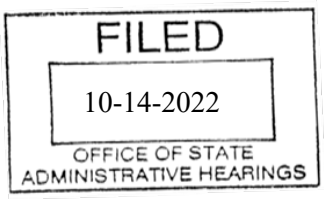
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

D[redacted] O[redacted],
Petitioner,

v.

PRUITT HEALTH - WASHINGTON,
Respondent.

Docket No.: [redacted]-OSAH-DCH-HFR-LTCBOR-157-Beaudrot



INITIAL DECISION

I. Introduction

D[redacted] O[redacted], Petitioner in this matter, has appealed Respondent Pruitt Health-Washington's proposed involuntarily discharge of him from its long-term care facility. The evidentiary hearing in this matter was held at the Greene County Superior Court on October 7, 2022. At the close of the hearing, the Court allowed the parties to submit their closing arguments in writing by close of business on October 13, 2022.

At the hearing, Respondent was represented by Jordan S. Johnson, Esq. and Petitioner was represented by Chastity N. Chadé Franklin, Esq. Witnesses at the hearing were: Candy Arwood, Nursing Home Administrator at Respondent's facility in Washington, Georgia; Julie West Berry, Social Services Director at Respondent's facility; Felicia K. Hampton-Jenkins, Director of Health Services and Nursing at the facility; Dawn Wolff, ombudsman and patient advocate; Therese Johnson, registered CNA and caregiver for Mr. O[redacted]'s 93-year-old mother; and Petitioner.

After careful consideration of the evidence and the parties' arguments, and for the reasons stated below, the Respondent's decision to discharge the Petitioner from its facility is **REVERSED**.

II. Findings of Fact

1. Petitioner is a 76-year-old male resident of the skilled nursing facility operated by Respondent, located at 112 Hospital Drive, Washington, Georgia 30673 (the "Facility"). The Facility is a 47-bed facility. It is a Five Star Facility qualified to render tier 4 level services. It has had six consecutive years of deficiency-free inspections. (Testimony of Ms. Arwood).

2. Petitioner has lived at the Facility since being admitted on October 23, 2020. Petitioner came to the facility after being discharged by the Veterans Administration in Augusta following treatment associated with the re-injury of a previously broken hip. (Testimony of Petitioner; Exhibit R-3). Petitioner has been diagnosed with, and receives treatment for, a number of conditions including chronic obstructive pulmonary disease, hypertension, heart disease with heart failure, low back pain, gastro-esophageal reflux, major depressive disorder, pressure ulcers on his feet, muscle weakness, and abnormalities of gait and mobility associated with his previous broken hip injuries. (Testimony of Ms. Hampton-Jenkins; Exhibits R-3 and P-1).

3. The staff of the Facility is of the opinion that Petitioner's care needs could be adequately addressed at an assisted living facility and that Petitioner does not necessarily need the full panoply of nursing home services he receives at the Facility. (Testimony of Ms. Hampton-Jenkins).

4. Petitioner has limited mobility and can only take a few small steps without a walker. (Testimony of Petitioner; testimony of Ms. Johnson).

5. After observing Petitioner and listening to him testify at the hearing, the Court notes that Petitioner is articulate, clearly spoken, and speaks with intensity using a firm projecting voice. Petitioner is tall, thin, and has a piercing gaze.

6. Petitioner has a background in sales from a career extending over years. This background no doubt contributes to Petitioner's forceful style of speaking and intense visual

engagement. Petitioner admits that he is critical when matters are not handled in the way he considers appropriate. (Testimony of Petitioner).

7. The preponderance of the evidence shows that Petitioner is a challenging and difficult resident at the Facility. He is described consistently in the testimony of the Facility staff as angry, aggressive, loud, uncooperative, manipulative, a thief, quick to refuse medications, and guilty of conduct and language that can be characterized as racist, sexist, and insulting. The staff of the Facility note that Petitioner has alienated at least four prior roommates. He has had repeated run-ins with staff. He uses insulting and inappropriate terms and language in his dealings with staff. Exhibit R-3 is replete with numerous documented incidents of these inappropriate and disruptive behaviors by Petitioner. (Testimony of Ms. Arwood, Ms. Berry and Ms. Hampton-Jenkins; Exhibit R-3).

8. Petitioner denies this testimony and characterizations of his behavior. When asked by the Court why multiple witnesses would lie if this testimony as to his inappropriate behaviors was not true, Petitioner launched into a long, disjointed, contorted, and dubious explanation suggesting a plot to "get" him because of alleged familiarity with the husband of one of the staff members at the Facility. (Testimony of Petitioner). The Court notes that, at a minimum, Petitioner does not appear to be self-aware as to the effect his speech and behavior has on other persons. The Court also has concerns that at some level Petitioner obtains emotional satisfaction from the attention that his confrontations and his inappropriate behavior provoke.

9. Petitioner is current on his financial obligations to Respondent. (Testimony of Ms. Arwood).

10. This proposed discharge is the second attempt by Respondent to discharge Petitioner involuntarily. The prior action between these parties, *O[redacted] v PruittHealth-Washington,* OSAH

Docket No. [redacted], was dismissed by order of the undersigned on October 29, 2021, after the parties reached a settlement, which was documented in a Behavior Agreement dated October 25, 2021. (Exhibits P-6 and R-5).

11. Respondent contends that Petitioner has repeatedly violated the terms of the Behavior Agreement by his documented misconduct and behavior. (Testimony of Ms. Arwood).

12. It is apparent that the staff of the Facility is eager to see Petitioner relocate to another facility. The staff of the Facility have made yeoman's efforts to arrange placement of Petitioner at another facility, making approximately 50 to 60 contacts to find suitable alternative facilities. They have repeatedly followed up with Petitioner to determine the status of these placement efforts. At least two of those inquiries generated potential sites to which Petitioner could relocate, but Petitioner declined to pursue either of these alternatives. (Testimony of Ms. Arwood; Testimony of Ms. Berry; Exhibit R-3). When Petitioner was asked by the Court why he did not wish to relocate to another facility in light of the strained nature of his relationships at the Facility, Petitioner testified that he likes living at the Facility. (Testimony of Petitioner).

13. Respondent issued a notice of involuntary discharge (the "Notice") to Petitioner on or about July 15, 2022, with a proposed date of discharge of July 22, 2022. (Exhibit R-1).

14. The Notice states that the "Reason for Transfer or Discharge" was "(x) A physician has determined that failure to transfer the patient will result in injury or illness to the patient or others." It states that the transfer will be to B[redacted] S[redacted] "or other location found during the discharge process." (Exhibit R-1).

15. B[redacted] S[redacted] is Petitioner's mother. She is 93 years old. Although she continues to be mentally alert, her health is failing. She is cared for by Ms. Johnson. Ms. S[redacted] is not capable of caring for Petitioner. (Testimony of Ms. Johnson).

16. The Notice was issued in reliance on a letter dated May 26, 2022, from Dr. Robert Williams, M.D., which was admitted over Petitioner's hearsay objection as Exhibit R-2. The Notice states:

> To Whom it May Concern,
>
> D[redacted] O[redacted] is a patient of mine who resides at Pruitt Health Washington. Mr. O[redacted] is cognitively aware of person, place and time and he has no cognition impairments at this time. Mr. O[redacted] has significant behavioral episodes, and he continues to be non-compliant with his plan of care. Mr. O[redacted] continues to have anger episodes that are not easily deescalated by staff, despite their attempts to calm his episodes.
>
> Pruitt Health Washington entered into a behavioral management agreement with Mr. O[redacted] in late October 2021. Mr. O[redacted] has continued to breech [sic] this agreement with the facility. In my professional opinion, Pruitt Health Washington has went [sic] to great lengths to ensure Mr. O[redacted] safety, as well as, the safety of others; with no cooperation form [sic] Mr. O[redacted] to ensure his own, as well as, the safety of others. Because of Mr. O[redacted]'s behavioral episodes, he is not appropriate for the setting that is provided by Pruittt Health Washington. In my professional opinion, Mr. O[redacted]'s behaviors and his non-compliance with his plan of care, will result in harm to himself and/or others.
>
> Sincerely,
>
> s/Dr. Robert Williams MD
>
> Dr. Robert Williams MD
> PCP for D[redacted] O[redacted]

17. Dr. Williams did not testify. As counsel for Petitioner properly noted in her objection to admission of Exhibit R-2, the letter is pure hearsay. Exhibit R-2 contains no evidence as to the underlying facts relied upon by Dr. Williams or the analysis of those facts used by Dr. Williams to reach his stated conclusions in the letter that Petitioner is a threat to others and himself.

18. Petitioner testified that he sees Dr. Williams rarely and often only briefly in a casual setting. (Testimony of Petitioner). There is no evidence in R-2 that Dr. Williams has personally witnessed any of the "anger episodes" or "behavioral episodes" to which he alludes in his letter.

19. It appears that Dr. Williams may have based his conclusions upon his review of the Petitioner's medical records and discussions with Ms. Arwood, Ms. Berry and perhaps other staff. (Testimony of Ms. Arwood, Testimony of Ms. Berry; Exhibit R-3).

20. Both Ms. Arwood and Ms. Berry testified as to specific incidents involving confrontations with Petitioner where they felt threatened by him. They each described situations where Petitioner would become angry, sit up in his bed, glower at them, speak in a threatening tone and appear to be prepared to "lunge." They each stated they felt unsafe as a result of Petitioner's behavior and demeanor. (Testimony of Ms. Arwood, Testimony of Ms. Berry; Exhibit R-3, pp. 54, 55, 62).

21. Petitioner disputed this testimony saying that he was simply sitting up to address them properly and with respect. (Testimony of Petitioner).

22. The Court is persuaded by the preponderance of the evidence that, in these and other interactions, Petitioner has been loud, strident, uncooperative, hostile, and unpleasant. The Court is persuaded that in these, and other, situations Petitioner has been difficult to deal with and has behaved unreasonably. The Court also finds it difficult to see how in these hostile situations Petitioner, who in these incidents is described as sitting up in his bed or on the side of his bed, who is unable to walk without a walker, and who is unarmed, could present a credible physical threat of harm to himself or others.

23. One recent incident where Petitioner did engage in prohibited behavior occurred when he and Ms. Johnson were accosted and reprimanded by Ms. Arwood for smoking on the premises of the Facility. Petitioner and Ms. Johnson testified that they were smoking on the sidewalk of the Facility. They testified that they understood smoking was not permitted in the Facility, but they thought they were not in the Facility as they were on the sidewalk. They also testified they had

done this several times prior to the incident and no one had previously objected. (Testimony of Ms. Arwood; Testimony of Petitioner; Testimony of Ms. Johnson; R-3, p. 2).

III. Conclusions of Law

1. Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.7(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. The Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-116(a)(1) provides in relevant part:

> (a) Except in an emergency, where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve or reduce, a facility may involuntarily transfer a resident only in the following situations and only after other reasonable alternatives to transfer after other reasonable alternatives to transfer have been exhausted:
>
> (1) a physician determines that failure to transfer the resident will threaten the health or safety of the resident or others and documents the determination in the resident's medical record. . . . If the basis for the transfer or discharge is the safety of the resident himself, the resident shall not be involuntarily transferred or discharged unless a physician determines that such transfer or discharge is not reasonably expected to endanger the resident to a greater extent than remaining in the facility and documents that determination in the resident's medical records.

3. Respondent did not show at the hearing by a preponderance of the evidence at the hearing that a physician has determined that failure to transfer Petitioner will threaten the health or safety of himself of others and documented that determination in Petitioner's medical records. Exhibit R-2 is pure hearsay. There is no substantive explanation contained in Exhibit R-2 as to how Dr. Williams reached his stated conclusions. One can perhaps surmise or hypothesize how

he may have done so, but documentation of his reasoning and methodology used to reach those conclusions is missing from Exhibit R-2.

4. Apparently recognizing these deficiencies, on October 13, 2022, Respondent filed an Affidavit from Dr. Williams as Exhibit "A" to Respondent's Closing Brief seeking to address some of these deficiencies. The Affidavit was not tendered at the hearing and will not be considered as part of the evidence in this matter.

5. At the hearing, Respondent also failed to show by a preponderance of the evidence how or where Dr. Williams' conclusions as stated in Exhibit R-2 are documented in Petitioner's medical records. The evidence does not show how or if Exhibit R-2 has been incorporated into Petitioner's medical records. And, again, even if it has been, Exhibit R-2 is bereft of information that documents the basis for the stated conclusions.

6. Finally, to the extent that Respondent is relying upon Dr. Williams' stated conclusion in Exhibit R-2 that discharge is justified for Petitioner's own safety, Respondent has failed to show that Dr. Williams determined ". . . that such transfer or discharge is not reasonably expected to endanger the resident to a greater extent than remaining in the facility and document[ed] that determination in the resident's medical records." *Id.*

7. The Court notes that Respondent cannot rely on the records generated by Respondent's staff in Exhibit R-3, the Care Plan admitted as Exhibit P-1 or the testimony of Respondent's witnesses to demonstrate that it has met these statutory requirements for involuntary discharge. The records, and the conclusions they contain, were not written by physicians, but rather licensed practical nurses, clinical nursing specialists, nurse practitioners and other medical professionals who are not physicians. None of Respondent's witnesses at the hearing are licensed physicians.

8. Because of the foregoing conclusions, it not necessary to address the issue of whether Respondent has satisfied the discharge planning requirements for a resident who is subject to involuntary transfer as specified in O.C.G.A. § 31-8-116(c).

9. Because Respondent has failed to meet all of the statutory prerequisites for involuntarily discharging Petitioner as a long-term care facility resident, it may not do so.

IV. Concluding Observations

Petitioner should take no comfort from this decision. Petitioner should be under no illusions as to where matters in his relationship with Respondent are ultimately headed. Petitioner's behavior as a resident at the Facility is inappropriate and disruptive. It seems likely that in due course Respondent will marshal the necessary documentation and medical records to support an involuntary discharge. Unless Petitioner undergoes a Scrooge-like conversion in his behavior and his dealings with staff at the Facility, it is likely that Petitioner's days at Respondent's Facility are numbered. Although the Court is hopeful that Petitioner can undergo such a change of heart and conform to proper norms of behavior at the Facility prospectively, the Court is not optimistic on this score.

V. Decision

Accordingly, based on the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to transfer or discharge Petitioner from its facility as proposed in the Notice dated July 15, 2022, is **REVERSED.**

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

Charles R. Beaudrot
Administrative Law Judge