

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

FILED

Sep 12, 2019

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]
[REDACTED]
[REDACTED]

APPEAL NO. 19N-00070

PETITIONER,

Vs.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter was convened on July 30, 2019 at 2:20 p.m. at th [REDACTED]

[REDACTED]

APPEARANCES

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT OF ISSUE

At issue is the facility's intent to discharge the petitioner. A Nursing Home Transfer and Discharge Notice was issued on May 23, 2019 with an effective date of June 22, 2019. The nursing home is seeking to discharge the petitioner due to his health improving sufficiently that he no longer needs the services provided by the facility. The facility has the burden of proof to establish by clear and convincing

evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. § 483.15 and Florida Statutes, Section 400.0255.

PRELIMINARY STATEMENT

The respondent presented four exhibits which were accepted into evidence and marked as Respondent's Exhibits "1" through "4". On August 9, 2019, the Office of Appeal Hearings received a letter from the Agency for Health Care Administration (AHCA) which informed that an unannounced visit to the nursing facility was completed and there were no violations. This letter was entered into evidence and marked as Hearing Officer's Exhibit 1. The record closed on August 9, 2019.

FINDINGS OF FACT

1. The petitioner was admitted into the respondent's skilled nursing facility on November 27, 2018 for rehabilitation after a hospital stay, see Respondent's Exhibit 4.
2. The petitioner complains of [REDACTED] Petitioner ambulates with the assistance of a cane. The petitioner is alert, makes his own doctor appointments, signs himself out of the facility and advocates for himself. He is independent and able to perform all activities of daily living (ADLs), see Respondent's Exhibits 2 & 3, Respondent's & Petitioner's Testimonies.
3. On May 23, 2019, the respondent issued a Nursing Home Transfer and Discharge Notice to the petitioner with an effective date of June 22, 2019. The notice allows for a brief explanation to support the action and explains a physician/designee's signature or a physician's written order for discharge are required if the facility is

seeking to discharge a resident because he/she no longer require the services provided by the facility. The petitioner's physician signed the progress report and stated that the petitioner was "ok to ALF", see Respondent's Exhibits 1 & 2.

4. The respondent explained that the petitioner made progress and met his therapy goals. He was evaluated by the attending physician. The evaluation concluded that his health has improved, and he no longer needs the services provided by the facility. The respondent believes that the petitioner will thrive in the setting of an Assisted Living Facility (ALF), see Respondent's Exhibits 2 & 3, Respondent's Testimony.

5. The petitioner argued that he has a complicated mental history and feels that the nursing home is the appropriate location for him. Eventually, he would like to relocate to Jacksonville, FL but he believes that he will not be able to relocate there with his income, Petitioner's Testimony.

6. The social worker countered that she did not know that he wanted to go to Jacksonville but that she would assist him in being placed in an ALF in Jacksonville, FL that would meet his needs and accept his income, Respondent's Testimony.

7. The petitioner voiced concern that an ALF would not meet his needs.

8. The respondent countered that an ALF is better suited to his needs and believed that the petitioner would thrive in that environment, Respondent's Testimony

9. The petitioner affirmed that he can advocate for himself and perform ADLs without supervision.

10. The respondent stated that the petitioner no longer needs skilled nursing care and that he would still get the medical assistance he needs at an ALF.

CONCLUSIONS OF LAW

11. 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.

12. Federal Regulations at 42 C. F. R. § 483.15, Admission, transfer and discharge rights, states in relevant part:

...
(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—

...
(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;

...
(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.

(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—

...

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

'''

(5) Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form

and assistance in completing the form and submitting the appeal hearing request;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

...

13. Based on the evidence presented, the nursing facility has established that the petitioner's health has improved, and he no longer requires skilled nursing home care. This is one of the six reasons provided in 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident.

14. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

15. 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 (888) 419-3456.

DECISION

This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge,

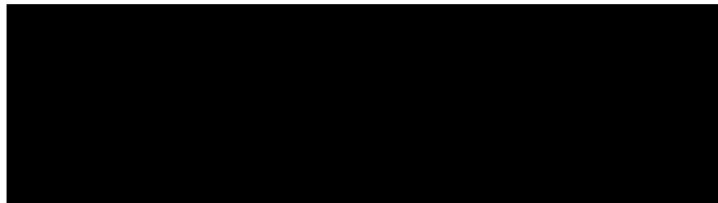
as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

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 12 day of September , 2019,

in Tallahassee, Florida.



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