

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

██████████  
1100 66TH STREET NORTH  
ST PETERSBURG, FL 33710

APPEAL NO. 24N-00123

PETITIONER,

Vs.

ADMINISTRATOR

██  
1100 66TH STREET NORTH,  
ST PETERSBURG, FL 33710

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on February 19, 2025, at 11:01 a.m.

**APPEARANCES**

For the petitioner: B. Maria Carrubba- Fuentes and Ellen Cheek,  
Attorneys for the petitioner

For the respondent: Sherry Bush ("S.B."), Nursing Home Administrator

**STATEMENT OF ISSUE**

The petitioner appeals the respondent's action to discharge him from ██████████  
██ (the "Facility"). The respondent carries the burden of proof by clear and convincing evidence.

### **SUMMARY OF PROCEEDINGS**

The hearing was originally scheduled for January 14, 2025 at 10:00 a.m. At the scheduled hearing, the petitioner requested a continuance as he is trying to obtain legal services. The continuance was granted, and the hearing was rescheduled.

The petitioner ("M.C.") was present at the hearing but was represented by Counsel. [REDACTED] ("O.H."), Psychiatric Nurse Practitioner, [REDACTED] ("J.M."), Therapy Director, and [REDACTED] ("T.H."), Staffing Coordinator, appeared as witnesses for the respondent.

The respondent's evidence packet was marked and entered as Respondent's Exhibits one ("1") and two ("2"). The record was held open through February 21, 2025 for the petitioner to provide additional information. On February 18, 2025, information was received from the petitioner, and it was marked and entered as Petitioner's Exhibit one ("1"). On February 18, 2025, additional information was received from the respondent, and it was marked and entered as Respondent's Exhibit three ("3"). On February 19, 2025, additional information was received from the petitioner, and it was marked and entered as Respondent's Exhibit two ("2"). The record was closed on February 21, 2025.

### **The Petitioner's Position**

The petitioner's counsel took the position that the Notice does not support a legal discharge. The Nursing Home Transfer and Discharge notice ("Notice") did not include a referral to Disability Rights Florida which is required as the petitioner suffers from a mental illness. The notes and records provided don't show why the facility can no longer meet the petitioner's needs. The petitioner has the right to refuse medication at

any time. When the petitioner was admitted to the Facility, he had the same diagnosis and behavior that he is currently exhibiting. There is no physician documentation on how the safety of other individuals in this facility are endangered. The most recent Preadmission Screening and Resident Review ("PASRR") states the petitioner is not a safety risk and shows he still needs care from the Facility.

### **The Respondent's Position**

The respondent took the position that the petitioner has been making threats to hurt staff members and saying expletives towards staff members and residents. Now that the petitioner is no longer compliant in taking his medications, these behavior issues have started. The petitioner has the right to refuse his medication, but other residents have the right to not be subject to the petitioner's behavior on a daily basis in their home. The respondent was hoping to get him into a hospital setting where they would regulate him, and he would be put back on his medications and then he would be released back to the facility. The respondent can no longer meet his behavioral health needs.

### **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 petitioner is sixty-five years old and currently resides in [REDACTED]. [REDACTED]. The petitioner suffers from schizoaffective disorder

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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.

bipolar type, uses a walker to ambulate and needs assistance to shower and dress.

(Hr'g R.)

2. T.H. took care of the petitioner for approximately a few years but starting about a year ago, the petitioner began calling her bad names and threatening to kill her. (T.H. Test.)

3. S.B. has noticed the petitioner's behavior change over the last six months. He is constantly calling her names and saying phrases like "I'm going to get you" to her. On November 8, 2024, the Facility found a lighter and scissors in the petitioner's room. The petitioner has also told her that he will set her on fire, and he shook his closed fist at her. (S.B. Test.)

4. The petitioner has been Baker Acted at least three times in an effort to get him back on his medication, but the hospital releases him back to them and he stops taking his medication again and the inappropriate behavior starts again. (*Id.*)

5. S.B. has spoken with local law enforcement and was advised to get an Order of Protection against him but she would need to stop working at the Facility as that is where he resides. (*Id.*)

6. Multiple residents have asked staff members to kick the petitioner out of the Facility and state they are afraid of him. (J.M. Test.)

7. On November 7, 2024, the respondent issued a Notice to the petitioner informing him that he was to be discharged from the facility effective December 8, 2024.

The reasons cited were:

(1) "Your needs cannot be met in this facility."

(2) "The safety of other individuals in this facility is endangered." (Resp't Ex. 1.)

8. The Notice designates the petitioner would be released to Pinellas Safe Harbor, a local homeless facility. The Notice was signed by S.B. and Physician S.H. The petitioner refused to sign the Notice. (*Id.*)

9. The petitioner has never brandished a weapon or gotten into a physical altercation with anyone. The petitioner had a lighter in his room as he smokes cigarettes. (S.B. Test.)

10. Certain situations in the Facility make the petitioner upset and result in the petitioner making outbursts. The petitioner has no intention to physically harm anyone. (Pet'r Test.)

11. The Facility did not document an attempt to find a new Facility for the petitioner until November 22, 2024, after the discharge notice was issued. The previous social worker did not document her attempts in finding a new facility. (S.B. Test.)

12. The most recent PASRR indicates the petitioner is still in need of nursing home care. (Pet'r Ex. 1.)

### **CONTROLLING LAW**

13. 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.

14. Section 400.0255(15), Florida Statutes, addresses hearing related to nursing homes and related health care facilities and the burden of proof to be met by stating:

(15)(a) The department's Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. **The burden of proof must be clear and convincing evidence.** A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(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.**

(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

[Emphasis added]

15. Florida Statutes Section 400.0255, 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.

...

16. 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.

(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;
- (v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
- (vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 *et seq.*); and
- (vii) **For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.**

...

[Emphasis added]

17. Title 42 Code of Federal Regulations Section 483.24, Quality of life, states in

relevant part:

Quality of life is a fundamental principle that applies to all care and services provided to facility residents. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

(a) Based on the comprehensive assessment of a resident and consistent with the resident's needs and choices, the facility must provide the necessary care and services to ensure that a resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that such diminution was unavoidable. This includes the facility ensuring that:

- (1) A resident is given the appropriate treatment and services to maintain or improve his or her ability to carry out the activities of daily living, including those specified in paragraph (b) of this section,

(2) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene, and

(3) Personnel provide basic life support, including CPR, to a resident requiring such emergency care prior to the arrival of emergency medical personnel and subject to related physician orders and the resident's advance directives.

...

### **CONCLUSIONS OF LAW**

18. The above cited authority explains six allowable reasons for discharge from a nursing facility. On November 7, 2024, the Facility issued a notice of discharge to the petitioner, citing two reasons for the discharge as follows: (1) Your needs cannot be met in this facility and (2) The safety of other individuals in this facility is endangered.

19. In accordance with the above cited authorities, the Notice was signed by the Facility administrator and physician, including the reason for discharge and effective date of the discharge and appeal rights.

20. Establishing that the reason(s) for a discharge is lawful is just one step in the discharge process. The facility must also identify an appropriate transfer or discharge location and a safe and orderly transfer or discharge from the facility. The undersigned cannot and has not considered either of these issues. The undersigned only considered whether the discharge was for a lawful reason(s) and that the requirements of the controlling authorities have been met.

21. Any discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the petitioner have concerns about the appropriateness of the discharge location or the discharge process, he may contact the Agency for Health Care Administration's health care facility complaint line at (888)419-3456.

**The first condition will now be addressed:**

**The petitioner's needs cannot be met at the facility.**

22. The Facility seeks to involuntarily discharge the petitioner, claiming that it can no longer meet the petitioner's behavioral needs.

23. While the petitioner's physician did sign the Notice, he did not testify or have the petitioner's Care Plans notated that his needs cannot be met.

24. The Facility is required to provide quality of life to all residents as stated in the Statute above.

25. At no point did the Facility's witnesses state that they are unable to care for the petitioner. The evidence indicates that the petitioner still needs nursing home care.

26. 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.

27. After careful review of the evidence and testimony, the undersigned concludes that the respondent has not met its burden of proof regarding the first condition as indicated on the Notice.

**The second condition will now be addressed:**

**The safety of other individuals in this facility is endangered.**

28. The petitioner uses a walker to ambulate and needs help with showering and dressing. Due to the petitioner making the decision to no longer take his medication he can be known to make an outburst if something going on in the Facility upsets him. The petitioner's witnesses testified that the petitioner has been threatening staff members but has never brandished a weapon or gotten in a physical altercation with anyone. The petitioner had a lighter in his room as he needs it to smoke cigarettes. The petitioner's

physician that signed the Notice did not testify or provide how the petitioner has put the safety of other individuals in this facility is endangered.

29. After careful review of the evidence and testimony, the undersigned concludes that the respondent has not met its burden of proof regarding the second condition indicated on the Notice. **The respondent's action to discharge the petitioner is solely based on the contentious relationship with the petitioner.** This does not meet one of the six requirements allowable under regulation for discharge. The Notice also did not include the mailing address, email address and telephone number for the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act as required by the above stated regulation.

30. Based on the evidence, testimony, and cited authorities, the undersigned concludes that the respondent's decision to discharge the petitioner was not within rule of the program.

### **DECISION**

Based upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Facility is ORDERED to not discharge the petitioner, if he has not yet been discharged. If the petitioner has already 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, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2025,

in Tallahassee, Florida.

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Ashley Brunelle  
Hearing Officer  
Suite I, Room 129  
2415 North Monroe Street  
Tallahassee, FL 32303-4190  
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Copies Furnished To: [REDACTED] Petitioner  
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Ms. Patricia Caufman  
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DEPARTMENT OF CHILDREN AND FAMILIES  
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PETITIONER,

APPEAL NO. 24N-00123

Vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 06 Pinellas

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:

B. Maria Carrubba-Fuentes, Esq.  
1302 N. 19th Street, Suite 400, BAY AREA LEGAL SERVICES, INC.  
Tampa, FL 33605  
mfuentes@bals.org & sbuffkin@bals.org

**I HEREBY CERTIFY** that these copies were furnished on March 28, 2025.

/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