

**FILED**

APR 10 2008

**JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY**

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

BARBARA H. LINDSAY, by and through her )  
 Attorneys-in-Fact, Douglas Lindsay and Jeanne )  
 Carmack, )  
 )  
 Petitioners, )  
 vs. )  
 )  
 BETHESDA LONG TERM CARE, INC., d/b/a )  
 BESTHEDA MEADOW, )  
 )  
 Respondent. )

Cause No. 07SL-CC00941

Division No. 9

**ORDER AND JUDGMENT**

This matter is before the Court on Petitioner Barbara H. Lindsay's ("Petitioner's")  
 Petition For Judicial Review of Administrative Decision, as filed by and through her  
 attorneys-in-fact, Douglas Lindsay and Jeanne Carmack, on November 20, 2007. A court  
 hearing was held on April 3, 2008 for oral argument pursuant to Local Rule 71(3), with  
 Attorney Jacqueline Ulin Levey appearing as counsel on behalf of Petitioner and  
 Attorney James W. Erwin appearing as counsel on behalf of Respondent, Bethesda Long  
 Term Care, Inc., d/b/a Bethesda Meadow ("Bethesda Meadow"). After oral argument,  
 this matter was submitted to the Court. The Court, being advised in the premises, rules as  
 follows:

**FACTS**

Petitioner Barbara H. Lindsay ("Ms. Lindsay") is presently residing at Bethesda  
 Meadow, which is a skilled nursing facility located in Ellisville, Missouri. Ms. Lindsay  
 has resided at Bethesda Meadow since November 27, 2006. As for her medical  
 condition, Ms. Lindsay suffered over the last ten (10) to twenty (20) years "from a

complex constellation of documented medical conditions,” including significant neuromuscular problems, hypoglycemia, and irritable bowel syndrome. Also, she has been diagnosed with autonomic dysfunction and an unspecified muscle disease, which causes her muscles to cramp and spasm. A prior muscle biopsy indicated chronic denervation (nerve death). Ms. Lindsay’s physicians have advised that she is very fragile and has very little strength.

On July 24, 2007, Bethesda Meadow issued a Notice of Discharge to Jeanne Carmack and to Doug Lindsay, on behalf of Ms. Lindsay, asserting that Ms. Lindsay would be “discharged from Bethesda Meadow on August 24, 2007, as a result of the failure to pay for her care in a timely manner.” In the Notice of Discharge, Bethesda Meadow stated that “[t]he balance owed to Bethesda Long Term Care, Inc. as of July 24, 2007, for Ms. Lindsay’s stay at Bethesda Meadow is \$29,774.50. After reasonable and appropriate notice to pay, this thirty-day written notice of discharge from this facility is now being issued.” The Notice also indicated that admission arrangements had been made with Oak Forest Manor, a skilled nursing facility in Ballwin, and that Ms. Lindsay would be discharged to that facility.

On August 21, 2007, Douglas Lindsay and Jeanne Carmack requested a hearing to challenge the Notice of Discharge with the Missouri Department of Health and Senior Services, Division of Regulation and Licensure (“DHSS”). Subsequently, DHSS conducted a telephonic hearing on October 11, 2007, and issued its Decision and Order on November 7, 2007, affirming the Notice of Discharge.

Among the exhibits submitted by Bethesda Meadow at the DHSS hearing, Bethesda Meadow submitted the Resident Entrance Agreement and the monthly billing

statements issued to Ms. Lindsay's family in support of its assertion that it had provided "reasonable and appropriate notice" of the amounts due to Bethesda Meadow and the time frames within which payment was required.

At the hearing, it was disclosed that the billing statements were erroneous because they had not properly credited Ms. Lindsay's account for overcharges previously billed. Long after issuance of the Notice of Discharge and one day prior to the October 11, 2007 DHSS hearing, Bethesda Meadow issued a revised invoice reflecting corrections of the errors in prior bills; however, the revised invoice was still inaccurate. Bethesda Meadow's witness also testified that as of the issuance date of the Notice of Discharge, "the actual balance due should have been reflected as \$19,767.20," rather than the \$29,774.50 amount that was actually listed in the Notice.

There is no dispute that the full amount due and owing on Ms. Lindsay's account as of the date of the DHSS hearing had been paid in full prior to the hearing.

Dr. Elizabeth Laffey, Ms. Lindsay's physician, testified at the DHSS hearing on Ms. Lindsay's fragile medical condition. Dr. Laffey stated that Ms. Lindsay's condition sharply declined after she was transported from Rosewood Nursing Home to Bethesda Meadow in November, 2006 and that Ms. Lindsay did not return to her prior level of functioning after the move. Dr. Laffey further testified that, given Ms. Lindsay's precipitous drop in functioning following two prior transfers, any future transfers would likely have "a dire effect" and precipitate a further decline in her ability to function.

Douglas Lindsay also testified at the DHSS hearing that he believed his mother, Ms. Lindsay, would be traumatized again by any additional transfer and that this would lead to injuries which would result in her death. Mr. Lindsay additionally stated that he

had repeatedly addressed his concerns regarding his mother's care and billing issues to Bethesda Meadow's staff, supervisors and management. He indicated that he did not believe that Bethesda Meadow had provided him with accurate billing statements and that he had been trying for months to obtain accurate billing statements.

Despite the testimony of Dr. Laffey and Mr. Lindsay, Bethesda Meadow did not present any evidence during the DHSS hearing on the issue of whether a safe and orderly discharge of Ms. Lindsay could be accomplished and whether adequate arrangements had been made for meeting her needs.

### CONCLUSIONS OF LAW

Ms. Lindsay timely filed a Petition for Judicial Review of the DHSS Decision and Order on November 20, 2007. The DHSS Decision and Order is a final decision in a contested case, and Ms. Lindsay is a party aggrieved thereby. § 536.010(2), RSMo. This Court has jurisdiction to review the DHSS Decision and Order pursuant to § 536.100, RSMo, *et seq.* and Rule 100.1 of the Missouri Rules of Civil Procedure. Pursuant to § 536.110.3, venue is proper in this Court because Ms. Lindsay resides in St. Louis County.

Under Missouri law, the Court's review may extend to an inquiry of whether the DHSS Decision and Order (1) is in violation of constitutional provisions; (2) is in excess of the statutory authority or jurisdiction of the agency; (3) is unsupported by competent and substantial evidence upon the whole record; (4) is, for any other reason, unauthorized by law; (5) is made upon unlawful procedure or without a fair trial; (6) is arbitrary, capricious or unreasonable; and/or (7) involves an abuse of discretion. § 536.140.2, RSMo.

After careful review of the whole record, this Court finds that the DHSS Decision and Order is unsupported by the evidence, is arbitrary and unreasonable, and is not authorized by law.

The record demonstrates that Bethesda Meadow failed to provide reasonable and appropriate notice to Ms. Lindsay prior to her threatened discharge, as required by State and federal regulations, in that the billing statements it issued in connection with Ms. Lindsay's account prior to mailing the Notice of Discharge were grossly inaccurate.

The record also demonstrates that Bethesda Meadow failed to provide a sufficient Notice of Discharge to Ms. Lindsay, or her attorneys-in-fact, in that the outstanding balance amount reflected on the Notice was \$10,000 higher than the amount actually due and owing on Ms. Lindsay's account as of the date of the Notice. As a result, Bethesda Meadow failed to establish that it had sent a written notice of discharge that was appropriately informative and "in a language and manner reasonably calculated to be understood by the resident," as required by State and federal regulations.

In addition, during the DHSS hearing, Bethesda Meadow had the burden of showing that the facility complied with all requirements for appropriate transfer or discharge of the resident. However, Bethesda Meadow failed to present any evidence that a safe and orderly discharge of Ms. Lindsay could be accomplished by Bethesda Meadow, and that adequate arrangements had been made for meeting her needs, as required by State and federal regulations governing resident discharges. On the contrary, the record shows that the only evidence submitted concerned the significant dire consequences that a transfer would have on Ms. Lindsay's health. Furthermore, Dr. Laffey testified about the "precipitous drop" in Ms. Lindsay's level of functioning after

her two prior transfers, and the likelihood of a further deterioration after another transfer. Although the hearing officer had decided that "there was insufficient evidence offered that a safe and orderly discharge of resident Lindsay cannot be accomplished by Bethesda," this ruling had the impermissible effect of placing the "safe and orderly discharge" burden on Ms. Lindsay rather than keeping it with Bethesda Meadow.

Each of the foregoing conclusions constitutes a separate and independent ground supporting reversal of the DHSS Decision and Order.

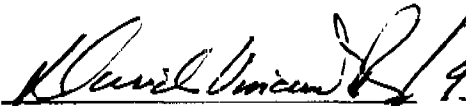
### ORDER AND JUDGMENT

ACCORDINGLY, THE COURT ORDERS, ADJUDGES, AND DECREES that judgment be entered in favor of the Petitioner Barbara H. Lindsay and against Respondent Bethesda Long Term Care Inc. d/b/a Bethesda Meadow on the Petition for Judicial Review of the Administration Decision of the Missouri Department of Health and Senior Services, Division of Regulation and Licensure, entered on November 7, 2007, in the matter styled *In re Barbara Lindsay, Resident*, Hearing No. T099-DIS-07; and further, that the Decision and Order of DHSS is hereby reversed and vacated. Costs taxed against respondent.

Bethesda Meadow is hereby prohibited from discharging Petitioner Barbara H. Lindsay from its facility pursuant to the July 24, 2007 Notice of Discharge.

So Ordered:

Dated: April 10, 2008

  
Hon. David Lee Vincent, III  
Circuit Judge, Division No. 9

cc: Attorneys of record