

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

FILED  
AUG 25 2009  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00093

PETITIONER,

Vs.

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 8, 2009, at 10:15 a.m., in Miami, Florida.

The petitioner was present and represented himself with the assistance of

... District Ombudsman Manager. ... was present on behalf of the petitioner. ... nursing home administrator, represented the respondent. Appearing as witnesses for the facility were ... physician assistant and ... , assistant administrator.

**ISSUE**

At issue is the April 24, 2009 action by the respondent to discharge the petitioner because his health has improved sufficiently so that he no longer needed the services provided by the facility. The respondent will have the

burden of proof that the discharge was in compliance with the requirements of 42 C.F.R. § 483.12.

### FINDINGS OF FACT

1. The petitioner, \_\_\_\_\_ is fifty-seven years old. He entered the nursing facility on October 10, 2003, after a hospital stay, and continues to reside there pending the outcome of this hearing.

2. The petitioner received nursing care at the nursing facility and his health improved. On April 24, 2009, the petitioner's physician authorized the facility to initiate the discharge process for the petitioner as he was found medically ready for discharge.

3. A Nursing Home Transfer and Discharge Notice was issued on April 24, 2009, citing that his health had improved sufficiently so that he no longer needed the services provided by the facility. The petitioner's treating physician's order for discharge was attached to this notice. The petitioner signed the notice on the same day. (Respondent's Exhibit 1)

4. According to the respondent, the petitioner is independent in all of his activities of daily living and requires no assistance. He is able to transfer himself from the chair to the bed and from the bed to the chair. The petitioner does not need any therapy and is not a candidate to be in a nursing home facility as he does not meet the level of care.

5. On April 22, 2009, the CARES unit from the Department of Elder Affairs, which is responsible for determining level of care for the state,

recommended that the petitioner needed Intermediate II care, not skilled care.

(Respondent Composite Exhibit 2)

6. Testimony revealed that the petitioner would be living with his aunt before moving to his own residence.

7. The petitioner explains that he was unfairly accused of dealing drugs and stealing a TV set. He understands that his condition has improved, but believes that the main reason for the discharge was these allegations.

8. \_\_\_\_\_ notes that the effective date of the discharge was the same date the notice was given to the petitioner. \_\_\_\_\_ explains that according to regulation, this date must be at least 30 days from the date the notice is given to the resident.

9. The respondent explains that in this case there is an exception being that the petitioner indicated that he was not interested in an ALF and that he was ready to go.

### **CONCLUSIONS OF LAW**

The Code of Federal Regulations at 42 C.F.R. § 483.12(a)(2) sets forth reasons for which a resident may be discharged, and states in part:

(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; ...

Pursuant to federal guidelines, the nursing facility issued a Nursing Facility Transfer and Discharge Notice to the petitioner on April 24, 2009. The nursing home social worker and the petitioner signed the form. The notice indicated that the petitioner's health has improved sufficiently and that he no longer needs skilled nursing care. As required, a physician's written order was attached. This was signed by Dr. [redacted]. The notice provided a location.

Based on the evidence, the federal regulations and all appropriate authorities set forth in the findings above, the hearing officer concludes that the respondent's proposed action to discharge the petitioner is in accordance with the controlling authorities, as his health has improved sufficiently that he no longer needs the level of the services provided by the facility. No contradictory medical evidence was presented that would dispute Dr. [redacted]' findings.

### **DECISION**

The appeal is denied. The respondent may proceed with the proposed discharge.

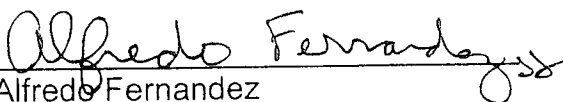
### **NOTICE OF RIGHT TO APPEAL**

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 29<sup>th</sup> day of July, 2009,

in Tallahassee, Florida.



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