

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

[REDACTED]

APPEAL NO. 11N-00035

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FILED
May 20, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 22, 2011, at 1:17 p.m., at [REDACTED] [REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED] Administrator, [REDACTED]

ISSUE

Petitioner [REDACTED] (hereafter "Petitioner") is appealing [REDACTED] [REDACTED] (hereafter "facility" or "Respondent") decision to discharge her because her medical status has improved such that she does not require the skilled level of services provided by their facility.

PRELIMINARY STATEMENT

By notice dated February 22, 2011, the facility informed the Petitioner that she would be discharged from the facility, effective March 22, 2011. On February 22, 2011, the petitioner timely requested a hearing challenging the discharge.

The Petitioner and the facility's representative appeared in person.

Witness for Respondent was [REDACTED] Director of Social Services, who appeared in person.

The Respondent has the burden of proof by clear and convincing evidence that the Petitioner's discharge in the notice dated February 22, 2011 is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. § 483.12(a)(2)(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...".

FINDINGS OF FACT

1. The Petitioner was admitted to the facility on April 21, 2009. The Petitioner's level of care at the time of admission was skilled care. The Petitioner's placement at the time of admission was a nursing home.

2. The Petitioner submitted medical evidence from 2010. The 2010 medical evidence indicated the Petitioner's impairments were dizziness, gait abnormality and sensory ataxia due to peripheral neuropathy. In 2010, the Petitioner was to be evaluated for balance and vertigo, and for an electric wheelchair due to neuropathy and gait disturbance. A consultation on February 3, 2010 indicated Petitioner would require three months of rehabilitation therapy due to imbalance, high risk of falls and declining functional mobility.

3. The CARES (Comprehensive Assessment and Review for Long-Term Care Services) Unit surveyor completed an Annual Survey for the facility on February 16, 2011. The surveyor completed a Statement of Deficiencies and Plan of Correction form. In the form, the surveyor noted that the Petitioner had been seeking discharge since August 31, 2010, and cited the facility, stating the Petitioner should have been discharged from the facility as she was not receiving any skilled care.

4. On February 16, 2011, the facility received a telephone order from the Petitioner's doctor, [REDACTED], M.D. The order stated that Petitioner was to be discharged to the community will all medications within 30 days.

5. On February 17, 2011, Dr. [REDACTED] completed a Patient Transfer and Continuity of Care form. The form indicated that the Petitioner was able to perform her own activities of daily living (ADLs), she was independent with ambulation with an assistive device, she needed intermittent rest, and she was not receiving any skilled care at the facility.

6. The facility issued the Petitioner a Nursing Home Transfer and Discharge Notice on February 22, 2011. The notice stated: "[Petitioner's] medical status has improved. Res. *[sic]* does not require skilled level of services" provided by the facility.

7. On April 5, 2011, the CARES Unit representative issued the Petitioner a Notification of Decision for Nursing Home Transition. The CARES reviewer did not recommend the Petitioner for nursing home placement or Nursing Home Transition Program benefits. The notice stated that the Petitioner was "ready to discharge and is seeking assistance with housing."

8. The Petitioner wants to leave the facility; however, she wants to remain until she feels her rehabilitation is finished. She opined that she is not independent in her ADLs and that she needs breathing treatments, assistance with walking, and help administering her medication.

CONCLUSIONS OF LAW

9. This proceeding is a de novo proceeding pursuant to Florida Administrative Code § 65-2.056.

10. In accordance with Florida Administrative Code § 65-2.060(1) the burden of proof is assigned to the respondent.

11. The Code of Federal Regulations limits 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 she would be discharged from the facility in accordance with the Code of Federal Regulations at 42 C.F.R. § 483.12(a)(2)(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..."

12. The Petitioner met the level of care of skilled nursing when she was admitted to the respondent nursing home in April 2009. The February 3, 2010 consultation indicated the Petitioner would require three months of rehabilitation therapy. That time frame of three months has passed. No current medical evidence was submitted which states Petitioner requires skilled care.

13. In February 2011, the CARES Unit did not recommend nursing home placement for the Petitioner. On February 16, 2011, [REDACTED] ordered the Petitioner be discharged to the community with all medications within 30 days. On February 17, 2011,

██████████ indicated that the petitioner was able to perform her own activities of daily living (ADLs), independent with ambulation with an assistive device, needed intermittent rest, and was not receiving any skilled care. Aside from Petitioner's testimony, there was no evidence which demonstrated that she met a skilled nursing home level of care, required full assistance with all ADLs, or was ordered by a physician to remain in the facility for further rehabilitation.

WHEREFORE, based on the evidence received, the hearing officer concludes the facility has met the burden of proof that the Petitioner's health has sufficiently improved. As the Petitioner's health has sufficiently improved, the Respondent's action to discharge the Petitioner was within the regulations of the program.

DECISION

This appeal is denied as the facility's action to discharge the Petitioner is in accordance with the Code of 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

FINAL ORDER (Cont.)

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any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this _____ day of _____, 2011,

in Tallahassee, Florida.

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