

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

[REDACTED]

APPEAL NO. 10N-00213

PETITIONER,

Vs.

[REDACTED]

FILED
Mar 18, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on February 10, 2011, at 2:58 p.m., at [REDACTED], in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED] district long term care ombudsman manager

For the Respondent: [REDACTED] administrator

ISSUE

The respondent will have the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice dated December 17, 2010 is in accordance with the requirements of Code of Federal Regulation at 42 C.F.R. § 483.12(a)(2)(iii): "The safety of individuals in the facility is endangered".

PRELIMINARY STATEMENT

By notice dated December 17, 2010, the facility informed the petitioner that she was to be discharged. On December 21, 2010 the petitioner timely requested a hearing to challenge the discharge.

The petitioner, district long term care ombudsman manager and the administrator appeared in person. Witnesses for respondent were [REDACTED] social services director, [REDACTED], PhD., and [REDACTED], director of nursing who appeared in person. [REDACTED], administrator-in-training, and [REDACTED] ombudsman, were observing.

FINDINGS OF FACT

1. The petitioner is a resident at the facility. She ambulates with the use of a wheelchair.
2. The respondent documented incidents of the petitioner's behavior in the petitioner's medical record. Prior to September 2010, the petitioner's medical record was documented with incidents in which the petitioner was verbally abusive, calling the staff names and making derogatory remarks to staff and residents. On September 21, 2010, the medical record was documented as the petitioner was verbally abusive, calling the staff names and making derogatory remarks. On September 27, 2010, the petitioner's roommate was assisting the petitioner with a transfer, at the request of the petitioner. On October 19, 2010, the medical record was documented as the petitioner was verbally abusive, calling the staff names and making derogatory remarks. The medical record was also documented that the family of the petitioner's last roommate

requested that the roommate be moved as the family thought the petitioner was yelling at the roommate.

3. The facility gave the petitioner a Nursing Home Transfer and Discharge Notice on December 17, 2010. The reason for discharge indicated in the notice was the safety of individuals in the facility was endangered. The notice was signed by the administrator and the petitioner's treating physician, [REDACTED] M.D.

4. [REDACTED], Ph.D., is the petitioner's treating psychologist. The petitioner is seeing Dr. [REDACTED] twice a week. Dr. [REDACTED] evaluated the petitioner on November 12, 2010. His notes were entered into the petitioner's medical record. Dr. [REDACTED] indicated as follows. The petitioner has severe anger control issues. The petitioner could control her anger, but she chooses not to. The petitioner has threatened others in the facility, with physical harm. The petitioner appears to be verbally abusive, not physically abusive. Dr. [REDACTED] opined that that the petitioner's emotional abusive causes emotion harm to others in the facility, the petitioner is unaware that her comments are a threat, her anger and explosive episodes are willful behavior, and the petitioner would benefit from additional psychiatric services that are not available at this facility. Dr. [REDACTED] asserted that he is concerned for the safety of staff and residents. Dr. [REDACTED] does not work for the facility. He is unpaid for the services he provides to the residents.

5. The administrator asserted as follows. The facility is unable to put a roommate in the petitioner room after the evaluation of the petitioner by Dr. [REDACTED]. The other facility recommended as the discharge location has psychiatric services available for which the petitioner could see a psychiatrist three times a week. The petitioner's behavior causes stress to the staff, as the petitioner yells at the staff and causes fear.

6. The director of nursing asserted that the petitioner's request to have her roommate transfer the petitioner was a safety issue for both the petitioner and the roommate. As the roommate is not trained in transferring, both the petitioner and the roommate could be injured and there is the issue of infection control.

7. The petitioner admitted to having a temper, and swearing and yelling at staff and residents. She asserted that she swears and yells out of frustration.

8. The district long term care ombudsman manager opined that the petitioner does not present a physical threat to the staff or other residents. The petitioner's seeking help from a roommate was not an intentional risk.

CONCLUSIONS OF LAW

9. Federal Regulation limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case the petitioner was sent notice indicating that he would be discharged from the facility in accordance with of Code of Federal Regulation at 42 C.F.R. § 483.12(a)(2)(iii): "The safety of individuals in the facility is endangered."

10. The facility has documented the petitioner medical record which demonstrated the petitioner's verbally abusive behavior, their action to maintain the petitioner's room as a private room, intervention by referral to the psychologist, and the evaluation of the psychologist.

11. The hearing officer gives weight to the opinion of the treating physicians and psychologists. The treating physician's signature on the discharge notice indicates that the petitioner's treating physician concurred with the discharge, the reason for

discharge, and the discharge location. There is no evidence by statement of the treating physician that the move would be detrimental to the petitioner's health.

12. The petitioner's treating psychologist opined that that the petitioner's verbal abuse causes emotion harm to others in the facility, the petitioner is unaware that her comments are a threat, her anger and explosive episodes are willful behavior, and the petitioner would benefit from additional psychiatric services that are not available at this facility. He expressed concern for the safety of staff and residents.

13. The hearing officer concludes that the opinion of the treating physician and psychologist are that the petitioner's behavior endangers others in the facility. The hearing officer concludes that the facility's action to discharge the petitioner is correct and in accordance with Federal Regulations.

DECISION

This appeal is denied as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The facility may proceed with the discharge, as determined by the treating physician and in accordance with applicable Agency for Health Care Administration requirements.

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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