

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Involuntary  
Discharge/Transfer of N.B., Petitioner,  
By Preston Good Samaritan Center,  
Respondent.

**RECOMMENDATION  
FOR DISMISSAL**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on August 11, 1999, at the Preston Good Samaritan Center, Preston, Minnesota.

Paul Mundt, Attorney at Law, Southern Minnesota Regional Legal Services, Inc., 66 E. Third Street, P.O. Box 1266, Winona, Minnesota 55987-7266, appeared on behalf of the Petitioner N.B. N.B.'s wife and three other family members were present, as was Jean Patzner-Mueller, an Ombudsman from the office of Ombudsman for Older Minnesotans.

Kris Kuhlmann, Administrator of Preston Good Samaritan Center (the Center) 608 Winona Street, P.O. Box 607, Preston, Minnesota 55965, appeared on behalf of the Center. Also present was the Center's Director of Nursing Services, the Unit Director of the Center's Alzheimer's Unit, and a Behavior Consultant from Good Samaritan's central office in Sioux Falls, South Dakota.

During preliminary discussions at the beginning of the hearing, it was noted that the entire center is certified for Medicare and Medicaid as a single unit, including the new Alzheimer's unit known as the "Circle of Serenity." N.B. is a resident of the Alzheimer's unit. There was discussion as to the Center's intent with regard to the transfer or discharge of N.B. from the Alzheimer's unit. The written notice provided to the family was ambiguous, but it was the Center's intent to transfer him from his room in the Alzheimer's wing to a skilled bed elsewhere in the facility, and to give the family the option of moving him to another nursing home if they so desired. The Center wanted to move him because his medical and nursing care needs had increased to the point that it had become difficult to provide adequate staffing for his needs in the Alzheimer's unit. The family opposed the move because they felt N.B. had been making progress in the unit and because, in physical design and appearance, the Alzheimer's unit is a preferable unit.

The Administrative Law Judge then advised the parties that if the Center was intending to give notice of a room transfer within the facility the transfer did not appear to be prohibited by the provisions of the Social Security Act under which the hearing was ordered. On the other hand, the Administrative Law Judge also advised the parties that if the center was actually intending to give a notice of discharge from the facility on the grounds that it was unable to provide for the resident's welfare, that would be a

violation of the Act because the Center had the ability to provide for the resident's welfare within the regular nursing home portion of the facility.

The parties then engaged in an extended discussion regarding their present situation. Ultimately, the Center agreed to withdraw its Notification of Transfer or Discharge and all present agreed to continue discussions and to cooperate in finding ways to provide the cares required to N.B. within the Center's staff constraints. For example, the Center is examining the possibility of using a lift that will allow a single employee to move N.B. without assistance. Everyone acknowledged that the Center still has the option of issuing a notice of room transfer at a future time if that becomes necessary.

Based upon the foregoing discussion, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED: that the Commissioner of Health order that, because the Notification of Transfer or Discharge has been withdrawn, the matter be dismissed.

Dated this 23rd day of August, 1999.

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Taped.