

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

FILED

DEC 10 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00157

PETITIONER,

Vs.

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to Notice, an administrative hearing was held before the undersigned hearing officer on December 3, 2009, at 8:05 a.m., in Lake Worth, Florida. The petitioner was not present. Representing the petitioner was \_\_\_\_\_ ombudsman. Representing the respondent was \_\_\_\_\_ administrator. Present as an observer was \_\_\_\_\_, social worker.

**ISSUE**

At issue is whether or not the nursing home's action to transfer/discharge the petitioner is an appropriate action based on the federal regulations found at 42 C.F.R. § 483.12. The nursing home is seeking to transfer the petitioner because his "needs cannot be met in this facility". The nursing home has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner had been transferred from another facility January 2009 to the respondent. Due to a police incident, the petitioner was taken from the facility November 4, 2009 and has not returned since.
2. On September 18, 2009, the facility issued a Nursing Home Transfer and Discharge Notice (which was amended October 9, 2009) to the petitioner who refused to sign the Notice. There was an effective transfer date of October 18, 2009. The Notice indicated the reason for discharge as "your needs cannot be met in this facility".
3. The respondent explains that the petitioner repeatedly failed to insure sanitary conditions in his room (for example cleaning the floor), created a fire hazard with having three lighters in the room (he does not smoke), failed to participate in his wound care treatment, and refuse to care for himself when he had the capacity to do it (for example with his catheter bag).
4. The respondent also explains that the petitioner continually complained about the Haitian staff, refused services, was non-compliant with his medications (refused to take his insulin), was non-compliant with his diet (had blood pressure concerns), and they even had to change physicians.
5. Further, the petitioner would exhibit aggressive behaviors by threatening staff and hitting others

6. When the facility had the petitioner arrested due to the treats November 4, 2009 it was determined that he had an outstanding warrant. Upon his release November 5, 2009 the facility had asked law enforcement to be there when he returned. The following is a partial statement from Sheriff's Office) report when the petitioner arrived:

At about 1320 returned from county jail on a non emergency transportation van. In my present [sic] and demanded his property to be taken outside. I told me that he is afraid, and stated the [sic] he saw his roommate die. I observe to be very aggressive (verbally) towards the staff and while inside the transportation van he repeatedly advised that he wanted to leave property was placed outside with him upon request.

7. The representative explains that there is a violation of the discharge Notice by having the petitioner arrested. He has not been able to contact the petitioner and does specifically know his whereabouts now.

#### CONCLUSIONS OF LAW

**42 C.F.R. § 483.12 Admission, transfer and discharge rights** states in part:

(a) Transfer and discharge--

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(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;

(iii) The safety of individuals in the facility is endangered....

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record

(5) Timing of the notice. (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section....

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged....

Pursuant to federal guidelines, the nursing facility issued a Nursing Home

Transfer and Discharge Notice to the petitioner (who refused to sign it)

September 18, 2009. An amended Notice was issued October 9, 2009 because the physician had not signed the original.

The original was signed by the administrator  
The amended  
copy was signed by the physician

The Notice, as required, indicates the reason for transfer or discharge as "your needs cannot be met in this facility". Subsequent to this reason, there was evidence presented that the petitioner also could have been transferred because the "safety of other individuals in this facility is endangered".

The effective date of the transfer or discharge was given as October 18, 2009. The location to which the petitioner was to be transferred or discharged was given as

All requirements have been met by the facility. The petitioner was transferred to the jail when he became an endangerment to the staff. As noted by the Sergeant, the petitioner did not want to return after he left the jail. In fact he was verbally aggressive.

By refusing to cooperate with the facility staff, the petitioner's needs could no longer be met. And, as noted, the facility staff was threatened and, therefore, their safety was of concern.

#### **DECISION**

The appeal is denied. Pursuant to 42 C.F.R. § 483.12(7), the "facility must provide sufficient preparation and orientation to residents to ensure safe and

orderly transfer or discharge from the facility". However, in this case, the petitioner did not want to return and his whereabouts are unknown.

**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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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 10<sup>th</sup> day of December 2009,

in Tallahassee, Florida.



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