

had a diagnosis of end-stage pancreatic cancer.¹ As of October 22, 2017, Mr. B was still in poor shape. He was weak, wheelchair dependent, incontinent, and required assistance with transfers in and out of bed and other basic care needs.² Mr. B's condition improved and he was able to start leaving the facility: "[n]ursing staff report that Mr. B leaves the nursing home frequently."³ A review of the nursing staff notes in the record show that Mr. B began leaving the Elders Home frequently beginning in December 2017.

Mr. B's condition improved to the point that he was no longer wheelchair bound. The blood markers (CA 19-9) for pancreatic cancer also improved to the high end of the normal range as of January 2018.⁴ The social worker's notes and testimony show that as of the end of February 2018, Mr. B was walking outside along the road, and no longer needed assistive devices.⁵ Dr. Tyree's notes from March 8, 2018 provide that "Mr. [B]'s condition has improved to the point where he may no longer be benefiting from the nursing home services we have to offer, and discharge is being arranged."⁶

In May 2018, Mr. B brought an ATV to the Elders Home and began driving it. He refused all assistance. Beginning in May 2018, he began leaving the Elders Home for extended periods of time, including overnights, and continues to drive his ATV.⁷ On May 22, 2018, Mr. B met with the social worker, Dr. Tyree, and the director of nursing. In that meeting, Mr. B stated that he could care for himself.⁸

Mr. B was given a discharge notice on May 24, 2018.⁹ The reason provided was "[y]our health has improved sufficiently so that you no longer need the services provided by this facility."¹⁰ Mr. B has refused to leave and appealed.¹¹

The Elders Home's social worker began looking for a placement for him starting in February of 2018. She successfully located assisted living and semi-assisted living placements in both a rural hub community and in Anchorage for Mr. B. Mr. B, however, has refused to help

¹ Dr. Tyree's progress notes from September 27, 2017, pp. 1 – 2, 8.

² Dr. Tyree's progress notes from October 22, 2017, p. 1; Social Worker's testimony.

³ Dr. Tyree's progress notes from December 14, 2017, p. 1.

⁴ Dr. Tyree's progress notes from March 8, 2018, pp. 1, 6.

⁵ Social Worker's notes from February 28, 2018, and testimony.

⁶ Dr. Tyree's progress notes from March 8, 2018, p. 6.

⁷ Social Worker's notes from May 16, 2018, and testimony.

⁸ Social Worker's notes from May 22, 2018.

⁹ Social Worker's notes from May 24, 2018.

¹⁰ May 24, 2018 Discharge Notice.

¹¹ May 24, 2018 Appeal Notice.

complete the necessary paperwork for those placements. The social worker also contacted Mr. B's sister, who lives in a nearby village, who is willing to have Mr. B move in with her. The Elders Home would pay for the cost of transporting Mr. B to his sister's home.¹²

Dr. Tyree wrote a "summary assessment" of Mr. B on July 18, 2018. It provides that Mr. B's CA 19-9 (pancreatic tumor marker) was at 50 in August 2017, and that it had decreased to 35, "on the border of the normal range," as of January 28, 2018 and that it was 32, within normal range, as of May 15, 2018. Dr. Tyree further stated that Mr. B "requires none of the skilled nursing services we offer at the nursing home."¹³

III. Discussion

A resident of a nursing facility has a number of rights. One of those rights is that he or she cannot be discharged involuntarily from that facility, unless certain conditions are satisfied.¹⁴ The relevant condition for this case is whether the "resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."¹⁵ In order to discharge a resident based on improvement, that improvement must be documented in the resident's clinical record by his or her physician.¹⁶

The Elders Home has the burden of proof in this case.¹⁷ It must establish, by a preponderance of the evidence, that Mr. B's health has improved to the point that he no longer requires the Elders Home's services. The evidence shows that as of mid-May 2018, if not earlier, Mr. B was physically stable, no longer required medical treatment from the Elders Home, and was able to care for himself.

By federal regulation, a nursing facility "must provide sufficient preparation and orientation to residents to ensure safe and orderly . . . discharge from the facility."¹⁸ The Elders Home has tried to provide that preparation and orientation for Mr. B, but Mr. B has not cooperated. The Elders Home has met its obligations under this regulation.

IV. Conclusion

The Elders Home has satisfied its burden of proof: Mr. B's condition has improved, as documented by Dr. Tyree in the clinical record, to the point where he does not

¹² Social work's testimony. *Also see* the social worker's notes of February 23, 28, May 18, 21, and 22. Dr.

¹³ Tyree's July 18, 2018 "Summary Assessment."

¹⁴ 42 U.S.C. § 1396r(c)(2)(A); 42 C.F.R. § 483.15(c).

¹⁵ 42 U.S.C. § 1396r(c)(2)(A)(ii); 42 C.F.R. § 483.15(c)(1)(i)(B).

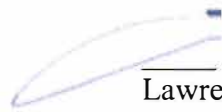
¹⁶ 42 C.F.R. § 483.15(c)(2).

¹⁷ 7 AAC 49.135.

¹⁸ 42 U.S.C. § 1396r(c)(2)(C); 42 C.F.R. § 483.12(c)(7).

require residency at the Elders Home, and the Elders Home has complied with the requirement that it provide the requisite preparation and orientation. The Elders Home's decision to discharge Mr. B is upheld.

DATED this 17th day of August, 2018.



Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1) as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of September, 2018.

Deborah Erickson, MBA
Project Coordinator
Office of the Commissioner
Department of Health & Social Services

~~The undersigned certifies that this is a true and correct~~
~~copy of the original and that on this date an exact copy~~
~~individuals:~~