

FILED

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

Nov 07, 2019
Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 19N-00099

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative nursing home discharge hearing in the above-referenced matter at 1:00 p.m. on September 27, 2019, at [REDACTED]

APPEARANCES

For the petitioner: [REDACTED] the petitioner's daughter

For the respondent: [REDACTED] Nursing Home Administrator

STATEMENT OF ISSUE

At issue is the facility's action to discharge the petitioner due to her needs cannot be met in the facility; a Nursing Home Transfer and Discharge Notice was issued on July 31, 2019 with an effective date of August 30, 2019. The respondent carries the burden of proof by clear and convincing evidence in this appeal.

PRELIMINARY STATEMENT

The petitioner was not present at the hearing. [REDACTED] District Ombudsman Manager, with the Florida Ombudsman Program, appeared as a witness for the petitioner. [REDACTED], Social Worker Manager, and [REDACTED] Registered Nurse, appeared as witnesses for the respondent. Appearing to observe were [REDACTED] [REDACTED] Social Services Director, [REDACTED] (did not address full name), Nursing Home Assistant Administrator, [REDACTED] staff and [REDACTED] (did not address full name). Outside of the record, the petitioner's daughter objected to the individuals observing the hearing as the issue is a private matter. The undersigned sustained the objection and did not allow the individuals to observe the hearing.

The petitioner submitted one exhibit, which was entered into evidence as Petitioner's Exhibit "1". The respondent submitted one exhibit, which was entered into evidence as Respondent's Exhibit "1". The record was left open until close of business on October 4, 2019 for submission of additional evidence from the petitioner.

On October 3, 2019 and after the hearing, 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. On October 4, 2019, the petitioner's daughter emailed a letter to the Office of Appeal Hearings, which indicates no additional evidence would be submitted and that on October 2, 2019, the petitioner was moved to another unit within the facility pending the outcome of the hearing. No additional evidence was submitted from the petitioner or her daughter. The record closed on October 4, 2019.

FINDINGS OF FACT

1. The petitioner, [REDACTED] has been a resident in the facility since 2009 and remains as a long-term resident.

2. The petitioner is ambulatory with the assistance of a wheelchair and suffers from

[REDACTED] The petitioner presents an elopement risk as she displays exit seeking behavior by attempting to open secure doors and windows.

3. The petitioner was a resident in the 400-memory care unit, a secure unit, with a 50-bed capacity. The secure unit had locked doors, which required door codes to enter; residents in the secure unit were restricted to the secure unit, unless authorized to leave the unit.

4. On June 15, 2019, the residents and their family members were notified that beginning July 15, 2019, the respondent would begin renovations to the 400-memory care unit; therefore, it would be closing the 400-memory care unit (Petitioner's Exhibit

1). The notification indicates the following:

After careful thought and consideration [REDACTED] made the decision to do a complete renovation of our 400 unit beginning July 15, 2019.

To accommodate this renovation residents will have to be relocated prior to the commencement of the work. We will be evaluating each resident individually to determine their current level of care need as it relates to memory care. If your loved one continues to require a memory care support unit we will work with you to identify another facility that offers this service. If your loved one no longer requires a memory care support unit we will work with you to identify another facility that offers skilled nursing services appropriate for the resident.

5. The residents from the 400-memory care unit were re-evaluated to determine if they needed to be reassigned to another unit within the facility or transferred to another facility. Ninety five percent of the fifty residents were transferred to another facility. Due to the petitioner's elopement risk, the respondent determined the petitioner requires a secure locked unit. Therefore, her needs cannot be met in the facility because she poses a safety risk in wandering out of the facility.

6. On July 31, 2019, a Nursing Home Transfer and Discharge Notice was issued to the petitioner's daughter. The reason listed on the discharge notice indicates "Your needs cannot be met in this facility" (Respondent Exhibit 1). The notice was signed by [REDACTED]

[REDACTED] A brief explanation to support the facility's action indicates the following:

The [REDACTED] is being shut down for extended renovations.

7. As of the date of the hearing, the respondent closed partial locations of the 400-memory care unit because the petitioner is the only one left in the unit. As a safety measure for the petitioner, the staff are providing one-on-one supervision. However, base on the facility's resident population, the facility cannot continue the one-on-one supervision.

8. No specific date was given on the renovation completion. The renovation can take approximately four to six months.

9. The petitioner is mobile in her wheelchair. An [REDACTED] assessment was completed on the petitioner, based on the medical records. The [REDACTED] assessment shows the petitioner poses a risk as she is [REDACTED].

10. It is the petitioner's daughter's position that the petitioner can be moved to another unit within the facility, the petitioner is not mobile, she suffers from [REDACTED]

and [REDACTED]. However; the petitioner is ambulatory with the assistance of her wheelchair. Additionally, the facility's residents have a "wonder guard band". The band is to detect when a resident attempts to exit the facility; therefore, if the petitioner attempts to exit, the facility doors exit alarm system will activate.

11. The respondent's witness clarified the "wonder guard band" is a notification device. The device is not a method to prevent [REDACTED]

12. It is the District Ombudsman Manager's position that in viewing the petitioner's medical record, the petitioner suffers from [REDACTED]

[REDACTED] which can be a factor in the petitioner's [REDACTED] No licensed physician or expert witness testified to affirm the witness's position.

13. The only issue before the hearing officer is whether the discharge was in accordance with federal regulations. Any issues concerning the petitioner's allegations of improper protocol by facility staff, medication changes or diagnoses, or treatment the petitioner received while residing at the facility are not within the jurisdiction of the hearing officer. These issues must be addressed with AHCA.

14. The petitioner was accepted to a nursing home secure locked unit facility in Deland, Florida. The petitioner's daughter is refusing this location.

15. The petitioner was referred to another facility, the facility spoke to the petitioner's daughter, it is her claim that the facility does not have a Dem [REDACTED] secure unit and is willing to accept the petitioner with her current diagnosis.

16. The record was held open for the petitioner's daughter to have an opportunity to provide documents to substantiate her allegation that a non-secure [REDACTED]

facility would accept the petitioner under the current diagnosis. The petitioner's daughter did not submit any documents.

CONCLUSIONS OF LAW

17. 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.

18. The Code of 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; (emphasis added)

(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;

(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) 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.

...

(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.

19. On July 31, 2019, the nursing facility issued a discharge notice to the petitioner.

The facility's reason for discharging the petitioner was that the petitioner's needs cannot be met in the facility. This is one of the six reasons permitted for discharge from a facility in accordance with the above federal regulation.

20. Title 29, 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. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.

21. In accordance with the above federal regulation and statute, the discharge notice was signed by a physician. The discharge notice also indicates the reason and effective date of the discharge, the location to which the petitioner is to be discharged,

and the petitioner's appeal rights along with other required assistance information. A copy was provided to the petitioner's daughter.

22. In accordance with the above authority, the facility evaluated the fifty residents' level of care needs that relates to the memory care supports and determined if a secure unit was required. The fifty residents were reassigned to another unit or transferred to another facility. The petitioner was identified with [REDACTED] requiring a secure unit. The evidence submitted establishes that petitioner's clinical records were well documented that the facility cannot meet her needs.

23. The controlling authorities require a higher standard of proof in nursing home discharge hearings; there must be substantial and credible evidence at the level of clear and convincing.

24. In careful review of the cited authorities, evidence and testimonies, the undersigned concludes the facility's evidence rises to the level of clear and convincing.

25. The undersigned concludes that the respondent's action to discharge the petitioner is proper, as the facility has proven that it cannot meet the petitioner's needs.

26. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and AHCA requirements. Should the petitioner have concerns about the appropriateness of the discharge location or the discharge planning process, she may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED. The respondent has established that this discharge is permissible under

