

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

FILED
JAN 05 2010
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 09N-00183

PETITIONER,

RESPONDENT.

FINAL ORDER

An administrative hearing was convened before the undersigned at 11:30 a.m. on December 17, 2009 at the _____ nursing facility. The petitioner did not attend, but was represented by his son, _____. The respondent was represented by _____ administrator, with testimony available from _____ social service director.

ISSUE

At issue was whether intent to discharge was correct due to facility inability to meet needs of the petitioner. The respondent has the burden of proof.

FINDINGS OF FACT

- 1) The petitioner entered _____ r on November 1, 2005. Need for nursing care is undisputed.
- 2) On October 30, 2009, the facility issued discharge notice, with intent to discharge November 28, 2009. Reason cited was "needs cannot be met..."

3) Upon initial review by the undersigned, medical authorization for discharge was not evident. The hearing was not scheduled and the critical defect was noted in a preliminary order. On November 19, 2009, the defect was corrected and the medical director (a physician) signed the notice. That remedied the flaw and the hearing was scheduled.

4) As of date of hearing, the petitioner remained at the facility and facility staff continued with intent to discharge. The respondent's discharge plan was to relocate the petitioner to a more secure facility that would have a locked unit. The notice reflected such a facility.

5) The family would prefer an alternate location that would be easier for the son to visit. The family would also prefer a higher rated facility.

6) Over the past year, behavior of the petitioner has been a concern (Respondent's Exhibit 2). In April 2009, the petitioner was found in another patient's room. In May 2009, following a medication decrease, the petitioner began "hitting & yelling at staff." He also continued to enter others' rooms. The medication resumed. Agitation and combative behavior progressed through the fall. In September, the medical progress note said, "suspect due to behaviors will require locked unit in near future. behaviors continuing & worsening..." By mid September, 1:1 care or locked unit was an anticipated care need. On October 24, 2009, 1:1 continuous observation was ordered as a means of controlling the adverse behaviors. As of hearing, it remained in place.

7) The petitioner receives hospice care. However, hospice, family, and volunteers do not provide the 1:1 coverage throughout the day. Facility staff members provide it.

CONCLUSIONS OF LAW

Jurisdiction to conduct this hearing are assigned to the Department by federal regulations appearing at 42 C.F.R. § 431.200. Additionally, transfer and discharge is addressed at 42 C.F.R. § 483.12 stating in relevant part:

(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...

(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. ...

(3) Contents of the notice. The written notice specified in paragraph (a)(4) 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...

Based on all evidence and testimony, it is concluded the current facility cannot adequately meet the individual care needs of the petitioner, as described in the notice. Discharge to a more secure facility would be appropriate, as also set forth in the notice under challenge. Due to wandering and behavior concerns, another location that provides greater security is not only preferable, it is needed for proper care of the petitioner. (It is recognized that the initial discharge notice was defective. However, as of date of hearing, the problem was corrected and discharge had not yet occurred, so the defect was no longer significant.)

While the family might prefer a closer location, more time to make arrangements, and would prefer certain other aspects of favorable placement, such are not controlling factors under regulation. Upon careful review of all facts and regulatory guidelines, if the location for intended discharge has a secure section and is appropriately licensed, such a location would be a permissible location for discharge. Therefore, it is concluded that intent to discharge is justified.

DECISION

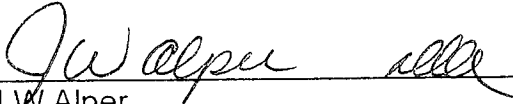
The appeal is denied and the discharge notice is upheld.

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.

DONE and ORDERED this 6th day of January, 2010, in

Tallahassee, Florida.



J W Alper
Hearing Officer
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Copies Furnished To: