

Apr 29, 2024

Office of Appeal Hearings
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 24N-00004

PETITIONER,

VS.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on February 26, 2024 at 4:16 p.m.

APPEARANCES

For the Petitioner: [REDACTED] ("AB"), Esq., Counsel for the
Petitioner

For the Respondent: [REDACTED] Facility Administrator

STATEMENT OF ISSUE

The Petitioner appeals the Respondent's action discharging the Petitioner from [REDACTED] (the "Facility"), due to needs cannot be met in this facility and for the safety of other individuals in this facility is endangered. The Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

On February 1, 2024, the Petitioner timely requested a hearing. The Petitioner appeared, [REDACTED], Esq. assistant Attorney with Legal Aid in Jacksonville, Florida (Pet Wit. 1) appeared as the Petitioner's witness.

Appearing as witnesses for the Respondent were, [REDACTED] (Resp't Wit.1), Corporate Consultant; and [REDACTED] (Resp't Wit.2), Social Service Director.

Prior to the hearing, on February 23, 2024 the Petitioner filed a "Motion to Strike" requesting the undersigned strike the Respondent's evidence used to support the Respondent's discharge request. The Petitioner argued the Respondent failed to provide the Petitioner with a valid discharge notice as required by 42 C.F.R 483.15 (c) and 400.0255 Fla Stat, the discharge notice served to the Petitioner did not include a physician signature. The Petitioner alleged; the Respondent did not identify specific needs of the Petitioner that could not be met by the Facility. It further explains how those needs were to be met at the Facility. The Petitioner asserts Respondent attempted to discharge the Petitioner from the Facility without following the proper procedures. The undersigned concludes the statutes Title 42 C.F.R 483.15 (c) and Section 400.0255 Florida Statutes referenced by the Petitioner are relevant to the issue at hand; therefore, the Petitioner's Motion to Strike the Respondent's discharge notice is GRANTED.

The Respondent submitted one (1) exhibit, which was entered into evidence and marked as the Respondent's Exhibit one ("1"). The Petitioner submitted one (1) exhibit, which was entered into evidence and marked as the Petitioner's Exhibit one ("1").

The Petitioner's Position

The Petitioner took the position that the Respondent failed to provide the Petitioner with a valid discharge notice, indicating the discharge notice did not include the required physician signature at the time the Respondent served the Petitioner the notice.

The Respondent's Position

The Respondent took the position that it issued two (2) different discharge notices. The first discharge notice was issued to the Petitioner due to his anger outburst and demanding to receive a discharge notice immediately. The second discharge notice was signed by the physician the same day. The Respondent argues the discharge notice issued to the Petitioner was rescinded and the second notice is the valid notice. The Respondent wants the Petitioner to be discharged from the Facility due to needs cannot be met in the Facility and the safety of other individuals in this facility is endangered.

FINDINGS OF FACT¹

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. A fair hearing convened on February 26, 2024 to address the discharge notice issued to the Petitioner from the Facility. (Hr'g R.)
2. (Pet Ex. 1 at 1; Hr'g R.)

¹ Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rule of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

3. On January 26, 2024, the Facility issued a Nursing Home Transfer and Discharge Notice to the Petitioner informing him that he was to be discharged from the Facility effective February 25, 2024. Said notice was personally served to the Petitioner by [REDACTED], listing the following reason for discharge or transfer, "Your needs cannot be met in this facility" and "The safety of other individuals in this facility is endangered". The discharge did not include a physician signature as required by rule at the time of service. The discharge notice also did not specify what needs could not be met by the Facility. A brief explanation to support the Facility action indicates the following: [REDACTED] the facility is unable to meet your needs in this facility. We are issuing you a 30-day discharge notice. We have found you a placement at [REDACTED] [REDACTED] ... (Pet Ex. 1 at 9-10; Hr'g R.)

4. The Facility acknowledges it did issue the first Nursing Home Transfer and Discharge Notice to the Petitioner on January 26, 2024 and said Discharge Notice did not include a physician signature. The Respondent alleged the Petitioner was argumentative and demanded the notice, it issued a Discharge Notice to the Petitioner. The Facility later attempted to rescind the January 26, 2024 Discharge Notice and issued a new notice with the signature of the physician. Said notice was sent to the Office of Appeal Hearings ("OAH"). (Hr'g R.)

5. On February 6, 2024 Respondent submitted as part of its evidence to OAH with a copy of the January 26, 2024 Nursing Home Transfer and Discharge Notice listing the following reason for discharge or transfer, "Your needs cannot be met in this facility" and "The safety of other individuals in this facility is endangered" and included a physician

signature. Said notice was not given to the Petitioner with the physician signature.

(Resp't Ex. 1 at 3-4; Hr'g R.)

CONTROLLING LAW

6. Section 400.0255(15), Florida Statutes, provides the Department of Children and Families, Office of Appeal Hearings, jurisdiction over the subject matter of this proceeding and the parties. This section further prescribes this order as the final administrative decision of the Department of Children and Families.

7. Title 42 Code of Federal Regulations Section 483.15 sets forth the reasons a facility may involuntarily discharge a resident as follows:

Admission, transfer and discharge rights.

I 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;

(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. 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.

(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.

(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—

(A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;

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

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or

(E) A resident has not resided in the facility for 30 days.

(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;

8. Section 400.0255, Florida Statutes, Resident transfer or discharge; requirements and procedures; hearings, states in 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. (Emphasis added.)

...

(c) If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility's first available bed....

...

(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 circumstances, 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 health or safety of 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.

CONCLUSIONS OF LAW

9. Based on the evidence presented, the nursing facility has established that (list reason for discharge). This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

10. 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 undersigned cannot and has not considered either of these issues. The undersigned has considered only whether the discharge is for a lawful reason.

11. In this case, the Facility claims it did seek to discharge the Petitioner from its facility. The Facility acknowledges the initial Nursing Home Transfer and Discharge Notice dated January 26, 2024, served to the Petitioner by [REDACTED] did not include a

signature of a physician or attendee. The Facility does not dispute the initial discharge notice did not include specifically what needs the Facility was unable to meet. No testimony was given by the physician during the hearing regarding the evidence to substantiate and support the facts that Petitioner's needs cannot be met. Furthermore, no medical record or care plan assessments were presented to support the Respondent's assertion that the Petitioner endangers the safety of other individuals in the Facility.

12. Since the purported reason for discharge involved medical issues, the notice was required to be signed by a physician or other medical professional. The notice was only signed by [REDACTED], the facility administrator. Therefore, the notice was defective.

13. After review of the cited authorities and evidence, the undersigned concludes that the Facility's action in discharging Petitioner was improper, as the Facility failed to provide a proper notice of discharge to Petitioner.

14. The undersigned concludes that the Respondent has not met its burden of proof regarding the two conditions indicated on the Discharge Notice. The Respondent's action to discharge the Petitioner is solely based on their contention and not supported with documentations from the Facility's medical records nor testimony by the Facility's physician or the medical director. This does not meet one of the six requirements allowable under regulation for Discharge.

DECISION

Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Respondent is ORDERED to not discharge the Petitioner if he has not yet been discharged. If the Petitioner has been discharged, the Respondent is ordered to readmit him to the Facility to the first available bed.

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, [REDACTED]. 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 29 day of April, 2024,

in Tallahassee, Florida.

[REDACTED]
[REDACTED]
Hearing Officer

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Copies Furnished To: [REDACTED] Petitioner
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