



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

G.R.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

AUTUMN LAKE HEALTHCARE AT

MEMORIAL BRIDGE,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08591-24

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 10, 2024.

This matter arises from the involuntary discharge of Petitioner from Autumn Lake Healthcare at Memorial Bridge (Autumn Lake) to another facility due to endangering the physical welfare or safety of Petitioner or other residents. The issue presented here is whether Petitioner's involuntary discharge from Autumn Lake 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 June 10, 2024, Autumn Lake requested and received approval to initiate an involuntary transfer from the Division of Aging Services (DoAS). (R-A.) On June 12, 2024, Petitioner appealed Autumn Lake's determination. ID at 2.

During the hearing, Moshe Lapa, Autumn Lake's administrator, testified that Petitioner was admitted to the facility on September 16, 2023, due to a gunshot wound. ID at 2. Per Mr. Lapa, they accepted Petitioner after many facilities denied Petitioner Ibid. While in the facility, Petitioner violated many different facility policies. Ibid. Mr. Lapa personally witnessed Petitioner vaping in the hallways multiple times. Ibid. Mr. Lapa

received complaints from other staff members that Petitioner was vaping in the hallway. Ibid. Mr. Lapa counseled Petitioner on vaping, but Petitioner denied that they were vaping. Ibid. Petitioner would threaten and attempt to intimidate staff at the facility if Petitioner believed they were wronged. ID at 3. Mr. Lapa educated Petitioner about the facility's "Contraband" policy. Petitioner also had another cooking device next to their microwave, some type of crockpot or hotplate. ID at 6. On January 2, 2024, Petitioner came to Mr. Lapa's office and wanted the other bed removed from their room. ID at 5. Since Petitioner is a managed Medicaid patient with Horizon, their insurance pays for a semi-private room, not a private room. ID at 5.

Crystal Cilio, who supervises Infection Control at Autumn Lake, testified that Petitioner decided to remove the other bed from their room on January 2, 2024. ID at 7-8. Petitioner shoved the bed out of the room into the resident hallway. Ibid. The bed struck her and narrowly missed a resident standing next to her. Ibid.

Gina Bush, who is a social worker at the facility, testified that she was in attendance at the meeting on May 22, 2024, with Petitioner, Mr. Lapa, and Petitioner's caseworker from Horizon, where they discussed the Autumn Lake's thirty-day notice of intent to discharge Petitioner due to their behavior. ID at 8. The Horizon representative explained the appeals process to Petitioner. Ibid.

Amanda Mecouch, the Director of Nursing (DON), testified that Petitioner could push a bed out into the hallway and place a towel over the drain because Petitioner was independent and needed minimal assistance. ID at 9. Ms. Mecouch witnessed that Petitioner in the hallway transferred from their manual wheelchair to their electric wheelchair with no assistance. Ibid.

Petitioner testified on their behalf that all the allegations were hearsay. ID at 10. Petitioner denied having a microwave in their room. Ibid. Petitioner denied intentionally

flooding the resident hallway. Petitioner stated they could not cover the drain because they could not move their body. Ibid. Petitioner denied removing the bed from their room. Ibid. Petitioner stated that they have been treated disrespectfully by nursing staff members. Ibid. Petitioner shared their concern about the cleanliness of the facility. (P-5.)

The Administrative Law Judge (ALJ) found that all the Autumn Lakes' witnesses testified credibly regarding their interaction with Petitioner. ID at 12. However, the ALJ did not find Petitioner's testimony credible, giving their motive to remain at Autumn Lake. Ibid. The ALJ further found that Petitioner signed a Smoking and Lighter Contract upon admission to the facility, acknowledging that repeated violations of the policy may lead to a discharge from the facility. ID at 13. Petitioner has violated this policy numerous times by repeatedly vaping inside the facility. Ibid. The ALJ concluded that Autumn Lake complied with the regulations regarding discharges and undertook the proper procedural steps, including obtaining permission from DoAS for the involuntary transfer and properly notifying Petitioner of its intention to discharge/transfer Petitioner by the issuance of the thirty-day discharge notice to Petitioner. ID at 16.

Here, Petitioner has exhibited a pattern of reckless disregard for the safety and well-being of the residents. Under Autumn Lake's "Contraband" policy residents cannot operate cooking equipment to keep residents safe. (R-C.) However, Petitioner operated a microwave in their room despite Mr. Lapa's numerous requests stating they would not remove the microwave as long as they resided there. (R-O.) On April 30, 2024, Petitioner covered the shower room drain with a towel and pointed the running showerhead outside the shower, putting the residents in great danger of slipping and injuring themselves. (R-M.) Petitioner operated their wheelchair at an excess rate of speed up and down in a facility where many residents have limited mobility. They called local law enforcement to de-escalate the situation and remove Petitioner from the premises. (R-D.) Petitioner

signed the Smoking and Lighter Contract on September 18, 2023. (R-Q). Per the contract, electric cigarettes are treated the same as any other smoking product; any violation will result in a loss of smoking privileges, and repeated violations may lead to discharge from the facility. Ibid. Despite agreeing to comply with the contract, Petitioner had been witnessed on multiple occasions vaping in their room, in the hallway, in the dining room and in the presence of residents on oxygen. (R-S.)

Under state and federal regulations, Autumn Lake has an obligation to its residents to protect their safety and well-being. Based on the records before me, I am satisfied that Autumn Lake took reasonable and appropriate steps to resolve the issues caused by Petitioner's documented behavior. When those efforts failed, Autumn Lake sought and received authority to discharge Petitioner to another facility.

Autumn Lake complied with Medicaid guidelines, giving Petitioner thirty-day advance notice of involuntary discharge and providing the right to a hearing. Prior to issuing a notice of discharge to Petitioner, as a part of its transfer planning for Petitioner, Autumn Lake secured placement for Petitioner at two skilled nursing facilities, Complete Care at Burlington and Complete Care at Marcella.

Thus, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT the Initial Decision in this matter. Autumn Lake'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 7th day of October 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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