

FILED

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

May 09, 2019

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 18N-00172

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned at 9:19 a.m. on March 26, 2019, at [REDACTED] [REDACTED].

APPEARANCES

For the Petitioner: [REDACTED], pro se

For the Respondent: [REDACTED], Interim Administrator

ISSUE

At issue is whether the respondent's intent to discharge the petitioner due to, her health has improved sufficiently and no longer needs the services provided by the facility, is proper. The respondent carries the burden of proof by clear and convincing evidence.

PRELIMINARY STATEMENT

No witnesses appeared on behalf of the petitioner. [REDACTED],
Director of Nursing, [REDACTED], appeared as a witness
for the respondent.

The hearing was originally scheduled to convene on January 31, 2019. On
January 23, 2019, the petitioner requested a continuance, due to seeking legal counsel.
The petitioner's continuance request was granted; the hearing was rescheduled for
March 5, 2019. Also, on January 23, 2019, the petitioner requested 20 ad testificandum
and 20 duces tecum subpoenas; which were mailed to her on January 24, 2019. On
February 1, 2019, the petitioner requested additional subpoenas and another
continuance. The petitioner's continuance request was again granted; the hearing was
rescheduled for March 19, 2019. On February 14, 2019, the Facility requested a
continuance, due to being unavailable on March 19, 2019. The Facility's request was
granted; the hearing was rescheduled for March 26, 2019. On February 21, 2019, the
petitioner requested a two-month continuance, due to seeking legal counsel. The
petitioner's request was denied.

The petitioner submitted one exhibit, entered Petitioner Exhibit "1". The
respondent submitted eight exhibits, entered Respondent Exhibits "1" through "8". The
petitioner was rude and disruptive during the entire hearing. The record was closed on
March 26, 2019.

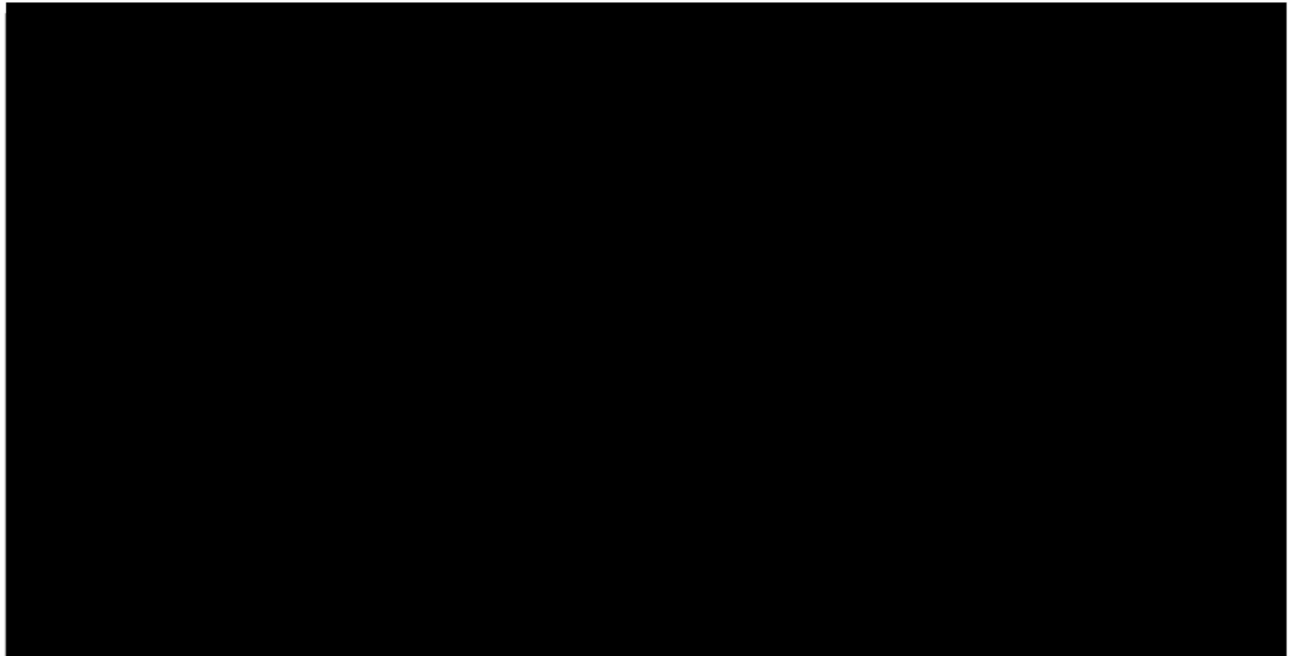
FINDINGS OF FACT

1. The petitioner was transferred from a hospital to the Facility on February 11, 2016,
due to suffering from [REDACTED] and [REDACTED]

2. ■ testified that shortly after the petitioner entered the Facility she started ambulating, refused treatment, therapy and medication.
3. The petitioner does not eat food from the Facility; she buys her own food and stores it in the Facility's refrigerator (Respondent Exhibit 8).
4. The petitioner agreed she provides her own food, because she does not want to gain weight.
5. ■, Medical Director at the Facility, last met with the petitioner on October 23, 2018. The following (Respondent Exhibit 2) is what transpired during the visit:



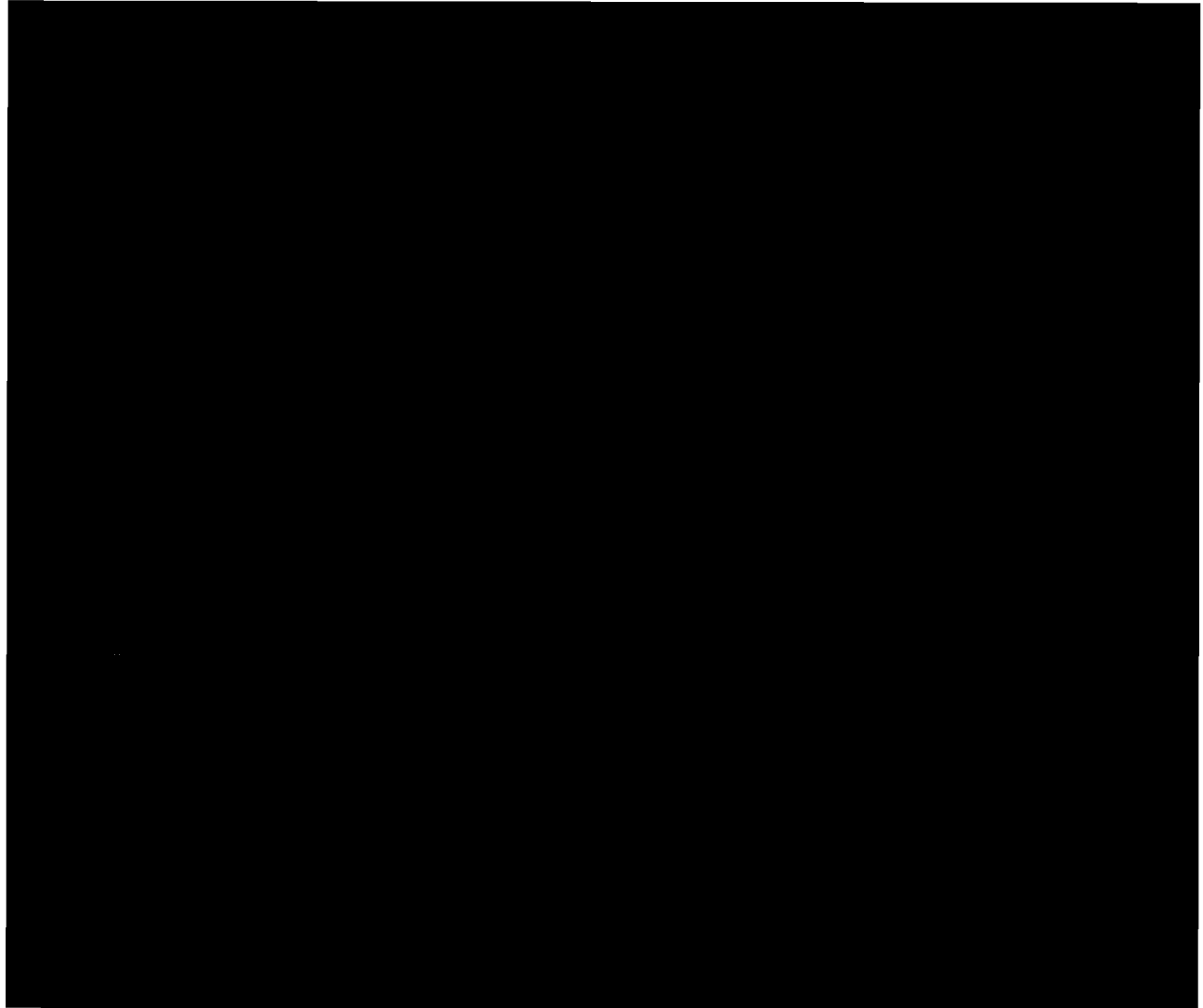
6. On October 24, 2018, [REDACTED] attempted to follow-up with the petitioner (Respondent Exhibit 8). The petitioner refused to see the doctor. The following is what transpired:



7. The petitioner said the doctor's statements are "garbage". The petitioner stated she is "holistic" and due to taking her [REDACTED] (which she keeps in the Facility's refrigerator) she is medically better.

8. On October 31, 2018, a Nursing Home Transfer and Discharge Notice was issued, signed by the Facility Administrator and [REDACTED]. The notice was given to the petitioner; she refused to sign the notice (Respondent Exhibit 1).

9. The petitioner disagreed with the Facility's Notice. The following (Petitioner Exhibit 1) is what the petitioner believes the Notice should look like:



10. Daily progress notes kept by the Facility's nurses notate the petitioner leaves the Facility daily, takes buses, can ambulate, and provides her own food (Respondent Exhibit 4).

11. Daily "sign out" sheets indicate the petitioner signs herself out of the Facility almost daily (Respondent Exhibit 6).

12. The petitioner agreed she frequently leaves the Facility. The petitioner argued there are 12 other residents that also leave the Facility and "they should be kicked out".

13. The petitioner alleged the Facility staff are “liars, criminals and falsify records” and stated, “I can put them in jail, if I wanted to.”

14. The petitioner asserted a dermatologist (name unknown) informed her she has [REDACTED], [REDACTED] all over her [REDACTED] and has [REDACTED].

15. The Hearing Officer requested the petitioner submit verification from the dermatologist. The petitioner did not submit verification to support her assertions.

16. The petitioner argued the Facility moves her to different rooms, broke her finger, stole her belongings and had her Baker Acted (Petitioner Exhibit 1).

17. The petitioner argued that the reason the Facility “wants to kick her out” is because she files grievances against Facility employees (Petitioner Exhibit 1).

18. [REDACTED] stated, “it would be irresponsible to continue to bill Medicaid for services that are no more than a hotel”. [REDACTED] stressed the petitioner does not receive medical care, does not eat the food from the Facility and does not require 24-hour care that a skilled nursing facility provides.

19. The petitioner argued that she needs to remain in the Facility because she is involved in 77 activities and the Facility has a rehabilitation center in the event she “breaks something, like she did in June 2018”.

CONCLUSIONS OF LAW

20. 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.

21. Federal Regulations at 42 C.F.R. § 483.15 Admission, transfer and discharge rights, 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;

(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; (emphasis added)

(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.

(2) (ii) (A) **The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section...**

22. In accordance with the above authority, the Facility requested the petitioner be discharged, "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility".

23. Also, in accordance with the above authority, [REDACTED], signed the discharge notice.

24. The totality of the evidence submitted establish the Facility is not treating the petitioner for any medical conditions or providing therapy; and the petitioner does not eat food provided by the Facility.

25. The petitioner argued that she has [REDACTED], [REDACTED] all over her [REDACTED] and has [REDACTED]. The petitioner did not submit evidence to support her argument.

26. The petitioner argued the Facility moves her to different rooms, broke her finger, stole her belongings and had her Baker Acted.

27. The petitioner argued that the reason the Facility wants to discharge her is because she files grievances against Facility employees.

28. The petitioner argued she needs to remain in the Facility because she is involved in 77 activities and the Facility has a rehabilitation center in the event she breaks something on her body.

29. The petitioner's arguments are irrelevant to the reason the Facility is requesting to discharge her, "Your health has improved sufficiently so that you no longer need the services provided by this facility."

30. *Florida Administrative Code R. 59G-4.290, Skilled Services*, in part states:

(1) Purpose. This rule establishes the level of care criteria that must be met in order for nursing and rehabilitative services to qualify as skilled services under Medicaid.

(2) Definitions as used in this section...

(f) Skilled care recipient. A Medicaid applicant or recipient who requires skilled nursing or skilled rehabilitative services.

(3) Skilled Services Criteria.

(a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.

(b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:

1. Ordered by and remain under the supervision of a physician;
2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effective performance;

- 4. Required on a daily basis;**
- 5. Reasonable and necessary to the treatment of a specific documented illness or injury; and,**
- 6. Consistent with the nature and severity of the individual's condition or the disease state or stage...(emphasis added)**

31. The above authority defines the criteria required to be a resident of a skilled nursing facility.

32. The evidence submitted establish the petitioner does not meet any of the criteria mentioned in the above authority.

33. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The Facility must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the resident for a safe and orderly transfer or discharge from the facility. The Hearing Officer cannot and has not considered either of these issues. The Hearing Officer has considered only whether the discharge is for a lawful reason.

34. Any discharge by the 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.

35. In careful review of the cited authorities, evidence and testimonies, the undersigned concludes the Facility's reason for discharging the petitioner due to, "Your health has improved sufficiently so that you no longer need the services provided by this facility.", is proper.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is DENIED. The facility may proceed with its proposed discharge action in accordance with all applicable Agency for 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 09 day of May , 2019,

in Tallahassee, Florida.



Priscilla Peterson
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Copies Furnished To: [REDACTED], Petitioner
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Agency for Health Care Administration
[REDACTED]