

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HUMAN SERVICES  
APPEALS OFFICE  
600 New London Avenue  
Cranston, Rhode Island 02920  
(401) 462-2132/Fax# (401) 462-0458  
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Docket # 14-1889

Hearing Date: January 13, 2015

Date: February 4, 2015



**ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided in your favor. During the course of the proceeding, the following issue(s) and agency policy reference(s) were the matters before the hearing:

**INVOLUNTARY RELOCATION RESTRICTIONS  
SECTION:0376.40.05.05**

**NF PATIENT APPEAL RIGHTS  
SECTION:0376.40.10**

**TRANSFER DISCHARGE CRITERIA  
SECTION:0376.40.10.05**

**DOCUMENTATION REQUIREMENTS  
SECTION:0376.40.10.10**

**PRE-TRANSFER/ DISCHARGE NOTICE  
SECTION 0376.40.10.15**

The facts of your case, the agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: you (the appellant), your attorney and facility representative Linda Wheeler.

Present at the hearing were you, your attorney, Linda Wheeler, Diane Livingston, Donna Morgan, and Sarah Snell (facility representatives)

**ISSUE: Should the appellant be discharged/transferred from the facility because (1.) He has endangered the safety of individuals in the facility and (2.) He has failed after reasonable and appropriate notice to pay his portion of the fee for his stay at the facility?**

**DHS POLICIES:** Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

#### **DISCUSSION OF THE EVIDENCE:**

##### **The facility representatives testified:**

- The facility admitted the appellant during July 2013. The appellant has a history of entering, uninvited, into other resident's rooms, and going through their belongings without permission.
- The appellant has also not paid the applied income fees owed to the facility under the Medicaid program. The appellant owed \$3838.51 as of the September 29, 2014 notice.
- The facility sent the appellant a Notice of Discharge dated September 29, 2014 notifying him that he would be discharged from the facility on October 29, 2014. (Copy of the notice submitted).
- The notice cites the above history of entering other patient's rooms, initiating a physical confrontation with a staff person, and non-payment of applied incomes.
- The facility representative stated that the appellant's past due applied incomes presently total more than \$5000.00. The appellant is required to pay \$1467.83 per month towards his care at the facility.
- The appellant has continued to enter other patient's rooms even when they have requested that he not enter their rooms.
- She stated that the appellant is very dependent but he often refuses care from staff and at times will not allow staff to enter his room. The appellant regularly leaves the facility by taxi to go out and visit and he does not meet the level of care to be in the facility at this time.

- She stated that the physical confrontation was with a facility staff member and there was also a physical confrontation with a resident in room 104 that was reported to the Department of Health.
- She stated that the physical confrontation with facility staff was an incident with a porter during which the appellant chest bumped the porter and told him to get out of his way. At that time the appellant became very verbal with the administrator when she intervened. The police were called and they spoke with the appellant and the employee due to the physical contact.
- She stated that facility physicians have refused to see the appellant due to his behavior, ambulance drivers have refused to transport him due to his behavior.
- She stated that providing care is difficult when the appellant refuses care and is belligerent to the staff.
- She stated that the facility will provide documentation of the past due applied incomes owed to the facility.

**The appellant testified:**

- The appellant stated that he has never told facility staff not to enter his room. He stated that a facility nurse enters his room twice a day to provide his medication.
- He stated that he had a serious injury about 2 months ago that required anti-biotic. He stated that the doctor was negligent as he never visited him at that time. He stated that he experienced a large gap between his antibiotic medications at that time.
- He stated that about 5 months ago he fell in his room and it took about 20 minutes before the nurse came to see him.
- He stated that he has a history of very high glucose readings and his insulin was not effective. He stated that he asked to consult with the doctor and he eventually had to contact Medicare to get approval for different medication for his high glucose.
- He stated that any physical confrontation was not initiated by him. He stated that he has never entered other patient's rooms without permission. He stated that he recalls one occasion when he was talking to another resident at her doorway when a nurse came by and started to yell at him.
- He stated that there was another incident with his roommate when the facility administrator came into his room and told him not to get involved with his roommate.
- He stated that he is not aware of any incident that occurred involving him going through another patient's belongings.
- He stated that he did not have physical contact with the staff person. The staff person had made a comment about his shoes and they both walked up to each other and he eventually left the building to have a cigarette.
- He stated that the police officer stated that there was no crime committed and he left.
- He stated that when he was first admitted to the facility there was an issue with his Social Security checks. He stated that the checks had not been deposited with the

bank and \$2900.00 was not accounted for. He stated that his understanding is that he has caught up with his bill as of this past April.

**The appellant's representative stated:**

- He stated that the physical confrontation noted in the discharge notice has not been discussed by the facility. He questioned the amount of applied incomes owed to the facility by the appellant and the dates they were incurred.
- He stated that the appellant's income consists of a monthly pension check and his monthly Social Security income.
- He stated that there has been an issue with the appellant's monthly State pension check of \$935.00 that the appellant has not received. The appellant did eventually receive a retroactive Social Security check so that income is no longer an issue.

**FINDINGS OF FACT**

1. The facility notified the appellant on September 29, 2014 that he would be discharged or transferred from the facility by October 29, 2014 because he has endangered the safety of individuals in the facility and the appellant has failed, after reasonable and appropriate notice to pay his portion of the fee for his stay at the facility.
2. The appellant appealed the facility's notice to discharge on October 8, 2014. The appellant notified the DHS Appeals office via DHS 121 NF Request for Hearing Form on October 8, 2014 that he was requesting a fair hearing
3. The appellant filed a timely request for hearing and the facility complied with a timely explanation of their decision.

**SUMMARY:**

The issue to be decided is whether the facility was correct in its decision to discharge the appellant from the facility because he has endangered the safety of individuals in the facility and because he has failed, after reasonable and appropriate notice, to pay his portion of the fee for his stay at the facility?

Review of agency policy determines that the agency permits a patient to be transferred or discharged from a facility when the basis for discharge is that the safety of individuals in the facility is endangered; or the health of individuals in the facility would otherwise be endangered.

Agency policy requires that the resident's physician must document the basis for the transfer or discharge in the resident's clinical record if the health or safety of individuals in the facility would otherwise be endangered. (DHS policy #0376.40.10.10)

The facility did testify to and submit at hearing evidence that the appellant has demonstrated disruptive and disrespectful behavior and on one occasion allegedly endangered the health or safety of another individual in the facility. The facility also submitted subsequent to the hearing verification of the appellant's disruptive behavior, copies of nurse's notes, Behavioral Health Follow-up reports, social service reviews, incident reports, a police report, and staff testimony.

The facility has also submitted documentation that since the appellant was admitted on July 31, 2013 he has not paid applied incomes totaling \$3,838.51 as of September 29, 2014.

The facility did not submit into evidence documentation that the appellant had signed an Admissions Agreement or similar document that makes specific mention of penalty or sanctions imposed for disruptive and unacceptable behavior.

The appellant testified that he has never entered other resident's rooms without permission. He stated that any physical confrontation that occurred was not initiated by him. He stated that he did not have physical contact with a facility staff member. He stated that there has been an issue with his pension and Social Security checks but it is his understanding that the income issue had been resolved.

The appellant submitted a hand written letter to this record subsequent to the hearing in response to the facility plan to discharge him. The appellant submits that due process was not followed by the facility. He submits that since his admission to the facility there have been issues with supplies, medications and appointments. He submits that he was sent for a psychological evaluation and he was cleared of being a threat to himself or others. The letter is mostly illegible but what can be understood is that the appellant denies any ongoing disruptive behavior. He denies the accusations that he has entered other residents rooms without permission. He again denies any physical confrontation with a staff member and points out that the police determined that there was no crime committed.

The appellant's representative submitted a letter on behalf of the appellant in which he cites the Code of Federal Regulations as follows:

42 CFR 483.10 Resident Rights:

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights: (a) Exercise of rights. (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States. (2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights. (b) Notice of rights and services... (4) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive. (d) Free choice. The resident has the right to: (1) Choose a personal attending physician.

The appellant's representative submits that the basis for the appellant's appeal is that he is not a safety threat or danger to any of the residents or employees of Trinity and that Trinity is retaliating against him for exercising his rights as described in the CFR. The appellant has been outspoken about the way he and others are being treated by the facility, including not receiving adequate treatment. He has done this by expressing his concerns at monthly meetings, writing letters to the Department of Health, directly complaining to the administrator and other staff and discussing these issues with other residents of the facility.

The representative submits that since his admission to the facility the appellant has

exercised his right to speak out and make complaints when he did not receive proper supplies. Instead of remedying the situation, the facility sent the appellant for a psychological evaluation and told him if he did not like it there he could go somewhere else. The appellant received a good psychological evaluation that stated he was not a threat to himself or others.

The representative submits that after the appellant intervened on another resident's behalf within 2 or 3 days the appellant received the 30 days discharge notice. The representative submits that this action is a strong inference that the facility retaliated against the appellant for exercising his rights.

The representative submits that at the hearing the administrator stated that the appellant refuses treatment from the facility. The appellant denies this and claims that only occurred on a few occasions. The appellant has the right to refuse treatment per the CFR.

The representative submits that the facility has given the appellant a difficult time because he wants to have his own primary care physician. This is a clear violation of the CFR which clearly states that the appellant has the right to choose his own physician without the threat of retaliation from the facility.

The representative submits that the appellant has only entered the rooms of a few residents and he felt he was invited or wanted to be in those rooms. After going through all the notes provided by the facility the representative submits that he could not find any information to support the allegation that the appellant went through the personal belongings of any residents.

The representative submits that at the hearing the administrator appeared to describe an incident which could potentially be viewed as sexual harassment by the appellant of another resident. However once the notes from the facility were reviewed they show that the incident described by the administrator is not how she described it at the hearing. From the notes it appears that the appellant was looking for a pen and went into the resident's room to ask her for a pen. He allegedly tapped her on the shoulder to wake her up to see if she had a pen. The resident herself stated she did not think anything inappropriate occurred but that she was simply startled. To make this seem more than it was is another example of the facility retaliating against the appellant. The appellant claims that while he was in his room just before this incident occurred, a med tech was outside his room chanting and yelling and as a result he wanted a pen to make a complaint. He then went into the resident's room and she was awake. He never even touched her in any way and any accusation of him touching her is false.

The representative submits that the facility notes contain information about the appellant's interactions with his roommate. After reviewing them this seems to be nothing more than 2 persons that did not get along well and could not remain roommates.

The representative submits that the appellant allegedly had an altercation with another resident in the Wheeler Lounge. The other resident had been verbally taunting the appellant, had become loud and belligerent when the appellant stated to him that we could take this outside. The appellant meant they could take the discussion outside since it appeared it was going to get loud and belligerent. The appellant never threatened physical harm to the other resident. Also the appellant was never informed that he may get a 30 day notice at that time as the facility notes indicate.

The representative submits that in the 30-day notice it states that the appellant had a physical confrontation with a staff member. This did not occur and a review of the police

report and the statement from the staff member himself makes it clear that there was not a physical confrontation, but simply an accidental bumping of the stomachs. Therefore, the social worker's note of May 23, 2014, that the appellant hit a staff member is not accurate. The police made it clear to the appellant that no crime had been committed concerning the incident.

The representative submits that there are other notes and issues the appellant would like to address. On 4-21-14 it states that the appellant accused the business office that they were forging his check. The appellant never accused the office of forging any check.

On 5-12-14 it states that the appellant told the staff that they had to do what he told them. The appellant never made such a statement.

On 8-25-14 it states that the appellant got a resident to sign a release to make him an advocate for that resident and that made the resident upset. The appellant denies forcing a resident to sign a release and that it was voluntary and only after the staff spoke with this resident did it become an issue and being perceived as being forced into signing the release. The appellant also did not force residents to sign statements as is alleged in the 9-4-14 note.

The representative submits that on 9-2-14 the appellant did go into a resident's room because he thought the resident might want to go outside as they had done in the past. He felt he was welcome in the resident's room.

On 9-6-14 the appellant did suffer from shortness of breath and it did take an excessive amount of time for him to be attended to after requesting help. On 9-22-14 it states that the appellant called a CNA sexy and asked her to be his girlfriend. This never occurred.

The representative submits that there was an allegation within the notes that the appellant followed a nurse to her car and made inappropriate comments to her. The appellant never followed a nurse to her car and has never made any sexually inappropriate comments to a nurse or asked questions about their private life.

The representative submits that the appellant is aware of 3 residents that have committed assault and have remained at the facility. One resident assaulted an employee of the facility, another resident got into a physical confrontation with another resident, and one resident threatened to hit the appellant with the cane he had raised above his head in front of the appellant.

The representative submits that the appellant suffered a back injury and a laceration on his leg which became infected. He did not receive the proper medical treatment for these injuries as the staff often would not examine him or make sure he had the proper medication to deal with these issues. The physician, Dr. Khan, also stated to a nurse that he was not to be called on his cell phone to deal with issues the appellant may have been having.

The representative submits that an incident occurred where the appellant's medicine was dropped on the floor. The nurse at the time picked up the medicine and put it back into the cup. When the appellant went to take the medicine a plastic cap from a syringe needle (for his insulin shot) had been placed in the cup. The appellant almost swallowed this cap which could have been serious if not fatal had he swallowed it. This was at best gross negligence.

The representative submits that as for the monetary issue the appellant is still due \$935.00 from the State for January 2014. This monetary issue appears to have been thrown in by the facility and it really did not play a role in issuing the appellant a 30 day notice. It is the appellant's belief that there are other residents that are also not up to date on the rent and they have not been issued 30 day notices.

The representative submits that despite some of the issues described above and the appellant's complaints against the facility, the appellant does for the most part like residing at the facility and wants to remain a resident there.

The representative submits in summary, most of the allegations made against the appellant by the facility are false or distorted. None of them rise to the level as to pose a safety risk to the residents, the staff or the appellant even considering the notes provided are accurate. The real motivation for the facility issuing the appellant a 30-day notice is him exercising his rights under the CFR by making legitimate complaints about the care he and others were receiving at the facility. The facility's 30 day notice should be revoked and the appellant should be allowed to remain a resident at the facility.

### **CONCLUSION:**

Regarding the facility reason for discharge due to the appellant's failure, after reasonable and appropriate notice to pay his portion of the fees for his stay at the facility. The facility has provided sufficient documentation to this record to determine that the appellant as of September 29, 2014 had not paid his applied incomes due the facility in the amount of \$3838.51.

Regarding the facility reason for discharge because the appellant has endangered the safety of individuals in the facility. Review of the facility notes submitted subsequent to the hearing determines that there is no document in the clinical record from the appellant's physician indicating that the due to the appellant's behavior the health or safety of individuals in the facility is endangered. As mentioned, agency policy (0376.40.10.10) specifically requires that a resident's physician must document the basis for the resident's transfer or discharge in the resident's clinical record if the health or safety of individual's in the facility would be otherwise endangered. In this matter the facility has not submitted the above-cited documentation from the appellant's physician.

The facility has not provided the required documentation to substantiate its claim that as a result of the appellant's behavior the health and safety of residents and staff is endangered.

The facility and the appellant followed the required agency procedure with regard to discharge notification and subsequent request for fair hearing.

After a careful review of the agency's policies as well as the evidence and testimony given, the Hearing Officer finds that the appellant's request for relief is granted. The facility should continue to work with the Alliance and the appellant to develop a plan that is acceptable to all parties.

**APPEAL RIGHTS (see page #10)**

  
Michael Gorman  
Hearing Officer

**APPENDIX**

Involuntary Relocation Restrictions            0376.40.05.05  
REV: 06/2000

The Nursing Home Resident Protection Amendments of 1999 prohibit the transfer or discharge of residents from a nursing facility as a result of the facility's voluntary withdrawal from participation in the Medicaid Program.

Individuals residing in a nursing facility on the day before the effective date of the facility's withdrawal from MA participation may not be transferred or discharged as a result of the facility's withdrawal. This includes residents receiving MA benefits at the time, as well as individuals who are residents but not yet eligible for MA.

To continue receiving MA payments, the nursing facility must comply with all Title XIX nursing facility requirements related to treating patients residing in the facility in effect at the  
0376.40.05.05  
time of its withdrawal from the program.

Involuntary relocation of a resident patient is permitted when the basis for discharge or transfer is:

- \* to meet the resident's welfare and that welfare cannot be met in the facility;
- \* the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- \* the safety of individuals in the facility is endangered;
- \* the health of individuals in the facility would otherwise be endangered;

Involuntary Relocation Restrictions

0376.40.05.05            3

- \* the resident has failed, after reasonable and

appropriate notice, to pay (or have paid by Medicare or Medical Assistance) for a stay at the facility; or

- \* the facility ceases to operate.

NF Patient Appeal Rights

0376.40.10

REV: 06/1994

Section 1919 (e) (3) of the Social Security Act requires States to provide appeal hearings for all nursing facility residents who wish to challenge their transfers or discharges. By statute, the appeals process cannot be limited to only Medical Assistance eligible nursing facility residents. Therefore, DHS will conduct administrative hearings for any NF resident who wishes to appeal a transfer or discharge from the facility, whether Medical Assistance or Medicare eligible, or private pay.

Transfer Discharge Criteria

0376.40.10.05

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REV: 06/1994

The basis for the transfer or discharge must be documented in the resident's clinical record by the resident's physician if:

- o The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- o 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;
- o The health of individuals in the facility would otherwise be endangered.

Transfer Discharge Criteria

0376.40.10.05

The basis of the transfer or discharge must be documented in the resident's clinical record if the safety of individuals in the facility is endangered.

Each nursing facility must display a notice which identifies the transfer and discharge criteria and informs residents of their appeal rights. The notice should be prominently posted along with the Patient's Bill of Rights.

Documentation Requirements

0376.40.10.10

REV: 06/1994

The basis for the transfer or discharge must be documented in the resident's clinical record by the resident's physician if:

- o The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- o 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;
- o The health of individuals in the facility would otherwise be endangered;

Documentation

Requirements

0376.40.10.10

The basis or transfer or discharge must be documented in the resident's clinical record if the safety of individuals in the facility is endangered.

Each nursing facility must display a notice which identifies the transfer and discharge criteria and informs residents of their appeal rights. The notice should be prominently posted along with the Patient's Bill of Rights.

Pre-Transfer/Discharge

Notice

0376.40.10.15

REV: 06/1994

Before effecting a transfer or discharge of a resident, a nursing facility must:

- o Notify the resident (and, if known, an immediate family member or legal representative of the resident) of the transfer or discharge and of the reasons for the move; and,
- o Record the reasons in the resident's clinical record (including any required documentation).

The nursing facility must notify the resident by use of a PRE-TRANSFER or PRE-DISCHARGE NOTICE (DHS-100NF) at least thirty (30) days in advance of the resident's transfer or discharge. At the time the patient receives the Pre-Transfer or Pre-Discharge Notice,

Pre-Transfer/Discharge

Notice

0376.40.10.15

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s/he receives at the same time a NOTICE OF YOUR TRANSFER AND

DISCHARGE RIGHTS (DHS-200NF) and a copy of REQUEST FOR A HEARING (DHS-121NF).

Thirty (30) day advance notice is not required under the following circumstances:

- o In the event of danger to the safety or health of the individuals in the facility;
- o When the resident's health improves sufficiently to allow a more immediate transfer or discharge;
- o Where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs;
- o When the resident has not resided in the facility for a period of at least 30 days.

0376.40.10.15

In the case of such exceptions, notice must be given as many days before the date of the move as is practicable, and include:

- o The right to appeal the transfer or discharge through the administrative appeals process;
- o The name, mailing address, and telephone number of the State long-term care ombudsman.

In the case of residents with developmental disabilities, the pre-transfer or pre-discharge notice must include:

- o The mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals. Pre-Transfer/Discharge Notice  
0376.40.10.15

The resident must request an appeal within thirty (30) days of the date of the pre-transfer/discharge notice.

#### APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.