



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

SARAH ADELMAN
Commissioner

GREGORY WOODS
Assistant Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

D.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

EXCELCARE AT EGG HARBOR,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 02380-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 31, 2024, in accordance with an Order of Extension.

This matter arises from the involuntary discharge of Petitioner from Excelsior at Egg Harbor (Excelsior) due to endangering the physical welfare or safety of Petitioner or

other residents. The issue presented here is whether Petitioner's involuntary discharge from Excelcare is appropriate under 42 C.F.R. §483.15(c) and N.J.A.C. 8:85-1.10.

Under 42 C.F.R. §483.15(c), the facility must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident.

Except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

The facility may not transfer or discharge the resident while the appeal is pending, pursuant to §431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to §431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. 42 C.F.R. §483.15(c)(4)(i).

On January 23, 2024, Excelcare requested and ultimately received approval to initiate an involuntary transfer or discharge from the Division of Aging Services (DoAS). (R-A.) On January 26, 2024, Petitioner appealed Excelcare's determination. ID at 2.

During the hearing, Derrick Henry II, Excelcare's executive director, testified that Petitioner was voluntary admitted to the facility in December 2021, during Covid. ID at 3. Mr. Henry stated that he believed Petitioner was in a homeless shelter prior to being admitted and that regulations were changed to allow patients to come into the facility who would not have been admitted prior to Covid. Ibid. Mr. Henry testified that there was an incident around Christmas Eve in 2023 which made it apparent that Petitioner needed to be removed from the facility. Ibid. Mr. Henry was called by staff to come to the facility because Petitioner was being abusive by attacking them and following them down the

hallway when they were trying to walk away and de-escalate the situation. Ibid. Police had to be called to the premises. Ibid. Mr. Henry stated that Petitioner's behavior did not improve after Petitioner was provided the paperwork⁸ showing Excelcare had been approved to remove Petitioner. Ibid. Excelcare staff complained that Petitioner had been derogatory and racist towards them, aggressive towards them, and that they are nervous and scared if they have to take care of him. ID at 4. Additionally, residents said they were afraid of Petitioner and no longer wished to be around them, stating that they have witnessed Petitioner behaving very aggressively towards staff members and that Petitioner creates a hostile and unsafe living environment. Ibid.

Joe Nizzardi, Excelcare's maintenance director, also testified. Mr. Nizzardi told of an incident which occurred on or around December 5, 2023, when he tried to check Petitioner's Christmas lights to make sure they were up to code. Ibid. Petitioner threatened Mr. Nizzardi and aggressively walked toward him as he was backing off out of fear. Ibid. Petitioner threatened to take Mr. Nizzardi outside and beat his ass. ID at 8. Mr. Nizzardi testified about being told that Petitioner had thrown his food tray at other residents of Excelcare and when a female resident's young niece was visiting, Petitioner played TikTok videos to try and get the niece and another young girl to dance in front of Petitioner, upsetting the female resident due to Petitioner's Meghan's law status. ID at 4-5. Mr. Nizzardi also testified that every single roommate that Petitioner has had requested to change their room because Petitioner was always verbally aggressive with them or made them feel uncomfortable. ID at 5.

Vienna Smith, an LPN at Excelcare, testified that Petitioner had not been aggressive towards her but other nurses have said Petitioner was aggressive towards them. ID at 6. Other African American nurses have said that Petitioner is verbally abusive

and has made racial comments to them. ID at 7. Ms. Smith has witnessed Petitioner blast heavy metal music while in the halls. Ibid.

Heidi Reed, a licensed social work therapist at Excelcare, testified that she observed Petitioner scream at the nurses that Petitioner hoped their children die on Christmas Eve, which upset the nurses. ID at 9. Nurses also spoke with her about Petitioner using the "N" word towards certain nurses. Ibid. Ms. Reed is aware of the police being called to the facility because of Petitioner's disruptive behavior at least seven times between December 2022 and March 7, 2024. ID at 10. Ms. Reed testified that she looked into other placements for Petitioner but no facilities would take Petitioner because of either Petitioner's predatory history or because Petitioner does not qualify for MLTSS as they do not need assistance with any activities of daily living. ID at 11.

Petitioner testified on their own behalf and stated that the nurses and aides have abused them mentally, physically and verbally. ID at 12. Petitioner admitted to being loud a few times, yelling at people, and calling an employee the "N" word because she called Petitioner a "child molester and a m-f cracker." Ibid. Petitioner testified that they never received physical therapy at Excelcare and that they were laying in their own feces and urine for so long that after eight months they got up and used the bathroom themselves. Ibid. Petitioner also testified that nobody knew they were there for the first five to six months. Ibid. Petitioner stated that they would like to work with Excelcare to find a permanent home because Petitioner wants to get out of the facility. ID at 13. Petitioner also acknowledged doing Kung Fu moves in front of an Asian resident because he looked like Jackie Chan. Ibid.

Petitioner's sister, S.F., testified that Petitioner was being treated unfairly. S.F. stated that Petitioner was sent to Excelcare for rehabilitation but Petitioner has

deteriorated physically. ID at 15. S.F. has not physically visited her sibling since Petitioner started residing there. Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) found that the police have been called to Excelcare because of Petitioner's disruptive behavior at least seven times between December 2022 and March 7, 2024. ID at 16. The ALJ also found that Petitioner was properly served with a Thirty-Day Notice of Intent to Discharge/Transfer Resident on January 23, 2024, and Petitioner's behavior did not improve after receiving the notice. ID at 17. Additionally, Petitioner had numerous roommates throughout their stay at Excelcare and every one of them requested a room change due to Petitioner's verbally aggressive behavior or because Petitioner made them feel uncomfortable. ID at 18. The ALJ found that Petitioner blasted their boom box in the hallways inappropriately, that the incident with the underage girl occurred, that Petitioner made Kung Fu gestures at another resident "because he looked like Jackie Chan," and that Petitioner repeatedly called a staff member the "N" word. ID 18-19. The Initial Decision concludes that Excelcare complied with the regulations regarding discharges and undertook the proper procedural steps including obtaining permission from DoAS for the involuntary transfer, and properly notified Petitioner of its intention to discharge Petitioner by issuing the thirty-day discharge notice to Petitioner. ID at 20. I concur.

Here, Petitioner has exhibited a pattern of reckless disregard for the safety and well-being of the residents and staff of Excelcare. On numerous occasions, as outlined above, Petitioner has acted aggressively and inappropriately to both residents and staff, resulting in the police being called. Both the nursing progress notes and police reports that were admitted into evidence outline Petitioner's aggressive and insulting behavior. Under state and federal regulations, Excelcare has an obligation to its residents to protect their safety and well-being. Based on the records before me, I am satisfied that Excelcare

took reasonable and appropriate steps to resolve the issues caused by Petitioner's documented behavior. When those efforts failed, Excelcare sought and received authority to discharge Petitioner.

Thus, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT the Initial Decision in this matter. Excelcare's determination of Petitioner's involuntary discharge was necessary to protect the physical welfare or safety of the resident, or of other residents under State and Federal Medicaid regulations.

THEREFORE, it is on this 25th day of October 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services