

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

[REDACTED]

APPEAL NO. 11N-00012

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED

April 26, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter at the nursing facility on March 10, 2011, at 11:17 a.m., in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED] Nursing Home Administrator of the facility

STATEMENT OF ISSUE

At issue is the discharge notice issued by the facility on January 31, 2011, stating, "...Your health has improved sufficiently so that you no longer need the services provided by this facility..."

PRELIMINARY STATEMENT

By notice dated January 31, 2011, the nursing home informed the petitioner of her transfer to [REDACTED] (ALF), effective March 2, 2011.

Present for the petitioner was [REDACTED], District Nursing Home Ombudsman Manager and [REDACTED], mother of the petitioner.

Present for the facility was [REDACTED] Director of Nursing, [REDACTED] Assistant Director of Nursing, [REDACTED], Social Services Director and [REDACTED] [REDACTED] Rehabilitative Director of Physical Therapy.

All parties appeared in person.

Entered into evidence was Respondent Exhibit 1.

FINDINGS OF FACT

1. The petitioner is a current resident of the facility due to injuries she sustained from an automobile accident. The petitioner has received rehabilitative services until she refused the services.
2. The facility notified the petitioner verbally of her discharged and transferred to an ALF.
3. The petitioner requested a fair hearing on January 27, 2011 indicating she did not receive a written notice of discharge.

4. By notice dated January 31, 2011, the facility notified the petitioner she was to be discharged by March 2, 2011. The discharge location was indicated as "[REDACTED]" This location is an ALF and is located in [REDACTED] Florida. Currently the petitioner resides at [REDACTED].

5. The discharge notice was signed by the petitioner's treating physician. The notice indicated and cited as the reason for discharge; "...*Your health has improved sufficiently so that you no longer need the services provided by this facility...*" The Notice also indicated as an explanation to support this action, the resident's needs can be met at an ALF.

6. The respondent testified the petitioner has met her physical therapy requirements and is no longer in need of the services of a skilled center.

7. The respondent testified assistance has been provided to the petitioner in locating an ALF of her choosing. The respondent explains the petitioner has visited several facilities and does not wish to reside with them but on her own.

8. The petitioner does not currently have an apartment ready to move into due to her financial situation.

9. The respondent also indicated that after the petitioner met her physical therapy requirements she has not been attending treatments or progressing. The respondent suggested an ALF would help with her independence prior to her moving in to her own apartment.

10. The petitioner's representative indicated the hearing was requested due to the lack of a written notice from the nursing home prior to her discharge and the desire of the petitioner not to move to an ALF is not the issue.

11. The respondent instituted the discharge procedures against the petitioner.

CONCLUSIONS OF LAW

12. 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.

13. 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:

(2)(a) 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; ...

14. The Code of Federal Regulations at 42 C.F.R. § 483.12(a)(2) sets forth reasons for which a resident may be discharged, and states in part:

(iii) The safety of individuals in the facility is endangered...
This regulation continues and states in part:

(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... (6) *Contents of the notice.* The written notice specified in paragraph (a)(4) of this section must include the following: ... (iii) The location to which the resident is transferred or discharged...

15. Based on the above governing authorities, 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. As shown in the Findings of Fact, the facility notified the petitioner on or

about January 31, 2011 that she was to be discharged by March 2, 2011, and transferred to an ALF located in [REDACTED], Florida. The facility has indicated that the petitioner's health has improved and that she no longer needs skilled nursing care. Additionally, the attending physician at the facility has signed the discharge notice agreeing the petitioner should be discharged.

16. The petitioner acknowledges she received and signed the Notice of discharge. The petitioner also agrees she no longer need the assistance of a skill nursing services. The petitioner argues she does not wish to live in an ALF but to remain in the facility or live in an apartment of her own. The petitioner's mother argues the petitioner does not have the finances to obtain an apartment of her own and has nowhere else to go.

17. The respondent contends they have arranged viewings for several ALF of which the petitioner has attended. The respondent explained an ALF is better suited for the petitioner to establish self sufficiency and provide for her current needs. The respondents explained they are unable to allow the petitioner to reside at the skilled facility as space is limited.

18. The hearing officer has taken into consideration all of the petitioner's arguments and concerns. However, there is nothing in the above controlling authorities that permits an individual to remain in a skilled nursing facility due to not having financial means or their refusal to reside in an ALF settings.

19. Based on the evidence, the federal regulations and all appropriate authorities set forth in the findings above, the hearing officer concludes that the facility's action to discharge the petitioner is appropriate as the petitioner is no longer in need of the skilled

nursing services of the facility. The facility has met its burden of proof and is in compliance with the appropriate federal regulation noted above for the discharge.

DECISION

This appeal is denied and the facility's action 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.

Ida Smith
Hearing Officer
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