

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

[REDACTED]

PETITIONER,

Vs.
Administrator

[REDACTED]

RESPONDENT.

APPEAL NO. 15N-00001

FILED

MAR 16 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on February 23, 2015 at 9:05 a.m., at [REDACTED] [REDACTED], Florida.

APPEARANCES

[REDACTED] husband, represented the petitioner.

[REDACTED] Nursing Home Administrator (NHA), represented the respondent.

ISSUE

Federal regulations limit the reason for which a Medicaid or Medicare certified nursing home may discharge a patient. At issue is whether or not the nursing home's action to transfer and discharge the petitioner is an appropriate action based on the federal regulations at 42 C. F. R. § 483.12.

The only issue before the hearing officer is whether the discharge was in accordance with federal regulations. Any issues concerning the POA's allegations of improper protocol by facility staff, diagnoses, or treatment the petitioner received while residing at the facility are not within the jurisdiction of the hearing officer..

PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated December 15, 2014, the respondent notified the petitioner she was to be discharged from the facility effective January 14, 2015. On December 16, 2014, the petitioner timely appealed.

██████████ director of nursing (DON), provided additional testimony for the respondent.

Respondent introduced four exhibits, which were accepted into evidence and marked as the Respondent's Exhibits 1 through 4. The record was left open for the petitioner to review Exhibits 2 to 4 and submit a rebuttal statement. The statement was timely received and marked as Petitioner's Exhibit 1 and the record was closed.

No representative from the Agency for Health Care Administration (AHCA) was present. At the request of the undersigned, AHCA conducted an on-site inspection of the facility on February 9, 2015 and found no violations.

FINDINGS OF FACT

1. Petitioner was admitted to the respondent's facility on May 10, 2013.
2. On December 15, 2014, the facility issued a Nursing Home Transfer and Discharge Notice to the petitioner informing her that she was to be discharged from the facility effective January 14, 2015. The Notice is signed by the facility administrator. A physician did not sign it. The reason cited is "Your needs cannot be met in this facility."

The discharge location is [REDACTED] Florida.

(Respondent's Exhibit 1).

3. On December 16, 2014, a hearing was requested.
4. On the evening of January 8, 2015, a physician signed orders for the petitioner to go to the hospital.
5. Shortly after midnight, petitioner was discharged to the hospital where she stayed for an unknown length of stay. Petitioner was informed that his wife was going to the hospital.
6. Upon discharge for the hospital, petitioner went to another facility.
7. She is seeking readmission based on the initial discharge notice issued on December 15, 2014 not containing a physician's signature. On record, petitioner is not challenging the discharge to the hospital, solely the discharge notice of December 15, 2014.
8. At the request of the undersigned, AHCA had reviewed the discharge initiated by the facility through an unannounced visit. Hearing Officer's Exhibit 1 is a letter from AHCA dated February 24, 2015 stating, "Representatives from the Agency for Health Care Administration (AHCA) completed an unannounced visit at North Beach Rehab Center on February 9, 2015. The purpose of the visit was to determine if the facility complied with the requirements of CFR 483.12 in taken action to discharge a resident. Based on interview and facility documentation, it has been determined that there were no violations."

CONCLUSIONS OF LAW

9. 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. The burden of proof is clear and convincing evidence and is assigned to the respondent.

10. 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...

11. Florida Statutes § 400.0255 explains that discharge notices indicating a medical reason for discharge must be signed by the treating physician or facility medical director or include an attached written discharge order. The authority reads in pertinent 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.**
(emphasis added)

12. In this case, the petitioner was issued a discharge notice on December 15, 2014. The notice requires a physician's signature. A medical professional did not sign it and there was no signed order to support it. However, during the pendency of this action, petitioner was discharged to the hospital. While it may have started out as a regular discharge, (with a possibly faulty notice), the respondent's most recent action to discharge the petitioner to the hospital is an intervening event and cannot be ignored. Now that the resident has been discharged, it becomes an admission/re-admission issue.

13. Fla. Stat. § 400.0255 states:

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the period of time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident's legal guardian or representative, and the local ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable.

14. It further states in Fla. Stat. § 400.022, Resident' rights:

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act.

15. Petitioner's husband was notified by telephone that his wife was going to the hospital. Therefore, the discharge was proper and as the petitioner is no longer a resident of the respondent's facility; the issue now becomes admission to the facility. In accordance with Fla. Stat §400.0255 (10)(a), "A resident is entitled to a favor hearing to

challenge a facility's proposed transfer or discharge." The cited authority does not include admission to the fair hearing process; therefore, admission/readmission to the respondent's facility is outside of the hearing officer's jurisdiction. Although the initial notice may have resulted in a different outcome, the subsequent discharge to the hospital would take precedence over the initial reason for discharge.

16. Should the petitioner still have concerns about any of the issues he raised at hearing, not within the jurisdiction of the undersigned, including the complaint of refusal of readmission after a transfer, he may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is dismissed as the undersigned lacks jurisdiction.

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.

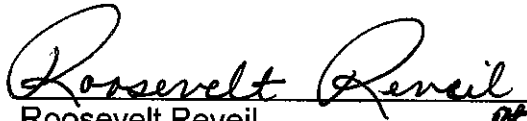
FINAL ORDER (Cont.)

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DONE and ORDERED this 16th day of March, 2015,

in Tallahassee, Florida.



Roosevelt Reveil

Hearing Officer

Building 5, Room 255

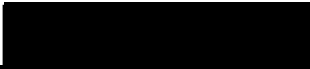
1317 Winewood Boulevard

Tallahassee, FL 32399-0700

Office: 850-488-1429

Fax: 850-487-0662

Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To:  Petitioner

 Respondent

Mr. Harold Williams

Agency for Health Care Administration

