

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

[REDACTED]

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

APPEAL NO. 11N-00077

FILED

JULY 6, 2011

OFFICE OF APPEAL HEARINGS
DEPARTMENT OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, an administrative hearing was convened at 12:55 p.m. on May 20, 2011 at the nursing facility.

APPEARANCES

For the petitioner: The petitioner represented himself.

For the respondent: The respondent was represented by [REDACTED], administrator. Appearing as respondent's witnesses were: [REDACTED], director of nurses; [REDACTED] RN, risk manager; [REDACTED], social service director.

ISSUE

At issue was whether the petitioner's health had improved sufficiently such that he no longer needed the services provided by the facility.

PRELIMINARY STATEMENT

On April 1, 2011 the respondent issued a Nursing Home Transfer and Discharge Notice to be effective on May 1, 2011. Reason for discharge was stated as: "health has

improved sufficiently so that you no longer need the services provided by this facility.”

In accord with requirements of the form, as stated on the form, the physician signed the discharge notice. The petitioner timely appealed.

Petitioner's Exhibit 1 and Respondent's Exhibit 1 were submitted. The hearing record was left open at petitioner's request in the event he cared to make further written comments. Such was not necessary and was not received.

FINDINGS OF FACT

1. The petitioner was admitted to the nursing facility in March 2010, following a hospital stay. His date of birth is [REDACTED].

2. While at the nursing facility he received physical therapy, speech therapy, occupational therapy, and restorative nursing services as well as physician plus psychological care.

3. As of April 1, 2011, health problems shown in progress notes included chronic obstructive pulmonary disorder, anxiety, seizure disorder, pain, hepatitis C, muscle weakness. He was alert, oriented and capable of communicating. Blood pressure was 132/72 and weight was 139 pounds. He could dress and feed himself, and was mobile with a wheel chair or walker (250 feet). He was continent and could perform his own hygiene chores. His strength had improved to 4/5 and he had good range of motion. He occasionally left the facility to attend to personal functions.

4. On April 1, 2011 the facility issued him a discharge notice, signed by the physician, authorizing discharge to self care. Psychological progress notes of March showed “fair” level of global assessment of functioning and “fair” insight/judgment. His

progress was shown as marginally satisfactory. The notes showed alternate placement was being sought and that the petitioner wanted to leave.

5. The petitioner does not believe he is capable of self-care and he does not know how he could pay for a place to live. He had checked an assisted living facility (ALF) but could not afford it. He needs pain medication and reported his walking was very limited to 5 – 7 steps at a time. He reported pain with walking. He would prefer greater capability with walking, talking and strength skills before he leaves the facility. The federal government determined he was disabled and he has received Social Security for about 20 years.

6. The respondent noted that discharge to unsafe location was not appropriate and all efforts would continue toward locating an acceptable alternative.

CONCLUSIONS OF LAW

7. Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Florida Statute 400.0255 addresses “Resident transfer or discharge; requirement and procedures; hearing...” and section (15) (b) informs that the burden of proof is on the respondent with a standard of clear and convincing evidence.

8. Federal regulations limit the reasons for which discharge may occur and in this situation, health improvement was the sole reason. Relevant to this problem is 42.

C.F.R. § 483.12 informing as follows:

Admission, transfer and discharge rights.

(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—

...

(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 ...

(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.

(6) 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;

This federal regulation addresses the situation at hand. The respondent seeks to discharge due to health improvement with doctor's authorization to discharge.

9. The evidence and testimony have been carefully studied. The petitioner's apprehensions and anxiety are understandable. However, the evidence demonstrated significant health improvement such that skilled nursing home placement was contra-indicated. The petitioner has the mobility and capability skills to take care of himself at a less restrictive location. Need for skilled nursing care has decreased to the point that an alternate location is correct. Physician authorization for skilled nursing care has been replaced by physician authorization to self care. In this situation, it cannot be concluded that continued placement at a skilled nursing facility would be proper.

10. It is concluded that discharge has been supported by evidence and regulations. The petitioner can attend to his own needs at an alternate and less skilled facility. His health improved such that he no longer needs skilled nursing service at an inpatient location. Discharge to a less skilled but safe location has been justified.

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 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.

J W Alper
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED], Petitioner
[REDACTED] Respondent
Robert Dickson, Agency for Health Care Administration