

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the
Involuntary Discharge of
QF_FACT,
Mary Elo, Petitioner,
by Nile Health Care
Center, Respondent.

FINDINGS

CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before
Administrative Law
Judge George A. Beck on Friday, January 18, 1991 at 9:30 a.m. at
Unit 6D of the
University of Minnesota Hospitals, in the City of Minneapolis,
Minnesota. The
record closed on January 28, 1991, upon receipt of the
final written
submission.

Ellen A. Morgan, Law Clerk, and Gail it Kaba, Esq., of the
Legal Aid
Society of Minneapolis, 222 Grain Exchange Building, 323 Fourth
Avenue South,
Minneapolis, Minnesota 55415, appeared on behalf of the
Petitioner, Mary Elo.
Susan M. Voigt, Esq., of the firm of Siegel, Brill, Gruepner and
Duffy, P.A.,
Suite 1350, 100 Washington Square, Minneapolis, Minnesota 55401,
appeared on
behalf of the Respondent, Nile Health Care Center.

This Report is a recommendation, not a final decision.
The Commissioner
of the Minnesota Department of Health will make the final
decision after a
review of the record which may adopt, reject or modify the
Findings of Fact,
Conclusions, and Recommendations contained in this Report.
Pursuant to Minn.
Stat. 14.61, the final decision of the Commissioner shall not
be made until
this Report has been made available to the parties to the
proceeding for at
least ten days. An opportunity must be afforded to each
party adversely
affected by this Report to file exceptions and present
argument to the
Commissioner. Parties should contact the Commissioner, Minnesota
Department of

Health, 71 7 Delaware Street S. E. , Minneapolis, Minnesota 55414, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this proceeding are whether the transfer or discharge of the Petitioner is necessary to meet her welfare or whether the safety or health of individuals in the Facility is endangered.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. By a letter dated November 20, 1990 the Nile Health Care Center advised Roger Elo, the Petitioner's son, that it was necessary to terminate the

admission agreement for the services rendered to his mother, Mary Elo, as of December 21, 1990.1/ The notice stated that the action was being taken "for Mary's dignity and safety and the safety of the other residents". The notice offered the assistance of the Facility's social service department in arranging a transfer and provided the addresses and telephone number for both the Minnesota Alliance for Health Care Consumers and the Minnesota Department of Health, Office of Health Facility Complaints, to be contacted if Mr. Elo wished to appeal the discharge. (Ex. 2).

2. By a letter dated December 3, 1990 and received by the Office of Health Facility Complaints on December 5, 1990, Mary Elo appealed the decision to discharge her from the Facility. (Ex. 4).

3. on December 12, 1990 the Commissioner of Health issued a Notice of and Order for Hearing in this matter setting the hearing date for January 23, 1991 at 9:30 a.m. at Nile Health Care Center. The notice was served upon the Petitioner and the Respondent by mail on December 14, 1990.

4. The date of the hearing was changed to January 18, 1991 at 9:30 a.m. upon agreement of the parties. The location of the hearing was changed to the University of Minnesota Hospitals because Mrs. Elo was hospitalized there on the date of the hearing.

5. During early 1988 Petitioner Mary Elo developed a brain tumor which was diagnosed as meningioma. In April of 1988 the tumor was removed surgically. During 1989 an infection was found in tier brain which was removed surgically at the University of Minnesota Hospitals in approximately August of 1989. At this time Dr. Kenneth A. Peterson of the University of Minnesota Family Practice Clinic became her primary care physician. Mrs. Elo's primary diagnosis is that of organic brain syndrome which includes a dementia or an inability to use the brain to rationalize and respond appropriately.

6. Mrs. Elo first entered the Respondent Nile Health Care Center on

August 24, 1989. The Respondent has 125 residents located on three floors. Mrs. Elo is located on the first floor of the facility with 24 other residents. The first floor also has the administrative offices. Since admission Mrs. Elo has consistently displayed a grabbing behavior related to her organic brain syndrome. She also will cry out on occasion, sometimes loudly. Mrs. Elo has displayed some physical improvement since entering Nile in that she now speaks and communicates more. When she was admitted, Mrs. Elo was assigned the highest level of care at the facility, case mix K. Since the summer of 1990 she has been classified as case mix J.

7. Mrs. Elo, who is 77 years old, is unable to walk on her own. Therefore, when she is placed in a geri-chair without wheels she is unable to move. Dr. Peterson and the staff at Nile have tried various strategies for Mrs. Elo's behavioral care including physical therapy, multiple medications, including Haldol, evaluation by a psychologist, and the use of mitts to control Mrs. Elo's grabbing behavior.

I/ The facility issued an earlier letter regarding discharge on October 29, 1990. (Ex. 1). Because it did not comply with the federal statute it was admittedly ineffective and the facility then issued the November 20, 1990 notice.

8. It is Dr. Anderson's opinion that Mrs. Elo does not intend to hurt or scare people and that she has some control over the grabbing because she will sometimes not grab and sometimes will release her grip if asked to do so. Mrs. Elo has occasionally grabbed Dr. Anderson's tie or lapel or hand while he was examining her. Dr. Anderson has rejected the idea of using sedatives or chemical restraint to control Mrs. Elo's behavior as not being in her best interests.

9. During the fall of 1990 Mrs. Elo grabbing and related behavior became more pronounced. Some examples include:

- a. On October 25, 1990 a visitor to the dayroom went to shake hands with Mrs. Elo who then would not let go of the visitor's hand. The visitor experienced some pain due to her arthritis. (Ex. A10).
- b. On October 30, 1990 Mrs. Elo grabbed the wrist of a staff member and pulled her hair, hit her face and pinched and squeezed her neck. (Ex. A9).
- c. On November 1, 1990 Mrs. Elo grabbed another resident on her thigh while both were in the day room leaving fingernail marks. (Ex. A6).
- d. On November 4, 1990 it was discovered that Mrs. Elo's roommate had a swollen left wrist which was then X-rayed which showed a small fracture. Mrs. Elo was not seen grabbing her roommate's wrist but was observed grabbing her arm on November 5, 1990. Nile staff has attempted to keep the two women separate, however the roommate approaches Mrs. Elo on occasion. (Ex. A5).
- e. On November 13, 1990 Mrs. Elo hit a nursing assistant in the eye while the nursing assistant was putting her in bed. (Ex. A4).
- f. On January 1, 1991 Mrs. Elo pulled a nursing assistant's hand into her mouth and bit the hand. (Ex. A13).

10. Earlier in 1990 on June 2 Mrs. Elo grabbed the arm of a 7-year-old boy who was visiting the nursing facility while they were in the hallway. Mrs. Elo's son Roger, who was present, helped remove Mrs. Elo's hand from the arm. The child was scared and crying but was not bruised. (Ex. A11, A12).

11. During the fall of 1990 Mrs. Elo has occasionally refused food and

medications. She has on occasion been agitated and has engaged in a behavior while sitting in her geri-chair in which she leans forward, grabs hold of the tray and rocks back and forth. This is sometimes accompanied by yelling. She has occasionally thrown her food or dishes on the floor in the dining room. (Ex. B).

12. The use of mitts to control Mrs. Elo's behavior has been hampered by her efforts on occasion to remove them by biting at the tape which holds the mitts in place. On one occasion Mrs. Elo broke a tooth while attempting to remove the mitts. (Ex. B).

1 3. Some residents of Nile Health Care Center are sympathetic towards Mrs. Elo and her condition while others are scared of her and would prefer to see her live elsewhere. (Ex. A2, Ex. A15-17, Ex. 8). Visitors are advised of Mrs. Elo's behavioral problem.

14. After reviewing Mrs. Elo's medical records the Medical Director of the Nile Health Care Center, Dr. Leroy Geis, concluded that she is -a threat to the safety of other residents and staff. (Ex. C).

15. Roger F. Elo, age 45, is one of Mrs. Elo's three children and is principally responsible for her care. He has been strongly involved with his mother's care, has visited the facility daily, and has fed his mother and helped her go to bed. A daughter, Betty, also visits Mrs. Elo daily. Although Roger was opposed to the use of mitts for his mother when she was first admitted to the facility, he agreed at some point during 1990 that they could be used while aides were in her room. In the fall of 1990, however, he noticed that they were being used more often. He believes that their repeated use with taping is abusive.

16. On September 25, 1990 a church service was held at the facility and Mrs. Elo was asked if she would like to attend. She wanted to attend and agreed to wear mitts at the service. Mr. Elo arrived at the facility while the mitts were being put on his mother. He removed the mitts and pushed his mother into the church service and refused to listen to the directions of staff. Mrs. Elo began screaming. When the staff advised Mr. Elo that she could not attend without the mitts he became very agitated and upset. A heated discussion ensued. At that point Mr. Elo was asked to leave the facility. After he had left Mrs. Elo was asked if she wished to stay at mass with the mitts on and she replied yes. She attended the service with no further problem. (Ex. B2-9). Mr. Elo would rather that his mother not attend large group activities if mitts are needed.

17. On September 27, 1990 Nile entered into an agreement with Mr. Elo which provided that he would be able to visit his mother from 6:00 p.m. to 8:00 p.m. each day with an additional hour on Saturday and Sunday from 1:00 p.m. to 2:00 p.m. It stated that he would not be able to provide cares to his mother and that behavior such as intimidating staff, failure to listen, raising his voice to his mother or staff, slapping his mother's hand, lack of flexibility or being demanding would not be tolerated. (Ex. B2-1). Mr. Elo subsequently violated the agreement by visiting his mother outside of the hours indicated. Mr. Elo has also involved himself in caring for his mother contrary to the agreement. (Ex. B2-6). During October Mr. Elo approached a visitor whose hand had been squeezed by his mother and complained that her reporting the incident was resulting in his mother being kicked out of the facility. (Ex. B2-4).

18. The ?ole Health Care Center has a relatively large day activities room compared to some facilities. Mrs. Elo has often been placed in a corner of that room during the day. Since she is not ambulatory, she remains in the corner. Because of the placement of the furniture in the room it is not easy for residents or visitors to approach her. When Mrs. Elo occupies the corner of the room, it does limit the use of that space for other residents and their visitors.

19. Since the Respondent decided to discharge Mrs. Elo in October of 1990 both Nile and Mr. Elo have contacted a large number of nursing homes to see if

they would accept her. Nile contacted approximately 17 nursing homey (Ex. E). It found two, Emerson Place North and David Herman which it believed would accept Mrs. Elo. A social worker from Emerson Place North visited Mrs. Elo at the Nile to interview her. Mrs. Elo told him that she would like to go to Emerson when asked and the social worker indicated that Emerson could accept her.

20. Emerson Place North is a smaller facility with a smaller dayroom than Nile. It has a higher proportion of residents with mental illness which might mean that there would be a need to protect Mrs. Elo, given her behavioral problem. David Herman is also a smaller facility with not as much open space. It has a new behavioral unit for residents with behavioral problems. Mr. Elo visited David Herman and was advised by a social worker that his mother would not be appropriate for the behavioral unit but might be admitted to the skilled nursing facility. He was advised, however, that there was no current vacancy and that his mother would be placed in a middle bed in a three-resident room.

21. Mr. Elo has contacted all of the religious nursing home facilities in the appropriate geographical area. He has made approximately 30 contacts and visited 12 facilities. Most of the facilities have advised him that they cannot meet his mother's needs if Nile cannot and some have said that the layout of the Nile is the best situation. Some facilities were willing to put Mrs. Elo on an indefinite waiting list and three facilities have not yet given Mr. Elo a definite no. Both Mr. Elo and Nile have contacted Mary Beth Arndt, the metro area ombudsman, for help on placement. She supplied it. Elo with a large number of nursing home facilities many of which he had already contacted. Very few facilities will accept residents with behavioral problems.

22. On January 7, 1991 Mrs. Elo was admitted to the University of Minnesota Hospitals because of a blood clot in her thigh. She remained in the

hospital on the day of the hearing. The Respondent has refused to allow her to return its facility. Mr. Elo had signed the "bed hold" agreement with Nile upon Mrs. Elo's admission in August of 1989. The bed hold agreement provides that the Respondent would hold a bed for Mrs. Elo if she were hospitalized or left for another reason provided that Mr. Elo would pay full room and board costs while she was away. (Petitioner's Ex. 3).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Health and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14-50 and 1819(c)(2), and 1819(e)(3), 1919(c)(2) and 1919(e)(3) of the federal Social Security Act.

2. The Notice of and Order for Hearing issued by the Department in this matter was proper and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. That pursuant to 1819(c)(2)(B) and 1919(c)(2)(B) the Notice of Discharge by the Facility must include notice of the resident's right to appeal under the state process and must include the name, mailing address and telephone number of the state long-term care ombudsman. The notice must include the reasons for the transfer or discharge.

4 That the Respondent has complied with the notice requirements set out above.

5. That the Petitioner has timely appealed the transfer or discharge.

6. Pursuant to 1819(c)(2)(A) and 1919(c)(2)(A) of the Social Security Act, a skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(iii) the safety of the individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

In each of the cases described in clauses (i) to (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv), the documentation must be made by a physician.

7. That under Minn. Rule 1400.7300, subp. 5 at party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.

B. That the Respondent is proposing that certain action be taken by its intent to transfer or discharge the Petitioner.

9. That the burden and proof in this proceeding is upon the nursing facility to prove the facts at issue by a preponderance of the evidence.

10. That the Respondent has not proved by a preponderance of the evidence that a transfer or discharge is necessary to meet the Petitioner's welfare and that the Petitioner's welfare cannot be met in the facility.

11. That the Respondent has not proved by a preponderance of the evidence that the safety of individuals in its facility is in endangered.

12. That the Respondent has not proved by a preponderance of the evidence that the health of individuals in its facility would otherwise be endangered.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Health:

(1) Grant the Petitioner's appeal and deny the proposed discharge or transfer.

(2) Condition the denial of the proposed discharge or transfer on Roger Elo entering into an agreement with the Respondent concerning his presence and activities in the facility.

(3) Encourage the parties to continue to pursue an alternative placement for the Petitioner.

Dated this 29th day of January, 1991.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Tape Nos. 9839, 9838, 9740 and 9884.
No Transcript Prepared.

MEMORANDUM

Amendments to the federal Social Security Act contained in the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) permit a certified nursing facility to discharge or transfer a resident only in certain situations. The Minnesota Department of Health has decided to conduct the hearings required under the Act as contested case proceedings under the Minnesota Administrative Procedure Act. The question in this case is whether or not the nursing home has shown that either a transfer or discharge is

necessary to meet the Petitioner's welfare, which cannot be met in the facility, and whether or not a transfer or discharge is necessary because the safety of individuals in the facility is endangered. A third issue was listed, namely, whether the health of individuals in the facility is endangered, however, no evidence was presented to show that the health of other residents or staff was affected.

Under Minn. Rule 1400.7300, subp. 5 the party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. In this case the burden of proof is upon the Respondent since it is proposing

to transfer or discharge the Petitioner. In re
City 311
Minn. 146, 247 N.W.2d 901 (1976); North Memorial Medical
Center v Minnesota
Department of Health, 423 N.W.2d 737 (Minn. Ct. App. 1988).
In a case such as
this the nursing facility has possession of the information which
would support
proof of one of the conditions set out in the statute and it
should therefore
properly bear the burden of proof. Old Ben C v.
Interior f
Mine Operations Appeals, 523 F.2d 25 (7th Cir. 1975).

The first issue is whether or not the facts in the record demonstrate
that
a transfer or discharge of Mrs. Elo is necessary to meet
her welfare and
whether it has been shown that her welfare cannot be met at
the Nile Health
Care Center. The Respondent has not shown by a preponderance
of the evidence
that Mrs. Elo's needs are not being met at the facility. The
record indicates
that Mrs. Elo has improved physically *Mile she has been at the
facility, for
example, she is able to communicate better. Her behavior
problem has not
improved, however. While Mrs. Elo takes up more staff
time than other
residents and takes up more space in the dayroom than other
residents due to
her behavior problems, it appears that insofar as her needs are
concerned, they
are being met by the facility. The facility argues that Mrs. Elo
does not fit
with the other residents at the Nile, however that argument goes
to the safety
question rather than the question of Mrs. Elo's welfare.
The facility's
administrator suggested in her testimony that she had heard some
residents make
derogatory remarks towards Mrs. Elo. this is a situation that
can be affected
by staff, however. She also testified that surrounding Mrs. Elo
with chairs in
the dayroom was not dignified and that Mrs. Elo was being
deprived of social
activities at Nile because of her behavior. The question of
whether Mrs. Elo's
needs are being met however must include a consideration of
what is available
to her given her condition. Her condition nay involve some
loss f social
activities or at least some restrictions in that regard. Based
on the record

there would seem to be much that the staff can do to lessen the effects of Mrs. Elo's behavioral problems especially if they are allowed to care for Mrs. Elo without interference by her son. The use of mitts may lessen the objections of other residents. Based upon the record it appears that the dayroom can be arranged so that Mrs. Elo is out of the pattern of traffic but not necessarily "barricaded."

The facility also argues that Mrs. Elo would be better served in a facility *Mich focuses on behavioral problems. Although strictly speaking the statute does not require a consideration of what may be available at other facilities, in reality a decision as to whether Mrs. Elo's needs are being met cannot be made without a consideration of what alternatives are available. The facility has laudably assisted Mr. Elo in exploring *that alternative placements might be available. As Ms. Arndt indicated, however, there are very few facilities who will accept behavioral problems. The Respondent indicated at the hearing that it had located two facilities, namely, Emerson Place North and David Herman. Mr. Elo's testimony indicated that there is no vacancy immediately at David Herman. Ms. Arndt's testimony indicated that both facilities had smaller dayrooms which would make it more difficult to deal with Mrs. Elo's grabbing behavior. Additionally, Emerson Place North, whose social worker visited Mrs. Elo, has a higher proportion of residents with mental illness which raises questions of the need to protect Mrs. Elo given her behavior. As Ms. Arndt pointed out, at Nile some residents remain responsive to Mrs. Elo. Whether or not this would be situation at David Herman or Emerson Place North is uncertain. Even though the statute does not so require, the Commissioner may wish to consider requiring a showing by a facility in future

contested case hearings that a better alternative exists for a resident proposed to be transferred or discharged. Although this record contains some information as to two possible alternatives, there is not enough evidence to allow a conclusion that Mrs. Elo would be better served at another facility. The Commissioner may wish to require a discharging facility to provide enough facts about possible alternative placements to allow the Commissioner to conclude not only that the resident's welfare is not being met at the facility but that there is some alternative which would be more favorable to the resident.

The evidence indicates that Nile has a dedicated staff which has worked hard to meet Mrs. Elo's problems. There is no doubt that her behavior presents a stressful challenge to those caring for her. The faculty is concerned about balancing Mrs. Elo's rights with those of other residents, staff, and visitors. However, Ms. Arndt believes that the Respondent has the capacity to care for Mrs. Elo. Similarly, Mrs. Elo's physician, Dr. Anderson, indicated that Nile had the ability to care for Mrs. Elo if they were allowed the flexibility necessary in her treatment and if Mr. Elo would not interfere with his mother's treatment. It is therefore concluded that Mrs. Elo's welfare is being met at the facility.

The Respondent has also attempted to show in this case that the safety of individuals in its facility is endangered by Mrs. Elo's behavior. The Findings of Fact describe her interaction in that regard with the staff, residents, and a visitor during the fall of 1990. While the difficulty of dealing with this behavior should not be minimized, it appears that no serious injuries have occurred. It appears that the use of mitts during cares or at other times may have prevented some of the incidents. The nature of the incidents, however, does not permit a conclusion that the safety of other people in the facility is necessarily endangered if Mrs. Elo remains. (See Findings of Fact nos. 9-11).

The fact that Mrs; Elo sometimes cries out, sometimes throws her food or dishes, or refuses medication is undoubtedly stressful for both staff and residents. However, the federal statute does not seem to permit this as a grounds for discharge or transfer. Although the facility's medical director has indicated his belief that the safety of others is endangered, the Respondent has not demonstrated by a preponderance of the evidence, facts sufficient to support that conclusion. Many nursing home residents with dementia may occasionally be involved in an incident similar to those described in this Report. A decision in this case must consider the severity and frequency of the incidents which have occurred. It is concluded that the events described do not rise to the level of endangerment given the options available to staff to mitigate the behavior.

The difficulty of caring for Mrs. Elo has been exacerbated in this case by the nature of her son's interaction with the nursing home staff.

It is the opinion of both the nursing home staff and Mrs. Elo's physician that he is interfering in her treatment. While he very clearly is concerned about his mother's welfare and is seeking to have her cared for in the best possible way, his actions have not always led to that end. As the Petitioner asserts in her post-hearing memorandum, it appears that the problems which Mr. Elo have caused for the facility are a part, though not all, of the reason that they seek the Petitioner's discharge or transfer. Some staff members are afraid of him. The nursing home staff is clearly justified in its concern about his behavior at the facility Accordingly, it is recommended -to the Commissioner of Health that should the recommendation to deny discharge be adopted, that it be

conditioned upon restrictions on Mr. Elo's presence in the facility. It is suggested that Mr. Elo and the facility negotiate an agreement, perhaps similar to Exhibit B2-1, which will permit the facility to care for Mrs. Elo with the flexibility contemplated by Dr. Anderson. It is suggested that Ms. Arndt assist the parties in negotiating an agreement and that if the parties are not able to agree that the Commissioner of Health finalize the agreement based upon the respective suggestions of the parties. It is also appropriate, given Mr. Elo's violation of the prior agreement, to provide that his failure to abide by the new agreement, should then allow the Respondent to transfer or discharge Mrs. Elo with the Commissioner's approval. As Dr. Anderson testified it seems clear that caring for a resident such as Mrs. Elo strains any facility. This should not be made more difficult by the actions of a relative, even one who is very concerned with her welfare.

It is also recommended that the facility, Mr. Elo and Ms. Arndt continue to explore the possibilities for an alternative placement which might meet Mrs. Elo's needs. At the time of the hearing Mr. Elo stated that three facilities had still not given him a definite no about her admission. With further time it may be possible to locate a placement for Mrs. Elo which will better meet her needs while also protecting her. Given the history of this case and given the fact that, as suggested by Dr. Anderson, that Mrs. Elo has the potential to cause a serious injury if she is not responded to by staff, alternatives should be pursued. The parties should therefore be encouraged to continue to seek an alternative placement even though the facility is not able to demonstrate adequate grounds for discharge under the federal statute at this point.

The facility argues in its written memorandum that its liability for Mrs. Elo's actions should be considered in support of its request to transfer or discharge her. The Respondent is concerned that it may be monetarily responsible for any serious bodily harm which Mrs. Elo might cause 'Me

facility, of course, faces this potential liability for the actions of any resident and assumes that risk because of the nature of its business. The federal statute does not recognize potential liability, however, as a grounds to support discharge or 'transfer. The potential for liability helps to assure that the staff is careful to minimize the effects of Mrs. Elo's behavior. However, the possibility of an injury is not properly a reason for a facility to seek removal of a resident.

Petitioner argues in her memorandum that the facility has improperly failed to honor a bed-hold agreement with her. The facility apparently argues that the bed-hold agreement applies only to transfers and that since it had discharged Mrs. Elo, the agreement no longer applied. Although the situation has obvious implications for allowing a circumvention of this appeal process, there does not appear to be any specific authority to deal with the consequences of the facility's decision not to allow Mrs. Elo to return from the hospital in this forum. However, this decision has been expedited due to the situation, namely the Petitioner remaining at the University of Minnesota Hospitals even though she could be discharged.

G.A.B.