

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

[REDACTED]

APPEAL NO. 11N-00212

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned on February 15, 2012 at 2:14 p.m. at the [REDACTED] [REDACTED] located in [REDACTED] Florida.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: [REDACTED] administrator.

ISSUE

At issue is whether discharge intent was correct based on the needs cannot be met in this facility, which is a non-smoking facility. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. § 483.12 (a) and Section 400.0255, Florida Statutes (2010).

PRELIMINARY STATEMENT

By notice dated December 13, 2011, the respondent informed the petitioner that it was seeking to discharge/transfer her from its facility because her needs could not be met in the facility, her health has improved sufficiently so that she no longer needs the services provided by this facility, the health of others in the facility are endangered, and the safety of others in the facility are endangered.

On December 21, 2011, the petitioner timely requested a hearing on the matter and continues to reside at the facility pending the outcome of the hearing.

Present as a witness for the respondent was [REDACTED] social services director.

FINDINGS OF FACT

1. The petitioner was admitted into the facility on November 4, 2008 with a history of drug-seeking behavior and non-compliance with treatment.
2. On December 13, 2011, the facility issued petitioner a Nursing Home Transfer and Discharge Notice (AHCA Form 3120-002 Revised May '01) advising her that the effective date of the transfer was December 13, 2011. The reasons cited were "Your needs cannot be met in this facility", "Your health has improved sufficiently so that you no longer need the services provided by this facility", "The health of other individuals in this facility is endangered", and "The safety of other individuals in this facility is endangered." Petitioner continues to reside at the facility pending the outcome of the hearing.

3. Attached to the notice is a letter from the attending physician, [REDACTED]

[REDACTED] MD, who writes:

As attending physician for [REDACTED], I am supportive of her discharge, due to the fact that she has had multiple incidents of not following facility policy and procedures inclusive of but not limited to obtaining meds from non approved physicians/sources....It is my recommendation to issue a 30 day discharge notice to this resident. I feel she would be more appropriately placed in a community setting.

4. The Notice was signed by the Administrator on November 13, 2011. The petitioner refused to sign the notice; this was observed by two witnesses who signed the notice. The Nursing Home Transfer and Discharge Notice was signed by the petitioner's attending physician (Respondent Exhibit 1).

5. Respondent Exhibit 1 includes Agency for Health Care Administration (AHCA) Form 3020-0017 February 2008, Federal Immediate/5-Day Report which documented an alleged incident that occurred on December 7, 2011 between the petitioner and another resident, who reportedly was snoring. Report indicates that a facility employee observed the petitioner standing over the other resident's bed and shaking the resident while yelling, "You are keeping me up." The report states further that when petitioner noticed employee standing in the doorway, she turned and closed the door. When the nurse and employee questioned the petitioner, she stated that she had been in her bed all night. An investigation was completed and the allegation of abuse was found to be substantiated and the facility planned for the petitioner's discharge to a more appropriate placement. Respondent submitted progress notes dated December 7, 2011

which states the petitioner explained that she had tripped over a table and was pulling herself up by using the roommate's bed.

6. Petitioner's testimony is that she is not here to argue about the discharge from the facility but is requesting more time to find independent living. It is the petitioner's contention that she began asking for assistance from the respondent to help her find a place to live after her discharge from the facility. The petitioner argues that she does not condone physical violence. The petitioner disputes the respondent's version of the incident that occurred on December 7, 2011. It is the petitioner's testimony that she woke up from a deep sleep due to being unable to breathe and that her left foot got caught on the edge of her bed, and that she grabbed the resident's bedrail to catch her fall. Petitioner argues that she has not had any altercations with facility staff or residents and that she gets along well with her former roommates.

7. It is the respondent's testimony that the petitioner is not complying with treatment plans and obtains medication that her physician has not authorized for her to take. Respondent Exhibit 2 contains the IPC Geriatric Psychiatry Follow-Up dated April 15, 2011 from physician, [REDACTED], MD, and it consists of notes under the section "Reason for Consultation: Anxiety" which state, "Pt also has extensive noncompliance with treatment and dependence. She has a history of extensive noncompliance with treatment and follow-ups with her pain physician as well as her primary care physician." [REDACTED] discharge September 2008). September 1, 2011 contains progress notes entry, "She continues to present with repetitive complaints and concerns. She also has behaviors of hoarding her belongings. Staff continues to try to

encourage her to keep only belongings she needs.” September 27, 2011 progress notes states,

Yesterday it was noted that resident had visited a pain clinic and received a prescription for Klonopin which she filled at the Winn Dixie pharmacy. DON confronted resident and MD notified. MD proceeded to decrease Xanax due to resident taking Klonopin. Klonopin was removed from resident's possession. This am when speaking with LCSW, resident presented as having withdrawal syndromes. Nursing attempted to send resident out to hospital to assist with withdrawals and stabilization however she refused....stated that she knows what works for her and that the Klonopin and Xanax works best for her. SSD offered resident to go to Riverpoint Behavioral Health for detox and stabilization. Resident refused to go stating that she doesn't have a drug abuse problem and she needs her medications (the Klonopin and Xanax) and she'd be fine. SSD explained that was the physician's decision and that it would be addressed with him.

8. Progress notes signed by registered nurse for September 26, 2011 states, “Resident was found with a RX for Clonipine in room prescribed by a pain clinic that resident was getting filled out in town. Contacted PA who changed RX for Xanax...PA advised this is the 3rd time resident has been caught with outside meds in room.”

Progress notes signed by registered nurse dated September 27, 2011 states, “Received n/o for pt. [REDACTED] to send resident to [REDACTED] for possible withdrawal symptoms of medication. Informed resident that she has to be sent out to [REDACTED] Hospital...F.V.S...172/108. Called report to [REDACTED] Hospital and called ambulance for transportation...Resident refused to go when pick-up by ambulance.”

9. On September 27, 2011, the physician sent order to Baker Act the petitioner. Petitioner was transported by Jacksonville Sheriff's Office (JSO) to the Mental Health Rehabilitation Center. Respondent's testimony is that two police officers came to

investigate and it was determined that the petitioner did not meet the criteria for the Baker Act.

10. Petitioner disputes that she overdosed on Klonopine and that she took the medication twice a day as prescribed. It is the petitioner's testimony that she was examined by health professionals and was told that she did not need to go to the emergency room.

11. It is the respondent's testimony that the petitioner does well with her assistance with daily living skills (ADLs) and that the facility is no longer appropriate for her. Registered nurse writes in the petitioner's progress notes dated September 29, 2011 that, "Resident alert and oriented...ambulatory, uses walker. Bladder and bowel continent. Needs minimal assist with ADL's." Progress notes dated November 22, 2011 quarterly care plan review states petitioner, "remains alert and oriented and able to make all of her needs and concerns known to staff. She continues to require min. assist with ADL's and personal hygiene."

12. The respondent's testimony is that the petitioner wishes discharge to the home of her daughter, who lives in [REDACTED] [REDACTED] Respondent Exhibit 2 includes progress notes dated February 15, 2012 which states, "SSD also contacted [REDACTED] who stated resident had been there in the past and is welcome to return..."

13. The petitioner would like to live in an independent living apartment and not an assisted living facility and believes the respondent is not assisting her in finding

housing. The respondent's position is that they have been trying to help find housing but the petitioner refuses the help.

CONCLUSIONS OF LAW

14. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to s. 400.0255(15), Fla. Stat. In accordance with that section this order is the final administrative decision of the Department of Children and Families.

15. Federal Regulations appearing 42 C.F.R. § 483.12, sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(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--

- (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;
- (v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
- (vi) The facility ceases to operate.

16. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing.--, informs at (15) (b) that the burden of proof must be clear and convincing evidence.

17. Based on the evidence presented, including the attending physician's order, the nursing facility has established that the petitioner's needs cannot be met by facility, her health has improved sufficiently so that she no longer need the services provided by this facility, and the safety of others in the facility are endangered. These are three of the six reasons provided in federal regulation (42 C.F.R. § 483.12) for which a nursing facility may involuntarily discharge a resident.

18. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason and requirements of the controlling authorities have been met.

19. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

Based upon the forgoing Findings of Fact and Conclusions, the appeal is denied and the facility may proceed with its proposed discharge in accordance with the Agency for Health Care Administration's rules and regulations.

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 _____ day of _____, 2012,

in Tallahassee, Florida.

Paula Ali
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

FINAL ORDER (Cont.)

11N-00212

PAGE -10

Copies Furnished To: [REDACTED] Petitioner
[REDACTED] Respondent
Agency for Health Care Administration Quality Assurance