

FILED

JUL 24 2009

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00099

PETITIONER,

Vs.

RESPONDENT.

*L. Garton
7/2/09
(Closed)*

RECEIVED

JUL 28 2009

APPEAL HEARINGS

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 2, 2009, at 1:20 p.m., at the respondent facility in Crestview, Florida. The petitioner was present and represented himself. Present on behalf of the petitioner was _____, ombudsman manager, Northwest Florida Long Term Care Ombudsman Committee (LTCOC). The respondent was represented by _____, administrator of the nursing facility. Testifying on behalf of the facility was _____, social worker.

The hearing record was held open until July 16, 2009 to allow the petitioner to submit a proposed order.

ISSUE

The respondent notified the petitioner that he was to be discharged for the following reasons: "Your health has improved sufficiently so that you no longer need the services provided by this facility..." The respondent will have the burden of proof to establish by clear and convincing evidence that the discharge was in compliance with the requirements of 42 C.F.R. § 483.12 and FS 400.0255.

FINDINGS OF FACT

1. The facility notified the petitioner on May 27, 2009 that he was to be discharged by June 27, 2009. The discharge location was given: . This location is an assisted living facility (ALF). Currently, the petitioner continues to reside at the nursing facility. The Discharge Notice was signed by the treating physician that was submitted as part of Respondent Exhibit 1.

2. When the petitioner was admitted to the facility; he was in need of nursing care. He was granted a temporary Level of Care, Intermediate I effective March 16, 2009. The level of care was for a thirty day period. The respondent was to seek alternate placement at an ALF or other less restrictive living arrangement (Respondent's Exhibit 2). The respondent also submitted into evidence as part of Respondent Exhibit 3, copies of Social Service notes and basic assessment tracking forms. The facility currently does not provide the petitioner any skilled nursing care. The petitioner does not require any (nursing) help in getting out of bed; taking baths; taking medication or any of his activities of daily living. The petitioner ambulates in a wheelchair or uses a

walker, but he is able to walk. He is physically fit but benefits from a structured environment.

3. The petitioner believes he continues to require nursing home care because of arthritis on his right side (hip) and left knee and elbow. He was previously incarcerated but was discharged to the nursing facility. There is no court order. He is 65 years old. The petitioner testified that he can feed himself, dress himself but needs help with putting on socks, can bathe himself while sitting in a chair, and takes his medication as provided by the facility. Further, the petitioner has previously been a resident of the facility on two other occasions. When he is discharged his condition worsens and he comes back to the facility.

4. The Respondent's Exhibit 3 indicates the petitioner has a regular diet. He takes thiamine, multivitamin with minerals, docusate sodium for constipation, citalopram for depression, lorazepam for anxiety, acetaminophen as needed for pain, temazepam for insomnia and clonidine for hypertension. The treating physician notes dated May 28, 2009 indicate a history of depression, alcohol abuse, some confusion at times and a dependency on others for his care especially medication and diet control. There are no falls, headaches, chest pain or shortness of breath. He is ambulating quite independently with the use of his walker and aides.

5. The physician authorized his discharge from the skilled nursing facility on May 27, 2009 as evidenced by his signature on the Nursing Home Transfer and Discharge Notice.

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; ...

As shown in the Findings of Fact, the facility notified the petitioner on May 27, 2009 that he was to be discharged by June 27, 2009 to an ALF. The facility has indicated that the petitioner's health has improved and that he no longer needs skilled nursing care. The Notification of Level of Care completed by the CARES unit dated April 8, 2009 indicates the placement in skilled nursing care was a temporary arrangement and good for only a thirty day period. Alternate placement in an ALF was recommended. Additionally, the petitioner's physician at the facility has signed an order agreeing the petitioner should be discharged to an ALF.

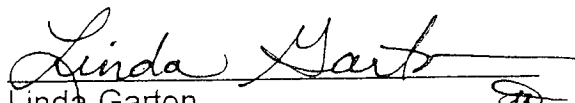
The petitioner argued that he still needs assistance with his daily care, medications and meal preparation. He argued that he has been in the facility at least

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 24th day of July, 2009,

in Tallahassee, Florida.


Linda Garton
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To