

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

[REDACTED]

APPEAL NO. 10N-00201

PETITIONER,

Vs.

FILED

Mar 2, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above referenced matter on February 2, 2011, at 2:55 p.m., in [REDACTED] Florida.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED], administrator.

**STATEMENT OF ISSUE**

The respondent notified the petitioner that he was to be discharged from the facility for the following reason: "Your health has improved sufficiently so that you no longer need the services provided by this facility." The respondent will have the burden of proof to establish by clear and convincing evidence that the discharge was in compliance with the requirements of 42 C.F.R. § 483.12 and FS 400.0255.

### **PRELIMINARY STATEMENT**

By way of notice dated November 17, 2010, the respondent informed the petitioner that he would be discharged from their facility, as his health had sufficiently improved.

Present as witnesses for the facility were [REDACTED] clinical director, and [REDACTED] [REDACTED] social services director. Present as a witness for the petitioner was [REDACTED] [REDACTED] ombudsman. This hearing was originally scheduled for January 12, 2011, but was continued at the request of the petitioner.

### **FINDINGS OF FACT**

1. The petitioner has been a resident of [REDACTED] since his discharge from [REDACTED] Hospital on July 23, 2010.
2. When the petitioner was admitted to the facility he was in need of nursing care. The Notification of Level of Care completed by the Department of Elder Affairs' Comprehensive Assessment and Review for Long Term Care Services (CARES) medical team, effective July 23, 2010, indicates the placement in skilled nursing care was a temporary arrangement (Respondent's Exhibit 2).
3. The petitioner at the time required medical care due to multiple medical problems. The facility determined in November 2010 that the petitioner no longer was in need of the nursing home services.
4. The facility notified the petitioner on or about November 17, 2010 that he was to be discharged by December 17, 2010. The discharge location was [REDACTED]



10. The Code of Federal Regulations at 42 C.F.R. § 483.12 sets forth reasons for which a resident may be discharged, and states in part:

(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— ... (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; ...

(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; ...

11. Fla. Stat. 400.0255, Resident transfer or discharge; requirements and procedures; hearings, reiterates the federal regulation and in addition 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...

(10)(a) A resident is entitled to a fair hearing to challenge a facility's proposed transfer or discharge. The resident, or the resident's legal representative or designee, may request a hearing at any time within 90 days after the resident's receipt of the facility's notice of the proposed discharge or transfer.

(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

12. One of the reasons listed in the federal regulation for allowing a facility to transfer a resident is when the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

13. The facility has indicated that the petitioner's health has improved sufficiently, where he no longer needs skilled nursing care. The Notification of Level of Care completed by the CARES unit indicates the placement in skilled nursing care was a temporary arrangement. Additionally, the facility's physician has signed the discharge notice agreeing the petitioner should be discharged from the facility, because his health has sufficiently improved and no longer requires skilled nursing services.

14. Based on the evidence and the controlling authorities set forth above, the hearing officer concludes that the facility's action to discharge the petitioner is appropriate. The petitioner's health has improved sufficiently for him to be discharged from the nursing facility.

15. The facility has met its burden of proof as the evidence indicates the resident does not need the skilled services provided by the facility. The respondent may continue its discharge action.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the facility's action 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 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 \_\_\_\_\_, 2011,

in Tallahassee, Florida.

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Copies Furnished To:

[REDACTED]