

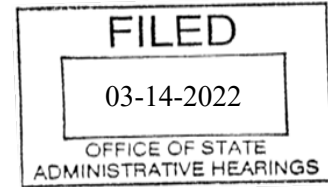
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

B [REDACTED] P [REDACTED],
Petitioner,

v.

**GEORGIA WAR VETERANS HOME,
Respondent.**

Docket No.: [REDACTED]
[REDACTED]-OSAH-DCH-HFR-LTCBOR-5-
Howells



INITIAL DECISION

Petitioner B [REDACTED] P [REDACTED]. (“Petitioner”) appealed the decision of Respondent Georgia War Veterans Home (“GWVH”) to involuntarily transfer or discharge him from its facility. A hearing was conducted by video conference on February 24, 2022. Petitioner was represented by Tara McIntosh, Esq. Respondent was represented by Brittany Cone, Esq.

For the reasons that follow, GWVH’s decision to discharge Petitioner from its facility is **REVERSED**.

Findings of Fact

1.

Petitioner has been a resident of the GWVH in Milledgeville, Georgia since January 22, 2021. At the time he was admitted, he had a diagnosis of Alzheimer’s disease. Additionally, he was having some hallucinations. (Testimony of B [REDACTED] P [REDACTED]; Testimony of Melissa Belcher, FNP-C; Ex. R-48.)

2.

GWVH Home is a skilled nursing facility for veterans. It does not accept Medicare or Medicaid funds. It is funded by the United States Veterans Administration and the Georgia Department of Veterans Services. Additionally, the veteran residents are required to pay a daily

resident's fee based on average veterans' benefits. Currently, that amount is \$27.00 per day.
(Testimony of Dennis Mize.)

3.

During Petitioner's stay at GWVH, he has had several instances which have threatened the health and safety of himself and others. On March 23, 2021, Petitioner somehow obtained a cigarette lighter and attempted to set his jacket on fire. As a result, he was transported to Appling Healthcare's behavioral health unit on an emergent basis and pursuant to a Form 1013. On July 16, 2021, Petitioner was involved in a physical altercation with another resident. Staff separated the residents and no injuries were noted. Petitioner was placed on one-to-one observation. On August 7, 2021, Petitioner went into another resident's room and attempted to take that resident's shoes. An altercation over the shoes ensued. Petitioner sustained a skin tear on the top of his right hand. Petitioner was again placed on one-to-one observation. (Exs. R-4, R-5, R-6, R-7 – R-11, R-12 – R-16.)

4.

On August 13, 2021, Petitioner initiated an altercation with another resident. The other resident retaliated, and Petitioner pushed the resident and placed him in a chokehold. Petitioner was noted to be experiencing delusions and hallucinations. As a result, he was transported Appling Healthcare's behavioral health unit on an emergent basis and pursuant to a Form 1013. Petitioner remained in Appling Healthcare's behavioral health unit until September 10, 2021. While there he continued to hallucinate and engage in aggressive behavior which prompted the need for additional medication. A social worker from Appling reported that Petitioner seemed to be showing signs of PTSD and that his behaviors did not appear to have known triggers. (Exs. R-17 – R-24, R-40, R-41.)

5.

Petitioner was transported pursuant to a Form 1013 to Atrium Health Navicent's behavioral health unit in Macon on September 13, 2021, due to increased anxiety and hallucinations. He returned to GWVH on October 4, 2021. (Exs. R-25 – R-27, R-43.)

6.

On October 16, 2021, Petitioner was observed pushing another resident. Petitioner continued to push the other resident despite direction to stop. Petitioner injured the other resident when he pushed him out of his wheelchair. As a result of this incident, Petitioner was transferred to Atrium Health Navicent's behavioral health unit on October 18, 2021, pursuant to a Form 1013. Petitioner returned to GWVH on November 2, 2021. (Exs. R-28 – R-33, R-43.)

7.

On November 3, 2021, while Petitioner was on one-to-one observation, he attempted to hit the sitter with the footrest from another resident's wheelchair. Staff intervened and there were no further incidents that night. (Exs. R-34 – R-35; Testimony of Melissa Belcher, FNP-C.)

8.

GWVH sent a notice of involuntary discharge to Petitioner's son, B■■■■ P■■■■ ■■■, on November 8, 2021. The facility sought to discharge Petitioner because of his aggressive behaviors toward the other residents and the staff. The notice stated that GWVH could no longer meet Petitioner's needs and that allowing him to remain would endanger the other residents. Petitioner was given thirty days' notice of the discharge. Petitioner, through Georgia Legal Services Program, requested a hearing to contest the involuntary discharge. (Ex. R-36; see Court File, B■■■■ P■■■■ ■■■ v. Georgia War Veterans Home, Docket No. ■■■■■.)

9.

Gwendolyn Ammons is the social services assistant at GWVH. She made multiple attempts to find an alternative placement for Petitioner. She contacted at least ten different facilities. Unfortunately, none of the facilities were willing to admit Petitioner because he required more services than they could provide. (Testimony of Gwendolyn Ammons; Ex. R-44.)

10.

On December 21, 2021, Petitioner wandered into another resident's room and an altercation ensued. Petitioner received two small abrasions to his left posterior forearm. Petitioner was transported to Atrium Health Navicent's behavioral health unit on December 22, 2021. (Testimony of Melissa Belcher, FNP-C; Exs. R-38, R-49 – R-51.)

11.

Lester Ward Jr. is a behavioral health social worker in Atrium Health Navicent's behavioral health unit.¹ His duties include discharge planning, among other things. On January 11, 2022, the unit's psychiatrist determined that Petitioner would be medically cleared for discharge on January 12, 2022. (Testimony of Lester Ward Jr.)

12.

On January 11, 2022, Mr. Ward contacted Katherine Dean, the admissions coordinator for GWVH regarding Petitioner's discharge from the behavioral health unit.² According to Mr. Ward, Ms. Dean told him to send the referral and GWVH's physician would have to review the referral to determine whether Petitioner could be re-admitted. (Testimony of Lester Ward Jr.)

¹ The behavioral health unit at Atrium Health Navicent is an acute care setting for stabilizing patients with mental or behavioral health problems. It is not a long-term facility.

² Based on Mr. Ward's conversations with Petitioner's son, he believed that the plan was for Petitioner to return to GWVH.

13.

The nurse manager of Atrium Health Navicent's behavioral health unit also spoke with Dr. Roberts at GWVH on January 11, 2022. It is Mr. Ward's understanding that Dr. Roberts initially cleared Petitioner to return to GWVH. However, on January 12, 2022, a nurse from Atrium Health Navicent's behavioral health unit spoke with a nurse at GWVH. She was informed that Petitioner could not return to GWVH. (Testimony of Lester Ward Jr.)

14.

According to Mr. Ward, another social worker from the behavioral health, Veronica Walker spoke with Dr. Roberts on January 12, 2022. Dr. Roberts purportedly told Ms. Walker that GWVH could not take Petitioner back due to low staffing.³ (Testimony of Lester Ward Jr.)

15.

On January 12, 2022, Dr. Michael Roberts wrote a note in Petitioner's chart which states, as follows:

Mr. P [REDACTED] has had difficulty adjusting to GWVH and has been aggressive toward staff and other residents. He is currently at an inpatient mental health facility for dementia with aggressive behaviors.

I believe that we cannot meet his needs at GWVH and that he will require a dedicated mental health facility.

I believe that Mr. P [REDACTED]'s continued stay at GWVH jeopardizes the health and safety of others, [the] patient and [the] staff.

(Ex. R-39.)⁴

³ Since Mr. Ward learned that GWVH was not willing to re-admit Petitioner, he has contacted eighteen other nursing facilities. None of the facilities have agreed to admit Petitioner. The facilities refused to admit Petitioner for a variety of reasons, including his lack of insurance accepted by the facility, his behaviors, and because his needs exceed the facility's capabilities. As of the date of the hearing, Mr. Ward had not attempted to find Petitioner placement at any long-term mental health facilities.

⁴ On January 13, 2022, the undersigned commenced a hearing regarding the November 8, 2021 notice of involuntary discharge. Prior to the hearing, counsel for GWVH stated that the facility was withdrawing the November 8, 2021 notice and intended to proceed with an emergency discharge. Once GWVH withdrew the November 8, 2021 notice, there was no longer a contested case before the court. Accordingly, that case was dismissed.

16.

On January 14, 2022, Dennis Mize, the executive director and administrator of the GWVH sent notice to Petitioner's son that Petitioner was being discharged. Specifically, Mr. Mize stated, in pertinent part, as follows:

Mr. P [REDACTED] was transferred on December 26, 2021 (sic) to [The Pavilion Atrium Navicent Health] immediately following his involvement in an altercation with another veteran/resident at GWVH.⁵ Since December 26, 2021 (sic), Mr. P [REDACTED], [REDACTED] has remained a patient at [The Pavilion Atrium Navicent Health], and therefore, we are discharging him to [The Pavilion Atrium Navicent Health].

Under applicable law, immediate transfer and discharge is appropriate insofar as other residents, staff members or the resident are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve. . . . Dr. Michael Roberts, believes that Mr. P [REDACTED] is no longer appropriate for the care setting and services provided by our facility. More specifically, Dr. Roberts deemed Mr. P [REDACTED] as a danger to himself, other veterans/residents, and staff . . . at GWVH, and in Dr. Robert's expert medical opinion, we can no longer meet the needs of Mr. P [REDACTED]

(Ex. R-1.)⁶

17.

According to Mr. Mize, GWVH can only provide one-to-one observation on a limited or emergent basis. The facility has made multiple attempts to manage Petitioner's behavior; however, they have been unsuccessful. Mr. Mize believes Petitioner poses a danger to the other veterans. (Testimony of Dennis Mize.)

18.

Dr. Michael Roberts is the attending physician for GWVH, which is not a dedicated psychiatric facility. It does not have regular access to a psychiatrist. In Dr. Roberts' opinion, Petitioner is a danger to the staff and residents and requires full time psychiatric care. The other

⁵ As noted above, Petitioner was admitted to Atrium Health Navicent's behavioral health unit on December 22, 2021, not December 26, 2021.

⁶ On January 18, 2022, Petitioner, through his counsel, requested a hearing to contest the emergency discharge discussed in the January 14, 2022 notice.

residents are not able to protect themselves from an aggressive resident. (Testimony of Dr. Michael Roberts.)

Conclusions of Law

1.

Respondent bears the burden of proof in this matter and must show, by a preponderance of the evidence that its proposed involuntary discharge of Petitioner is authorized by law. See Ga. Comp. R. & Regs. 616-1-2-.07; Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Long-term care facilities may involuntarily transfer residents in emergency situations and may involuntarily transfer or discharge residents in non-emergency situations. O.C.G.A. § 31-8-116(a). In emergency situations, “where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve, the facility may involuntarily transfer the resident to another health facility.” Ga. Comp. R. & Regs. 111-8-50-.11(1). When a resident is transferred on an emergent basis, an individual in charge must document in the resident’s file the reason for the emergency transfer and must immediately notify the resident and the resident’s guardian of the transfer and the location where the resident will be transferred. Id. Residents transferred from the facility to a hospital or other health care facility shall have the right to return to the facility provided the resident has continued to pay. O.C.G.A. § 31-8-116(i); Ga. Comp. R. & Regs. 111-8-50-.11(9).

3.

In non-emergency situations, long-term care facilities may involuntarily transfer or discharge residents for the following reasons:

- (a) “A physician determines that failure to transfer the resident will threaten the health or safety of the resident or others and documents that determination in the resident’s medical record;”

- (b) “The facility does not participate in or voluntarily or involuntarily ceases to operate or participate in the program which reimburses the cost of the resident’s care;”
- (c) The resident does not pay allowable fees; or
- (d) The resident no longer requires the level of care provided by the facility, as determined by a Medicare or Medicaid medical necessity review.

O.C.G.A. § 31-8-116(a); Ga. Comp. R. & Regs. 111-8-50-.11(2)(a) – (d).

4.

If the facility is involuntarily transferring or discharging the resident due to threats to the health and safety of the resident or others, cessation of operation or participation the resident’s reimbursement program, or the resident’s non-payment of allowable fees, then the facility must give the resident, the resident’s guardian or representative, and attending physician at least 30 days’ notice before the involuntary transfer. O.C.G.A. § 31-8-116(d); Ga. Comp. R. & Regs. 111-8-50-.11(3). The notice must include the reason for the proposed transfer, the effective date, notice of the right to a hearing, and the location where the facility proposes to transfer or discharge the resident. O.C.G.A. § 31-8-116(d); Ga. Comp. R. & Regs. 111-8-50-.11(3). Additionally, the facility must assist the resident and guardian with finding a reasonably appropriate alternative placement before the proposed transfer or discharge. O.C.G.A. § 31-8-116(c); Ga. Comp. R. & Regs. 111-8-50-.11(5).

5.

In this case, the transfers to the behavioral health units, after Petitioner was involved in altercations or when he became aggressive, were appropriate emergency transfers. However, the proposed discharge described in the January 14, 2022 notice and which was effective January 12, 2022, was not in compliance with the statutory requirements regarding involuntary discharge. Respondent presented no evidence that an emergency existed on January 12, 2022, at the time the

hospital had medically cleared Petitioner to return to GWVH. Absent emergency circumstances, Petitioner had a right to return to GWVH on January 12, 2022, pursuant to Georgia Code Section 31-8-116(i) and Rule 111-8-50-.11(9).

6.

For a non-emergency involuntary transfer, GWVH was required to have the physician document in Petitioner's medical record the physician's determination that the failure to transfer the resident will threaten the health and safety of the resident and others. Respondent complied with this requirement. O.C.G.A. § 31-8-116(a)(1). However, in addition to the documentation in the Petitioner's medical record, GWVH was required to give Petitioner and Petitioner's guardian or representative at least 30 days' notice of the proposed involuntary transfer.⁷ GWVH did not comply with this provision. Furthermore, it was GWVH's responsibility to assist with finding a reasonably appropriate alternative placement. O.C.G.A. § 31-8-116(c). At the hearing, GWVH established that the appropriate placement for Petitioner is not a skilled nursing facility, but rather a long-term mental health facility. Thus, it was GWVH's responsibility to assist in finding such a facility.

7.

GWVH certainly could have initiated the non-emergent involuntary transfer or discharge of Petitioner when it transferred Petitioner to Atrium Health Navicent's behavioral health unit on December 21, 2021, by providing a statutorily compliant 30-day notice. That would have started the clock running. Then, when Petitioner was medically cleared to return to GWVH on January 12, 2022, GWVH would have been required to readmit Petitioner for an additional nine (9) days.

⁷ The notice must include the reason for the proposed transfer, the effective date, notice of the right to a hearing, and the location to where the facility proposes to transfer or discharge the resident. O.C.G.A./ § 31-8-116(d); Ga. Comp. R. & Regs. 111-8-50-.11(3). While GWVH did provide notice that included each of these items, it did not provide 30 days' notice.

Prior to issuing the 30-day notice, GWVH could have been locating an appropriate long-term mental health facility for Petitioner.


8.

GWVH failed to comply with the statutory requirements regarding involuntary discharge. Accordingly, GWVH's proposed discharge to Atrium Navicent Health was not authorized.⁸

Decision

For the above and foregoing reasons, Respondent's decision to discharge Petitioner is **REVERSED**.

SO ORDERED, this 14th day of March, 2022.


Stephanie M. Howells
Administrative Law Judge



⁸ The requirements for involuntary discharge amount to a procedural checklist. GWVH need only comply with that checklist to correctly initiate a non-emergent involuntary discharge.