

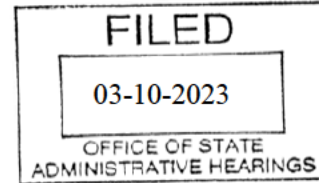
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

A [REDACTED] W [REDACTED],
Petitioner,

v.

LIFE CARE CENTER,
Respondent.

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



FINAL DECISION

I. Introduction

Petitioner A [REDACTED] W [REDACTED] appealed Respondent Life Care Center's Notice of Involuntary Discharge dated September 14, 2022, with a proposed discharge date of October 14, 2022. A hearing was conducted on February 13, 2023, at Crisp County Courthouse, Cordele, Georgia, and adjourned to March 7, 2023, as a video hearing. Petitioner was represented by Rhonda Bass, Attorney at Law, Georgia Legal Services Program, Albany. Respondent (hereafter "Life Care") was represented by Karen Smiley, Attorney at Law, Savannah. Petitioner has remained a resident at Respondent's intermediate care facility during the pendency of her appeal.

For the reasons stated below, Respondent's proposed action to involuntarily discharge Petitioner from its facility is **REVERSED**. This Decision does not prohibit Respondent and Petitioner's representatives from seeking an alternate placement at another facility, including a state institution such as East Georgia Regional Hospital in Augusta, or from applying for home-delivered services through the Independent Care Waiver Program or other waived Medicaid program.

II. Findings of Fact

The following findings of fact are based on a preponderance of evidence as required by Ga. Comp. R. & Regs. 616-1-2-.21(4). All evidence was considered by the Court, although not all facts presented by the parties are repeated here.

1. Petitioner A [REDACTED] W [REDACTED] is a 33-year-old female who is currently a resident at Life Care in Fitzgerald, Ben Hill County, Georgia. (Testimony of Jodie Kennedy, Administrative, Life Care; Exhibit R-1).

2. Petitioner was an active-duty soldier scheduled to deploy to Afghanistan in February 2013. On February 3, 2013, Petitioner was severely injured when her car left the road and struck a chain link fence. Her skull was fractured in multiple places by a metal fencepost, and she suffered significant brain trauma to the frontal lobe. Petitioner went through more than nine hours of surgery to relieve swelling on her brain and reduce the skull fractures. Because of the severity of her brain injuries, Petitioner is unable to engage in meaningful verbal communication. Her lengthy list of mental and physical diagnoses include schizophrenia, bipolar disorder, and seizures. Although Petitioner is self-ambulatory, she is unable to perform many of the tasks of daily living without assistance. Although Petitioner is fairly slender, she is very strong and quick. (Testimony of P [REDACTED] W [REDACTED] B [REDACTED], Petitioner's mother; testimony of Tanja Moore, Certified Nursing Assistant, Life Care; Exhibits P-5, P-6, R-2).

3. After a lengthy hospital stay, Petitioner was discharged to the home of her husband, A [REDACTED] T [REDACTED], and his parents. Petitioner and Mr. T [REDACTED] had only been married a few months at the time of her accident. After about nine months, Mr. T [REDACTED] gave up trying to take care of Petitioner, and he delivered Petitioner and her clothes and personal belongings to her maternal grandmother's home. For a while, her grandmother, called "Granny C [REDACTED]" in the hearing record, and her mother, P [REDACTED] W [REDACTED] B [REDACTED], took care of Petitioner at Granny C [REDACTED]' home in Grovetown, Columbia County, Georgia. Although it appears that Petitioner's family could meet her physical needs, she became more aggressive to her sister, mother and father, including at least one incident where she slapped each of them. Ms. B [REDACTED] made the decision to seek placement in

a nursing home. Petitioner was later transferred to a second facility, and although the testimonial record is not clear on this point, she may have been admitted to a third facility. Following a brief stay at Appling Healthcare, a mental health facility in Baxley, Georgia, Petitioner was admitted to Life Care on or about January 4, 2022. (Testimony of Jodie Kennedy; testimony of P [REDACTED] B [REDACTED]).

4. Petitioner was initially placed in Life Care's Behavioral Unit. Over the following months, there were several incidents of Petitioner becoming physically violent against Life Care staff and other residents. She also exhibited extreme hypersexuality toward male residents and at least one Life Care employee. Her episodes of physical aggression seemed to be directed exclusively against female residents and staff. Because Petitioner is physically strong and quite fleet of foot, her caregivers had great difficulty in keeping her from entering other resident's rooms. She was also considered a flight risk. (Testimony of Jodie Kennedy; Exhibits R-2, R-3).

5. Life Care maintains records of Petitioner's care needs, and of incidents of violence or other inappropriate behavior against employees or other residents. Following an incident on June 20, 2022, when Petitioner was struck by a male resident she had approached, Life Care decided to provide a one-on-one caregiver 24 hours per day. When Life Care tried to end the full-time one-on-one caregiver arrangement in July, Petitioner resumed her aggressive behavior, and the caregiver regimen was reinstated. Petitioner was also moved to the Memory Care Unit at this time. This served a dual purpose: this unit has fewer male residents whom Petitioner might approach sexually, and also has doors to the outside that are kept locked to prevent residents from eloping. The full-time sitters cannot use physical force or restrain Petitioner and can only redirect her movements and encourage her from poor behavior. The sitters have been quite successful in preventing incidents, although the record contains several events in September 2022, October 2022, and January 2023 when Petitioner acted inappropriately. (Testimony of Kennedy, Moore; Exhibit R-2).

6. Following an incident on September 8, 2022 when Petitioner attempted to assault another resident, Life Care determined that it could no longer provide care for Petitioner and initiated the

process to involuntarily transfer her from the facility. A “Thirty (30) Day Discharge Notice” was mailed to P [REDACTED] B [REDACTED] on September 14, 2022. This notice states, in part, as follows:

This letter is to provide you with notice that A [REDACTED] W [REDACTED] will be discharged from Life Care Center Healthcare effective on...10/14/22, which is at least thirty (30) Days from the date of this letter. The reason A [REDACTED] W [REDACTED] is being discharged is due to the inability of the facility to provide care and services to meet the needs of the resident at this time.

...
We are currently planning to discharge resident to the following location: [REDACTED] [REDACTED] 30813. Should you prefer resident to be discharged to another location, we will assist you in locating a reasonably appropriate alternate placement. To this end, we will be working with you to prepare a discharge plan. Please note, however, that the ultimate responsibility for obtaining alternate placement rests with you.

[REDACTED], is Ms. B [REDACTED]’s residence. (Attachment to referral for hearing; Exhibit P-3).

7. Ms. B [REDACTED] is Petitioner’s guardian and conservator. She filed a request for hearing on Petitioner’s behalf with the Georgia Department of Community Health, which then referred her request to the Office of State Administrative Hearings for adjudication. (Referral for Hearing- OSAH Form 1).

8. Life Care produced several witnesses who testified about the steps taken to ensure Petitioner was discharged to a safe location that could meet her needs. There are no facilities owned by Life Care’s parent company located near Ms. B [REDACTED]’s home in Columbia County. All requests for transfer made to other private intermediate care facilities were rejected due to Petitioner’s hypersexual and aggressive behavior. An enquiry was made to the Department of Behavioral Health and Developmental Disabilities regarding placement in a public mental health hospital. One such institution, East Central Georgia Regional Hospital, is located in Gracewood, Richmond County, Georgia, which is close to Ms. B [REDACTED]’s home. Life Care was informed that since Petitioner was currently residing in Ben Hill County, she was outside the hospital’s geographical “catchment” and could not be admitted unless she resided within the Central Savannah River Area or other nearby region within its service area. There is no evidence in the record indicating whether Petitioner could be temporarily transferred to Ms. B [REDACTED]’s home then quickly admitted to East Central Georgia Regional Hospital or another state facility. Life Care was without a social worker

during this period, and the enquiries with other facilities were conducted by its administrator, Ms. Kennedy, and its Director of Business Development, Ms. Trilby Idzerda. Life Care did not enquire about placement in alternative care settings such as through the Independent Care Waiver Program, which provides Medicaid-funded services for individuals with severe physical impairments or traumatic brain injuries. (Testimony of Ms. Kennedy; testimony of Trilby Idzerda; testimony of Frances Guice, Long Term Care Ombudsman, Valdosta).

9. Ms. B [REDACTED] testified at length about the impediments to providing care in her home. Ms. B [REDACTED] is employed as a bus driver by the [REDACTED] County School District. She works five days per week during the school year, and her hours are usually from 6 am to 6 pm or later. She awakens each morning as early as 2 am to prepare for work and make the commute to the bus yard. She presently lives by herself in a private residence. Although she was married at the time of Petitioner's accident, she and her husband are divorcing. Ms. B [REDACTED] testified that Petitioner needs round-the-clock care, and if she took Petitioner into her home with no additional help, she would have to quit her job. This would mean total loss of her income, loss of health insurance, and the likely loss of her home. Ms. B [REDACTED]'s mother Granny C [REDACTED] lives nearby, but she has her own health issues and is not able to help care for Petitioner if she is discharged to Ms. B [REDACTED]'s home. Petitioner's younger sister has moved to New Jersey with her family and is unavailable to care for Petitioner. (Testimony of Ms. B [REDACTED]).

III. Conclusions of Law

1. Georgia's Bill of Rights for Residents of Long-Term Care Facilities establishes that nursing home residents and their representatives have the right to appeal violations of certain statutory rights – specifically, those enumerated in O.C.G.A. § 31-8-125(a). Included among the rights for which residents may appeal perceived violations are the rights set forth in O.C.G.A. § 31-8-116, related to involuntary discharge. See O.C.G.A. § 31-8-125(a).

2. 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 if 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.* O.C.G.A. § 31-8-116(a)(1) (emphasis added).

While the testimony and documentary evidence shows that Petitioner has exhibited aggressive and sexually inappropriate behavior toward both the staff and residents at Life Care, there is no physician's statement that failing to transfer her will threaten the health or safety of herself or others. For this reason, the Notice of Involuntary Discharge is insufficient to meet the statutory requirements.

4. Even if the record provided the proper physician's documentation required by O.C.G.A. § 31-8-116(a)(1), the evidence shows that discharge to Petitioner's mother's home is wholly inadequate to provide the care and safety that she requires. O.C.G.A. § 31-8-116(a)(1) goes on to state that:

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.

The hearing record clearly indicates that Ms. B [REDACTED] cannot afford to stay at home with Petitioner full-time without great financial risk, including the loss of her income and health insurance. While programs such as the Independent Care Waiver might be available to provide home health aides or other providers to assist with Petitioner's care while Ms. B [REDACTED] works, these supports are not currently in place nor has an application for such services been filed with the Department of Community Health. Therefore, discharge to Ms. B [REDACTED]'s residence would be reasonably expected to endanger the resident to a greater extent than if she remained at Life Care, and the Notice of Involuntary Discharge fails for this reason as well.

5. The Court acknowledges that Life Care has undertaken a significant financial burden by providing one-on-one full-time caregivers for Petitioner. Life Care could use these individuals to provide care for multiple residents at a time when the health care industry is facing a shortage of qualified employees. It is not the Court's intention that Life Care continue to provide these full-time caregivers indefinitely, but the facility is required by O.C.G.A. § 31-8-50(c) to:

... assist the resident and guardian in finding a reasonably appropriate alternative placement *prior to the proposed transfer or discharge*. The plan for such transfer or discharge shall be designed to mitigate the effects of transfer stress to the resident. Such



plan shall include counseling the resident, guardian, or representative regarding available community resources and informing the appropriate state or social service organization.

There are multiple options available for a reasonably appropriate alternative placement for Petitioner, including possible admission to East Central Georgia Regional Hospital (which Ms. B [REDACTED] favors), or home services through the Independent Care Waiver. Hopefully, the new Social Worker at Life Care can assist with this process.

IV. Decision

Respondent has failed to satisfy the requirements of O.C.G.A. § 31-8-116 and is not authorized to involuntarily discharge Petitioner at this time.

SO ORDERED, this 10th day of March, 2023.



M. Patrick Woodard
Administrative Law Judge