

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

[REDACTED]

APPEAL NO. 24N-00064

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on August 13, 2024, at 10:02 a.m.

APPEARANCES

For Petitioner: [REDACTED], Petitioner's Representative

For Respondent: [REDACTED], Facility Director
[REDACTED] Director of Clinical Services

STATEMENT OF ISSUE

The Petitioner appeals the Respondent's action discharging the Petitioner from [REDACTED] due to her needs not being able to be met in the facility. The Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

Petitioner submitted no exhibits.

Respondent submitted one exhibit, which were marked and entered as Respondent's Exhibits one ("1").

The record was held open through August 20, 2024, for the parties to supplement the record.

Respondent submitted one additional exhibit, which was marked and entered as Respondent's Exhibit two ("2").

The record closed on August 20, 2024.

Petitioner's Position

Petitioner's representative took the position that Petitioner is well established in the facility. Petitioner's representative argued that the facility was aware of her condition upon being admitted and the required needs of Petitioner.

Respondent's Position

Respondent took the position Petitioner should be discharged from the Facility as her needs cannot be met in the Facility. Respondent argued Petitioner has a risk for elopement and endangering herself because of her condition. Respondent further argued that their facility is not equipped to deal with the level of care Petitioner needs.

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 Citations within the Findings of Fact, Controlling Law, 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.

1. On November 2, 2023, Petitioner was admitted to [REDACTED] [REDACTED] for rehabilitation. Petitioner was admitted with the diagnoses of Encephalopathy, Dementia and Failure to thrive. (H'rg R.)
2. On March 1, 2024, Petitioner was transitioned to long term care at the facility. (H'rg R.)
3. On June 7, 2024, Respondent issued a Nursing Home Transfer and Discharge Notice, with an effective date of July 7, 2024, to Petitioner's representative. The notice listed the reason for discharge or transfer as "your needs cannot be met in this facility" and went on to state, "increased wandering and redirecting." The Discharge and Transfer Notice was signed by [REDACTED], the Nursing Home Administrator. No physician or medical personnel signed the Discharge and Transfer Notice. Respondent attached a physician's order to the Discharge and Transfer Notice. The order indicates it was communicated verbally by the physician [REDACTED]. No signature is present on the physician's order (Resp't Ex.1.)

CONTROLLING LAW

4. 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.
5. 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.

(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;

6. 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

7. Based on the evidence presented, the nursing facility has argued that Petitioner's needs cannot be met in the facility. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

8. 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.

9. The above controlling authorities explain a discharge involving medical issues requires either the discharge notice or a physician's order to be signed by a physician or other medical professional. The findings show the Nursing Home Transfer and Discharge Notice dated June 7, 2024, served to the Petitioner listed the reason for discharge as "your needs cannot be met in this facility," one of the medical issues. The findings show the discharge notice was only signed by [REDACTED], the facility administrator. The findings also show the physician's order attached to the discharge notice is not signed. Therefore, the notice was defective. 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.

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 she has not yet been discharged. If the Petitioner has been discharged, the Respondent is ordered to readmit her 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, 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 13 day of September, 2024,

in Tallahassee, Florida.

[REDACTED]
[REDACTED]
[REDACTED]
Hearing Officer
Suite I, Room 129
2415 North Monroe Street
Tallahassee, FL 32303-4190
Office: 850-488-1429
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Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner
[REDACTED], Respondent
[REDACTED]
Agency for Health Care Administration
[REDACTED]

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

[REDACTED]

PETITIONER,

APPEAL NO. 24N-00064

Vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: [REDACTED]

CASE NO.

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:

[REDACTED]

I HEREBY CERTIFY that these copies were furnished on September 13, 2024.

[REDACTED]

Agency Clerk, Office of Appeal Hearings
Department of Children and Families
Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190