

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

[REDACTED]

APPEAL NO. 11N-00047

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED

May 11, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on May 3, 2011, at 11:30 a.m., in [REDACTED], Florida.

APPEARANCES

The petitioner was present and represented herself. The respondent was represented by [REDACTED] attorney.

STATEMENT OF ISSUE

The petitioner is appealing the [REDACTED] February 28, 2011 action of transferring her from the facility, because her needs cannot be met there, and the health and safety of others in the facility is endangered.

PRELIMINARY STATEMENT

The facility gave the petitioner a Nursing Home Transfer and Discharge Notice dated February 28, 2011, informing her that she was being transferred from the facility

because her needs cannot be met there, and the health and safety of others in the facility is endangered.

Present was [REDACTED] the petitioner's health care surrogate. Present from the facility was [REDACTED] C.E.O., [REDACTED] administrator, [REDACTED] director of nursing, [REDACTED] medical operations officer, [REDACTED] physical therapist, and [REDACTED] social worker.

The hearing was rescheduled from April 25, 2011, and moved up from May 9, 2011, at the petitioner's request.

FINDINGS OF FACT

1. The petitioner, date of birth [REDACTED], is 32 years old. She resides at the [REDACTED] in [REDACTED], Florida.
2. The February 28, 2011 Nursing Home Transfer and Discharge Notice states that the petitioner had multiple refusals of care, the use of a power wheelchair, and spittle as weapons, and persistent and prolific accusations, which would lead anybody to believe that the facility cannot meet her needs.
3. The transfer and discharge notice also states that a psychological diagnosis by the staff psychologist cannot be properly addressed due the petitioner's refusal of psychiatric consults and preemptively refusing anticipated medications.
4. There have been incidents in the past when the petitioner spit liquid on a facility's employee, and most recently hitting an employee with her electric wheelchair. [REDACTED] asserted that she was present when this happened, and she hit the employee with her wheelchair hard.

5. The petitioner disagreed asserting that her wheelchair went up against her uniform, and she did not hit her with her wheelchair, however [REDACTED] and [REDACTED] asserted that the employee that was hit with the petitioner's wheelchair was injured, and she filed a worker's compensation claim.

6. The petitioner is refusing care from the facility's psychiatrist unless [REDACTED] is present, and [REDACTED] asserts that the psychiatrist cannot treat the petitioner with [REDACTED] present. The petitioner does agree to consults from an independent psychiatrist not affiliated with the facility.

7. Ms. [REDACTED] asserted that the petitioner had an infection, and according to doctor's orders, she was to go to the hospital to be treated with antibiotics. Mr. [REDACTED] asserted that the petitioner did not have an infection. She was under threat of being Baker Acted if she did not comply, even though she did not need antibiotics or hospitalization. It was reported at the hearing that she went to the hospital the next day.

8. Ms. [REDACTED] asserted that due to the petitioner's past complaints of attempts of sexual assault by different people, one person should not be alone with her at the facility. There are grievance logs completed due to complaints that the petitioner had from November 2009, January 2010, May 2010, August 2010, October 2010, and December 2010.

9. Ms. [REDACTED] asserted that this is a pediatric facility with a license to care for individuals up to age 21. This is not an appropriate facility for the 32 year old petitioner, and that she should be with adults, not living in this setting with children. The petitioner, however, asserted that she wants to stay in this facility.

10. There is a letter dated March 7, 2011 with a fax date of March 10, 2011 from Dr. [REDACTED] stating that, "This is to let you know that when you asked me to sign the discharge order for [REDACTED] I was not aware that nobody told er about it therefore I am rescinding the order that I signed on February 25, 2011."

CONCLUSIONS OF LAW

11. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

12. In accordance with Florida Administrative Code § 65-2.060(1) the burden of proof is assigned to the respondent.

13. In accordance with the Federal Regulations at 42 C.F.R. § 483.12 (a):

(2) *Transfer and discharge requirements.* The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless-

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) 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;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) 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

(vi) The facility ceases to operate.

14. The petitioner, a resident of the [REDACTED] was being discharged from the facility because her needs could no longer be met there, and the health and safety of others in the facility is endangered.

15. There is a letter from [REDACTED] stating that she was rescinding the discharge order that she signed on February 25, 2011. There are typographical and grammatical errors in the letter in evidence. The respondent's representative also objected to this letter due to it being hearsay.

16. According to the doctor in her letter, she was rescinding the order because the petitioner was not told about the discharge. Mr. [REDACTED] explained that the doctor thought that the petitioner knew about the discharge, and that the petitioner was in agreement with it. The doctor did not rescind the discharge due to any of the reasons given on the notice, which are that the petitioner's needs cannot be met, and the health and safety of individuals in the facility is endangered. After careful consideration, it is determined that the discharge notice is still valid.

17. The testimony and evidence presented from the parties is taken into consideration in making a final decision. This includes the petitioner's testimony, and [REDACTED] arguments at the hearing, and in his written statement disagreeing with the transfer. Part of his arguments state that the reasons for the transfer are not true or grossly exaggerated, the facility has not been willing to make reasonable accommodations for the petitioner's needs, and the facility withholds basic care from the petitioner, and often documenting it as her refusal.

18. Also taken into consideration is the information concerning the wheelchair incident, the petitioner spitting liquid on a facility's employee, the accusations from the

petitioner against different parties, the respondent asserting that a psychological diagnosis by the staff psychologist cannot be properly addressed due the petitioner's refusal of psychiatric consults, and preemptively refusing anticipated medications.

19. Also taken into consideration is that this is a pediatric facility with a license to care for individuals up to age 21. The respondent is asserting that this a not an appropriate facility for the 32 year old petitioner, and that she should be with adults, not living in this setting with children.

20. After careful consideration, it is determined that the petitioner would be best served by transferring to a facility that would better treat her needs. It is determined that the action to transfer the petitioner from the facility is upheld.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied, and the Children's Comprehensive Center's action to transfer the petitioner from the facility is affirmed.

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 Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. 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.

FINAL ORDER (Cont.)
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DONE and ORDERED this _____ day of _____, 2011,
in Tallahassee, Florida.

Stuart Imberman
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To:

[REDACTED]