

Sep 20, 2024

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

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 24N-00009

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on August 15, 2024, at 9:16 a.m., in Royal Palm Beach, Florida.

**APPEARANCES**

For Petitioner: [REDACTED], *pro se*

For Respondent: [REDACTED],  
Nursing Home Administrator ("NHA")

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action to discharge him from [REDACTED] [REDACTED] (the "Facility") due to his health having improved sufficiently so that he no longer needs the services provided by the Facility. Respondent carries the burden of proof by clear and convincing evidence.

**SUMMARY OF PROCEEDINGS**

The appeal was continued multiple times due to Petitioner's request.

██████████, Unit Manager South Wing, ██████████ Unit Manger North Wing, ██████████, Physician Assistant ("PA"), ██████████, Director of Nursing, ██████████, Minimum Data Set ("DMS") Case Manager, ██████████, Social Service Assistance, ██████████, Activities, ██████████, Director of Rehabilitation, ██████████, ██████████, Medical Records and Appointments, ██████████, Office Manager, and ██████████, Social Service Director were present as witnesses for Respondent.

Petitioner submitted two evidence packets, which were admitted into evidence and marked as Petitioner's Exhibit one ("1") through seven ("7"). Respondent also submitted two evidence packets, which were admitted into evidence marked as Respondent's Exhibit one ("1") through seven ("7").

**Petitioner's Position**

Petitioner took the position that he suffers with a deteriorating spine disease. His health will only get worse. He is in pain. He recently had a ██████████ and had to be on ██████████ and antibiotics. He was septic and could have died; therefore, he had to go to the hospital on May 29, 2024, and June 16, 2024. The petitioner also alleged that Respondent issued the Discharge Notice not because his health has improved but because they believed that he made statements to the state representative to get the Facility in trouble. This discharge was a form of retaliation for him speaking to the state representative.

### **Respondent's Position**

Respondent took the position that Petitioner's health has improved to where he no longer needs skilled services. Petitioner is mentally alert and able to make decisions on his own. He is physically able to move around and ambulate. He is mentally and physically stable. He has other providers outside of the Facility. His primary doctor is outside of the Facility, and he makes his own appointments and goes by himself. He also has specialists outside of the Facility which he visits by himself.

### **FINDINGS OF FACT<sup>1</sup>**

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. The Facility admitted Petitioner initially in April 2022 and readmitted him on October 18, 2022. He had Discitis, an infection of his spine and required skilled nursing and therapy services. He is sixty-two (62) years old. (Resp't Ex. 5; Resp't Test. )
2. Respondent provided its progress notes from March 01, 2024, through May 2, 2024. The progress notes do not indicate that Petitioner's health improved sufficiently that he no longer needs the services provided by the Facility.(Resp't Exs. 2-5.)
3. On May 2, 2024, [REDACTED], wrote in Petitioner's progress notes that he suffers with chronic pain [REDACTED], [REDACTED] [REDACTED] disorder, insomnia. Additionally, he has history [REDACTED] (Resp't Ex. 2-5.)

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

4. On February 20, 2024, [REDACTED] did a rehabilitation screen on Petitioner. He was assessed as being independent for cognitive skills for daily decision making,

[REDACTED]

[REDACTED] Resp't Ex.6.)

5. He can now ambulate without assistance; he is alert and has good mental capacity for making medical and financial decisions. He has outpatient doctors. He does not need skilled nursing or long-term care anymore. (Resp't Wit. Test.)

6. On February 20, 2024, Respondent issued a Nursing Home Transfer and Discharge Notice ("Notice") to Petitioner in person, which informed him he was to be discharged from the Facility effective March 21, 2024. The reasons cited were "Your health has improved sufficiency so that you no longer need services provided by this Facility" (Resp't Ex. 7.)

7. On February 26, 2024, Petitioner timely requested an appeal to challenge Respondent's action. (Appeal R.)

8. Petitioner confirmed he can ambulate without assistance; he is alert and has good mental capacity for making medical decisions and that it may be better for him to go to a Facility more compatible with his needs. (Pet'r Test. )

9. Petitioner submitted his medical records from [REDACTED] for his visit on June 12, 2024. His medical records show he suffers from [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]s. (Pet'r Ex. 3.)

10. Petitioner provided medical records showing that he has been treated at [REDACTED] on October 6, 2022, for Colitis, October 13, 2022, for back pain, August 28, 2023, for [REDACTED] May 29, 2024, for [REDACTED], June 18, 2024, for [REDACTED] and June 22, 2024, for [REDACTED].

(Resp't Ex. 6.)

### CONTROLLING LAW

11. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties; this order is the final administrative decision of the Department of Children and Families pursuant to Section 409.285, Florida Statutes.

12. Section 400.0255(15)(b), Florida Statutes, requires that the burden of proof must be the clear and convincing.

13. Title 42 Code of Federal Regulations Section 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—

(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. 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.**

**(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.

[Emphasis added]

14. Section 400.0255, Florida Statutes, addresses 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.

...

(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...

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or

regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form must state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form must clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

#### **CONCLUSIONS OF LAW**

15. On February 20, 2024, Respondent issued a discharge notice to Petitioner informing him that he was to be discharged from the Facility effective March 21, 2024, as his health has improved sufficiently so that he no longer needs the services provided by this Facility.

16. 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 and that the requirements of the controlling authorities have been met.

17. Discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should

Petitioner have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the AHCA's health care facility complaint line at (888) 419-3456.

18. In accordance with the above authorities, the Facility seeks to involuntarily discharge Petitioner because his health has improved sufficiently so that he no longer needs skilled and long-term care services provided by the Facility.

19. Respondent's witnesses testified that Petitioner's health has improved significantly since he was initially admitted to the Facility. However, Respondent has not provided documentation of Petitioner's medical records or progress notes to indicate that Petitioner's health has improved significantly since he was initially admitted to the Facility. Additionally, Petitioner has provided his medical records showing new medical conditions [REDACTED], [REDACTED]

[REDACTED] [REDACTED]  
[REDACTED] region and [REDACTED] with [REDACTED]  
[REDACTED] Petitioner medical records show [REDACTED]  
[REDACTED]

20. Based on the evidence presented, the Facility has not established that Petitioner's health has improved sufficiently so that he no longer needs its skilled and long-term care services.

21. After careful review of the evidence and testimony, the undersigned concludes that Respondent has not met its burden of proof by establishing its proposed action to discharge Petitioner for no longer having needs for its services.

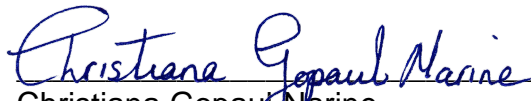
**DECISION**

Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Facility may not proceed with its proposed discharge action, as described in the Conclusions of Law and 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, Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190. 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 20 day of September, 2024,  
in Tallahassee, Florida.



Christiana Gopaul Narine  
Hearing Officer  
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Copies Furnished To: [Redacted] Petitioner  
[Redacted], Respondent  
Agency for Health Care Administration

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

[REDACTED]

PETITIONER,

APPEAL NO. 24N-00009

Vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES

CASE NO.

[REDACTED]

RESPONDENT.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the attached notice or order was provided to Petitioner at the above address and to the following individuals by either regular U.S. or electronic mail:

**I HEREBY CERTIFY** that these copies were furnished on September 20, 2024.

/s/ Karina Sarmiento

Karina Sarmiento

Agency Clerk, Office of Appeal Hearings

Department of Children and Families

Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190