

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

FILED

Oct 14, 2019

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPEAL NO. 19N-00060

PETITIONER,

Vs.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened two administrative hearings in the above-referenced matter on July 3, 2019 at 1:39 p.m. at [REDACTED] [REDACTED]

[REDACTED] and on September 6, 2019 at 2:57 p.m. at [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED] [REDACTED]

For the Respondent: [REDACTED] [REDACTED]

ISSUE

At issue is the facility's intent to discharge the petitioner due to "your needs cannot be met in this facility". A Nursing Home Transfer and Discharge Notice was issued on April 17, 2019. 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.

PRELIMINARY STATEMENT

The July 3, 2019 hearing was not completed as both parties agreed to a continuance, so they could possibly resolve all issues. The hearing was reset to August 9, 2019.

On August 7, 2019 [REDACTED] the former Administrator of [REDACTED] [REDACTED] contacted the Office of Appeals Hearings by phone and indicated the petitioner's family no longer wanted the petitioner to return to the facility. On August 8, 2019, the undersigned issued a Preliminary Order of Dismissal that allowed all parties to object to the dismissal of the petitioner's appeal. On August 9, 2019, the undersigned contacted [REDACTED] Executive Director of [REDACTED] [REDACTED] and [REDACTED] the petitioner's son, by phone. During the phone call [REDACTED] explained he wants his mother to return to the facility. The hearing was reset to September 6, 2019.

At the July 3, 2019 and the September 6, 2019 hearings, the petitioner presented two witnesses who testified: [REDACTED] petitioner's daughter; and [REDACTED] [REDACTED] petitioner's son-in-law.

At the July 3, 2019 hearing, the respondent presented three witnesses who testified: [REDACTED]; [REDACTED] Regional Director of Clinical Operations; and [REDACTED] and Director of Nursing. At the September 6, 2019, the respondent presented three witnesses: [REDACTED]

[REDACTED]

FINAL ORDER (Cont.)

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facility; the petitioner's admission information; and the petitioner's financial information

as follows:

Site Name	Assigned	Last Activity Date	Respond by Date	Response Status	Response Reason Date/Time Provider Can Take Patient	Comments
[REDACTED]	Unassigned	5/15/2019 4:47 PM (ET)	5/15/2019 10:00 AM (ET)	Waiting for sender's response	No, unable to accept patient Care Needs Exceed Current Capacity	PENDING CLINICAL AND FINANCIAL REVIEW

Contact Name	Response Received	Response	Reason	Comment
[REDACTED]	5/15/2019 4:47 PM (ET)	No, unable to accept patient	Care Needs Exceed Current Capacity	PENDING CLINICAL AND FINANCIAL REVIEW
[REDACTED]	5/15/2019 9:20 AM (ET)	Interested, but need more information	-	PENDING CLINICAL AND FINANCIAL REVIEW

Referral Information - Referral # 51002535 - MRN: FA00017679 - [REDACTED]

Sending Organization:	[REDACTED] Healthcare Inc.		
Referral ID:	51002535	Referral Type:	Skilled Nursing Facility
Date First Sent:	5/15/2019 7:37 AM (ET)	Most Recent Revision:	5/15/2019 5:08 PM (ET)
Respond by Date:	5/15/2019 10:00 AM (ET)		
Primary Referral Category:		Primary Referral Reason:	

Referral Comments

Patient is ready for discharge today. Please call [REDACTED]

Sender's last activity:	5/15/2019 7:37 AM (ET)	Your last activity:	5/15/2019 4:47 PM (ET)
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Contact Information

[REDACTED]

File Attachments - Referral # 51002535 - MRN: FA00017679 - OLLIE STEWART

File	Uploaded On	Size	Description	Action	
FaxAttachment.pdf	5/15/2019 7:27 AM (ET)	~975K		View File	[fax to me]

Admission Information - Referral # [REDACTED] - MRN: [REDACTED] - [REDACTED]			
Account #:	FA0000207522	Patient Type:	IN
Admission Date:	4/23/2019 4:15 PM (ET)	Projected Discharge Date:	5/19/2019 11:00 AM (ET)
Patient Class:	I	Admit Source:	4
Service Type:	LTA	Location:	FA.SOUTH / FA.203-1
Facility:		Level of Care:	SPV

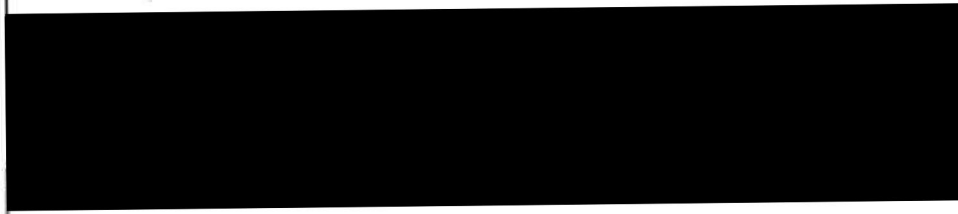
Primary Diagnosis:	WOUND/SEPSIS/UTI/WVABX/DHT		
Admitting Physician:	[REDACTED]		
Attending Physician:	[REDACTED]		

Financial Information - Referral # [REDACTED] - MRN: [REDACTED] - [REDACTED]	
Financial Class:	MCRLTC

Payment Sources		
Primary	Financial Class:	[REDACTED]
	Plan Number:	[REDACTED]
	Plan Description:	[REDACTED]
	Plan Provider Contact:	[REDACTED]
	Insured:	[REDACTED]
Secondary	Financial Class:	A
	Plan Number:	[REDACTED]
	Plan Description:	[REDACTED]
	Plan Provider Contact:	[REDACTED]
	Insured:	[REDACTED]

Guarantor:	[REDACTED]	[REDACTED]
Guarantor Employer:	UNKNOWN	

Assessment/Needs - General Information - [REDACTED]	
Primary Language:	ENG



5. On May 24, 2019 [REDACTED], A.P.R.N wrote a letter on [REDACTED] Network (Petitioner's Exhibit 1) that stated:



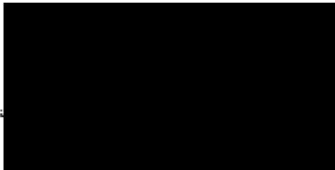
May 24, 2019

Dear Mr. [REDACTED]

Upon review of the medical records and in consultation with our medical director, we are unable to readmit [REDACTED] to our facility. Because of her clinical complexity, we are unable to meet her needs.

Our decision in this matter is final, and we are happy to collaborate with [REDACTED] to ensure they have everything from us that they need to find her appropriate placement in the community.

Sincerely,



CONCLUSIONS OF LAW

6. 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 that section, this Order is the final administrative decision of the Department of Children and Families.

7. Section 400.022, Florida Statutes, provides in part:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

...

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. . .

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

8. Pursuant to the above authority, a nursing home facility must inform an individual and his/her representative of the number of days the facility would hold the individual's bed after being transferred to a hospital. Furthermore, if the individual cannot return to the nursing home facility after the required number of days, the facility does not need to hold the individual's bed. If the facility refuses to allow the individual to return to the facility after the hospitalization, this is considered a readmission to the facility.

9. The evidence indicates the petitioner was sent to the hospital due to a chronic medical condition. The evidence also indicates the respondent's nursing home facility is not required to hold the petitioner's bed if she was out of the facility for more than fifteen days as allowed by the Florida Statutes. The evidence finally indicates the facility did

not discharge the petitioner when she was transferred to the hospital, but rather denied her readmission to the facility.

10. The undersigned does not have jurisdiction to hear appeals related to admissions and/or readmissions. All issues related to the facility's denial of the petitioner's request for readmission to the nursing home facility should be forwarded to the Agency for Healthcare Administration. Therefore, it is ORDERED that this matter be DISMISSED as moot as there is no other issue under appeal that is under jurisdiction of the undersigned.

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 14 day of October, 2019,

in Tallahassee, Florida.

[Redacted Signature]

[Redacted Title]

Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

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Copies Furnished To: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]