

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

FILED

MAY 01 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00022

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on February 4, 2014, at 2:30 p.m., at [REDACTED] in Cape Coral, Florida.

APPEARANCES

For the Petitioner: [REDACTED] the petitioner's nephew

For the Respondent: [REDACTED] executive director

ISSUE

At issue is the facility's intent to discharge petitioner as it was necessary for the resident's welfare and the resident's needs could not be met in the facility; a Nursing Home Transfer and Discharge Notice was issued on February 4, 2014. The facility has the burden of proof to establish by clear and convincing evidence

that the discharges are appropriate under federal regulations found in

42 C.F.R. §483.12.

PRELIMINARY STATEMENT

On February 10, 2014, the petitioner timely requested a hearing to challenge the discharge.

Witnesses for the respondent appearing in person were [REDACTED] social services, [REDACTED] interim director of nursing, and [REDACTED] regional vice-president.

Helen Faison, Agency for Health Care, health facility evaluator supervisor, was observing.

FINDINGS OF FACT

1. On November 6, 2012, the petitioner was admitted to the respondent's facility. He will be 78 years old on [REDACTED]
2. A physician completed a Certificate of Incapacity. The Certificate of Incapacity was not dated. The physician found that the petitioner was unable to make health care decisions for himself or provide informed consent to medical treatment. It was the physician's medical opinion that there was no reasonable probability that the petitioner would recover competency to make health care decisions.
3. On December 13, 2012, a Behavior Management Care Plan was completed. No problems were indicated. The goal indicated was that the petitioner would not demonstrate behaviors of anxiety, wandering, and repetitive statements.
4. On February 5, 2013, [REDACTED] M.D. signed the Notification of Level of Care. The level of care was indicated as skilled, and the placement recommendation

was temporary nursing facility. The section for "Meets Program Requirements For" for waivers programs, including Assisted Living, was not completed.

5. On April 18, 2013, a nurse observed the petitioner touching another resident inappropriately. The other resident was a female. The incident was noted in the petitioner's file under Interdisciplinary Notes. The facility's corrective action was to check on the petitioner every 15 minutes.

6. On April 18, 2013, the Plan was updated. The problems indicated were socially inappropriate behavior, sexually inappropriate behavior. The interventions were "psych consult", medications per physician orders, encourage resident to attend group activities, redirect inappropriate behaviors as needed, assess for changes in psychosocial status and/or environment, laboratory tests as ordered physician, safety checks, remove distractions, and determine precipitating factors and alleviate.

7. On April 18, 2013, the petitioner had a consultation with [REDACTED] [REDACTED] M.D. The Progress Notes for the petitioner's consultation indicated the petitioner's diagnoses were dementia with sexually inappropriate behavior, anxiety disorder, and depressive disorder. The petitioner reported that he was not touching the female resident's breast; he was straightening out her blanket. The petitioner's medication was increased. The April 20, 2013 Progress Notes follow-up consultation indicated no further behavioral problems noted.

8. On December 29, 2013, a certified nursing assistance observed the petitioner touching another resident inappropriately. His hand was on her lap, rubbing her leg. The other resident was the same female as the one in the previous incident. The facility removed the petitioner; returned him to his room; placed the petitioner on "one-on-one"

(a staff member with the petitioner at all times) supervision; completed an Immediate Report, a Five Day Report, an abuse report for the female resident, and reported the incident to the police.

9. On December 30, 2013, a physician signed an order for "psych consult" for the petitioner.

10. The January 4, 2014 Progress Notes for the consultation indicated the petitioner diagnoses were dementia with behavior problems, anxiety disorder and depressive disorder. It was noted that the petitioner's only previous inappropriate behavior was approximately a year prior. The petitioner's medication was increased. On January 18, 2014, February 7, 2014 and February 20, 2014, the petitioner was seen for follow-up consultations. The petitioner's medication was continued. He remained on "one-on-one" supervision.

11. On January 30, 2014, the facility called the petitioner's nephew to advise him of the discharge. On February 4, 2014, the facility mailed him a Nursing Home Transfer and Discharge Notice. The notice informed the petitioner that the effective date of discharge was March 10, 2014 and the discharge location was [REDACTED]. The reason for the discharge indicated was, "Your needs cannot be met in this facility". The petitioner's physician [REDACTED] M.D. signed the notice.

12. The CNA-ADL Tracking Form for January 2014 indicated the petitioner needed supervisor for eating and bed mobility; limited assistance (staff guiding) with transfers, and physical help with transfer and activity of bathing. The CNA-ADL Tracking Form for February 2014 indicated the petitioner needed supervisor for eating,

limited assistance (staff guiding) with bed mobility, transfer, and toileting, and physical help with transfer and activity of bathing.

13. The facility asserted as follows. The petitioner can do most activities such as transferring, toileting, eating, and personal care, and he can dress himself. The petitioner's Level of Care was temporary nursing facility. The petitioner's health has improved that he no longer needs a level of care of a nursing facility. The discharge was appropriate, as the safety of another resident was endangered; the petitioner no longer required skilled care; the petitioner is appropriate for placement in an assisted living facility; he can care for himself, and the facility can no longer meet his needs. The facility cannot continue to provide one-on-one supervision of the petitioner, as it is an undue burden on the facility as the overdue burden of care for one resident is a detraction from other residents. A new location would be better for the petitioner, as the petitioner has only targeted one resident and has not targeted any other resident.

14. The petitioner's nephew asserted as follows. The petitioner is not independent. He needs assistance with medication, toileting, shaving, and almost everything. He has dementia. He cannot care for himself. He falls. He cannot walk without a cane and sometimes needs a wheelchair. He is getting worse, not better. The facility has met his needs for two years. The facility could have avoided the situation.

CONCLUSIONS OF LAW

15. 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.

16. The Code of 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...

17. The facility did not indicate on the Nursing Home Transfer and Discharge Notice that the reason for the discharge was the safety of other individuals in the facility was endangered. The evidence documents the petitioner's sexually inappropriate behavior and all parties were aware of the petitioner's behavior. However, the hearing officer is limiting the decision to the reason as listed in the notice: the resident's needs cannot be met in the facility.

18. The facility is providing one-on-one supervision based on the petitioner's behavior. One-to-one supervision is not the normal course of business in a nursing facility. The notice was signed by the petitioner's physician, which indicates the physician's medical opinion that the petitioner's needs cannot be met in the facility. In careful review of the cited authority, evidence and testimony, it is concluded that the respondent met their burden of proof at a level of clear and convincing evidence that the facility could not meet petitioner's needs. It is concluded that the facility may proceed with the discharge.

20. Establishing that the reason for a discharge is lawful is just one-step in the discharge process. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge was for a lawful reason. The Agency for Health Care Administration representative observed the proceeding and had a discussion with the facility and the petitioner's nephew after the hearing. (The hearing officer was not present) Should the petitioner have any additional concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

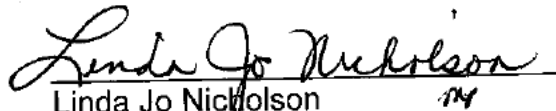
This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The facility may proceed with the discharge in accordance with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements.

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 7th day of May, 2014,

in Tallahassee, Florida.



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Copies Furnished To: [redacted] Petitioner
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