authorities, the undersigned concludes the nursing facility has correctly established that the health of other individuals in the facility would be endangered. This is included as one of the reasons provided in federal regulation for which a nursing facility may involuntarily discharge a resident.

16. 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 complaint line at (888) 419-3456.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law the appeal is denied and the facility may proceed with its proposed discharge in accordance with the Agency for Health Care Administration's rules and regulations.

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 25 day of September, 2018,
in Tallahassee, Florida.

Christiana Gopaul Narine

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Copies Furnished To:

[REDACTED]