

FILED

Feb 26, 2019

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

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 18N-00057

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 9, 2019 at 3:27 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's daughter

For the Respondent: [REDACTED].

STATEMENT OF ISSUE

At issue is whether the nursing home's action to transfer and discharge the petitioner is an appropriate action abased on the federal regulations at 42 C.F.R. § 483.15. The burden of proof was assigned to the respondent by clear and convincing evidence.

PRELIMINARY STATEMENT

On April 25, 2018, the petitioner's daughter requested a hearing to challenge the respondent intent to discharge the petitioner from its facility. A hearing was scheduled for July 3, 2018 at 3:30 p.m. The hearing officer continued the hearing to provide time to come to a resolution and to have both attorneys confer on the matter. The hearing was rescheduled for August 21, 2018 at 3:00 p.m.

On August 21, 2018, the undersigned appeared. The respondent and the respondent's attorney appeared. We waited 20 minutes and the petitioner did not appear. On August 23, 2018, the petitioner's daughter contacted the undersigned stating she did not recall receiving the notice of hearing. On August 24, 2018, the undersigned issued ORDER TO SHOW GOOD CAUSE. On August 29, 2018, the petitioner submitted her response to the Order. On August 31, 2018, the undersigned issued ORDER GRANTING PETITIONER'S REQUEST FOR CONTINUANCE. The hearing was rescheduled for October 9, 2018 at 3:15 p.m.

On October 3, 2018, the respondent's attorney requested a continuance due to a scheduling conflict. The request was granted, and the hearing was rescheduled for November 8, 2018. On November 6, 2018, [REDACTED], petitioner's attorney, requested an emergency continuance. The request was granted, and the hearing was rescheduled for December 13, 2018 at 3:00 p.m.

On December 13, 2018, the undersigned appeared for the hearing. The nursing home administrator advised she did not receive the scheduling notice. The undersigned rescheduled the hearing for January 9, 2019.

██████████ Director of Nursing; ██████████ Nursing Home Administrator; and ██████████ Social Worker all appeared as witnesses for the respondent. The petitioner submitted a nine-page evidence packet, which was marked and entered as Petitioner's Exhibits "1" through "3". The respondent submitted an eight-page evidence packet, which was marked and entered as Respondent's Exhibits "1" through "3". The undersigned admitted notice from Agency for Health Care Administration (AHCA) as Hearing Officer Exhibit "1". The record was left open through January 16, 2018 for additional information including patient documentation from the facility. No additional information was submitted by the facility. On January 16, 2018, the record was closed.

FINDINGS OF FACT

1. The petitioner ██████████ was admitted to the nursing facility on March 17, 2018. The petitioner suffered a ██████████ and was unable to care for herself.
2. The petitioner receives ██████████ three times per week off site from the facility.
3. The petitioner began showing signs of aggression towards the staff while traveling to ██████████. The ██████████ requested the nursing facility send an aide with the petitioner during her treatments.
4. The facility sent two aides with the petitioner and she was still exhibiting aggressive behavior towards the aides and the dialysis staff. The aides refused to return to the ██████████ with the petitioner.

5. The respondent suggested sending friends with her during her [REDACTED]. Two friends went with her and refused to return to the [REDACTED] with her (Respondent's Testimony).
6. The petitioner also had an incident where she refused to get off the transportation bus, fighting the driver and the aides attempting to get her off the bus.
7. On March 28, 2018, the petitioner's daughter and the nursing home staff met to discuss the petitioner's behavior. The nursing facility informed the petitioner's daughter they would continue to work with her on her behavior.
8. The petitioner's daughter does not deny her mother was aggressive and combative with the staff at the nursing facility and the dialysis center. She does not deny any claims made by the respondent related to the combative and violent behavior exhibited by her mother.
9. On April 12, 2018, the facility issued Nursing Home Transfer and Discharge Notice. The reason checked on the notice was "Your needs cannot be met in this facility." In the explanation section of the Discharge Notice the comment [REDACTED]" with the discharge location as [REDACTED] (Respondent's Exhibit 3).
10. On April 13, 2018, the petitioner's daughter contacted the respondent because she had no place for her mother after her procedure at [REDACTED]. The respondent notified the petitioner's daughter her mother was being discharged and could not return to the facility (Witness Testimony).
11. The petitioner's daughter contends the nursing home did not follow policy related to the discharge and left her with nowhere to put her mother.

12. The respondent contends due to the combative and violent behavior exhibited by the petitioner, she was discharged from the facility and they could not take her back at the facility because her behavior would further endanger the facility staff and the petitioner.

13. The petitioner is no longer in the nursing home facility. Effective April 2018, she remains in an assisted living facility in [REDACTED]

14. ACHA completed an on-site inspection of the facility. There were no violations found related to this discharge (Hearing Officer's Exhibit 1).

CONCLUSIONS OF LAW

15. 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 409.285, Fla. Stat.

16. This order is the final administrative decision of the Department of Children and Families under Section 409.285, Fla. Stat.

17. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

18. 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...

(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. *(emphasis added)*

19. The above cited authorities set forth the condition which must exist for a nursing home to involuntarily discharge a resident. In this instant case, the petitioner was discharged on April 12, 2018 to [REDACTED], indicating she was being discharged from the facility, stating her needs could not be met at the facility.

20. 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. *(emphasis added)*

21. The above cited authority explains exceptions to the 30-day discharge/transfer notice from a nursing home. In this instant case, the respondent's reason for the discharge was the petitioner's combative and violent behavior towards the nursing home staff, dialysis center staff, and the transportation driver. This continued to happen after the facility met with the petitioner's daughter to develop a plan of action to combat these behaviors and became a danger to the staff of the facility.

22. The petitioner's daughter was aware of the combative behaviors and thought the nursing home would keep her while working on her behavior with her.

23. After careful review of the evidence, testimony, and controlling authorities, the undersigned concludes the nursing facility has correctly established that the safety of other individuals in the facility would be endangered. This is included in one of the reasons provided in the federal regulations for which a nursing facility may involuntarily discharge a resident without a 30-day notice.

24. 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 [REDACTED]

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is hereby denied, as the facility's action to discharge the petitioner is correct and in accordance with Federal Regulations. The facility may proceed with the discharge as discussed in the Conclusions of Law, in accordance with applicable Agency of Health Care Administration requirements.

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 26 day of February, 2019,
in Tallahassee, Florida.

Pamela B. Vance

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Copies Furnished To: [REDACTED], Petitioner
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[REDACTED]