

FILED

AUG 07 2009

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00085

PETITIONER,

Vs.

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 23, 2009, at 9:15 a.m., in Tamarac, Florida. The petitioner was not present. He was represented by his daughters, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. The respondent was represented by \_\_\_\_\_, director of the facility. Also present from the facility was \_\_\_\_\_, director of nursing; \_\_\_\_\_, assistant director of nursing; \_\_\_\_\_, nurse; \_\_\_\_\_, social worker; \_\_\_\_\_, nutritionist; and \_\_\_\_\_, medical data system coordinator.

**ISSUE**

At issue is the \_\_\_\_\_; May 4, 2009 action to discharge the petitioner from the facility, because his needs cannot be met there. The respondent has the burden of proof.

**FINDINGS OF FACT**

1. At the time of the hearing, the petitioner resided at the \_\_\_\_\_, Florida. Included in the evidence is a copy of a Nursing Facility Transfer and Discharge Notice, dated May 4, 2009, stating that the petitioner was being discharged from the facility because his needs cannot be met there.
2. According to the petitioner's daughter, \_\_\_\_\_, at the hearing, she wants him to be discharged from the facility.

**CONCLUSIONS OF LAW**

The jurisdiction to conduct these hearings is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. These hearings differ from most hearings conducted by the Department's hearing staff, as the Department is not a party to the proceedings. The matter is a private dispute between two parties, and not a circumstance where the individual's substantial interest has been affected by the Department's action.

In accordance with the Federal Regulations at 42 C.F.R. § 483.12 (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.

The petitioner, a resident of the \_\_\_\_\_, was being discharged from the facility because his needs could no longer be met there. The findings show that the petitioner's representative agreed to his discharge from the facility. It is therefore determined that the action to discharge the petitioner from the facility is upheld.

### **DECISION**

The appeal is denied, and the \_\_\_\_\_ action to discharge the petitioner from the facility 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.

FINAL ORDER (Cont.)  
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DONE and ORDERED this 7<sup>th</sup> day of August, 2009,

in Tallahassee, Florida.

Stuart Imberman *SI*

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