

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

FILED

JAN 08 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00182

FINAL ORDER

An administrative hearing was convened at the _____ nursing facility on December 17, 2009 in Lakeland, Florida. The petitioner was not present. He was represented by _____, Long-Term Care Ombudsman manager, assisted by _____ Ombudsman. Also present on his behalf were _____ family friend; _____, son; and _____, daughter-in-law. The respondent was represented by _____ administrator, with testimony from _____ social service director.

ISSUE

At issue was whether discharge was correct based on safety endangerment of other individuals in the facility. The respondent bears the burden of proof.

FINDINGS OF FACT

1. The petitioner was admitted to _____ nursing facility on September 9, 2009.

2. The petitioner left _____ on November 2, 2009, under Baker Act provisions. He was accepted for admittance to _____ Medical Center hospital. He stayed at the hospital for ten days, with discharge to an assisted living facility in the county.

3. Ombudsman staff and the family would prefer his readmission to the _____. They believe he would be safer at the nursing facility. A hearing was requested.

4. The respondent issued several Nursing Home Transfer and Discharge Notices. Each notice described the reason as "safety of other individuals in this facility is endangered." The first notice (Respondent's Exhibit 1) did not include a physician/designee signature or order. Correction occurred and a second notice (Respondent's Exhibit 2) was issued. It included the doctor's signature. Those notices set November 26, 2009 as the discharge date to a facility in St. Petersburg, Florida.

5. Episodes of agitation, some aggressive behavior, and September 30, 2009 medical orders for care at a 1:1 ratio were documented in Respondent's Exhibit 3. By the end of October, facility staff determined inability to provide care.

6. On November 2, 2009, the respondent issued another Nursing Home Transfer and Discharge Notice (Respondent's Exhibit 4). It set December 1, 2009 as the date of discharge to "_____." _____ is the hospital the petitioner was admitted to under Baker Act procedures. That notice was obviously in error as to discharge date. Involuntary discharge occurred on November 2, 2009, not December 1, 2009.

7. That notice also gave “safety of other individuals ... endangered” as reason for discharge. It further explained: “psychiatric evaluation completed on 11/02/09. Customer is a threat to staff and customers {sic} safety and well-being. Behavioral and pharmacological interventions ineffective. Recommends immediate inpatient hospitalization Baker Act.” Despite the error for the discharge date, it is found that discharge did occur on November 2, 2009, with admission to hospital.

8. While the petitioner was at , intervention occurred and medication was modified (Petitioner's Exhibit 3). The November 12, 2009 LRMC safety assessment said “improvement seems to be attributed to better coping skills, better social support, appropriate therapeutic medication management, therapeutic milieu unit and good outpatient plan.”

CONCLUSIONS OF LAW

Jurisdiction to conduct this hearing is established at federal regulations of 42 C.F.R. § 431.200. Additional regulations at 42 C.F.R. § 483.12 address nursing facility **Admission, transfer and discharge rights** for residents, in relevant part as follows:

(a) Transfer and discharge--

- ...
- (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--
- (iii) The safety of individuals in the facility is endangered;
 - (iv) The health of individuals in the facility would otherwise be endangered;

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs

(a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by--
(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and
(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) Timing of the notice.

(i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section...

The petitioner's family has reasonable concerns about the petitioner's health, welfare, and whereabouts. They want him to live in the safest and best situation. However, with Baker Act admission to the hospital, and hospital acceptance of the petitioner for inpatient care, it is evident the situation rose to a level such that advance notice of discharge was not required. The undersigned has no authority over Baker Act provisions, admissions, and hospital placement or discharge. A DCF hearing officer has no jurisdiction to evaluate or adjudicate the appropriateness of the Baker Act admission, care, and discharge.

It is evident the discharge notices were confusing, especially as to date of discharge, and the initial omission of medical signature. However, with Baker Act admission, a 30-day advance notice is not needed. Moreover, after a ten-day Baker Act hospital stay, and with medically authorized discharge to a less restrictive environment, there is no administrative authority for readmission to While family frustration and dissatisfaction were apparent, this tribunal has no regulatory remedy available.

DECISION

The appeal is denied and the respondent's action 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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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 6th day of January, 2010, in

Tallahassee, Florida.



J.W. Alper

Hearing Officer

Building 5, Room 255

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Tallahassee, FL 32399-0700

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Copies Furnished To:

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