

FILED

Jun 13, 2018

Office of Appeal Hearings
Dept. of Children and Families

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[REDACTED]

APPEAL NO. 18N-00005

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter was convened on
May 18, 2018 at 9:30 a.m. at the [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED] petitioner's husband

For the Respondent: [REDACTED], Facility Administrator.

ISSUE

At issue is the facility's intent to discharge the petitioner due to non-payment
of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on
January 5, 2018 with an effective date of February 5, 2018.

The facility has the burden of proof to establish by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. § 483.15 and Section 400.0255, Florida Statutes.

PRELIMINARY STATEMENT

By a notice dated January 5, 2018, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to non-payment. On January 11, 2018, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as an observer for the petitioner but not giving testimony was [REDACTED] [REDACTED] from the Long Term Care Ombudsman Program.

Appearing as witnesses for the respondent were [REDACTED] Office Manager, and [REDACTED] Social Services Director.

The petitioner did not submit any documents as evidence for the hearing.

The respondent submitted the notice of discharge as evidence for the hearing, which was marked as Respondent Exhibit 1. The respondent also submitted a transaction history, billing report, and Medicaid eligibility history information. These documents were marked as Respondent Exhibit 2.

A letter dated March 2, 2018 from the Agency for Health Care Administration (AHCA) was sent to the undersigned, stating that the representative did not find the facility in violation of any laws or rules. This was entered as Hearing Officer Exhibit 1.

FINDINGS OF FACT

1. The petitioner has been residing in the facility since August of 2017.
2. The respondent's husband stated he was informed by the billing manager at the nursing facility on August 3, 2017 that there would be no cost to the patient for the nursing home services and that his wife could keep her monthly Social Security benefit. He stated everything was fine for the first few months until he was informed by the facility that a mistake had been made and there was actually a patient responsibility that had been due to the facility. He stated the facility agreed to waive the first two months' charges due to this mistake. He also stated he requested Medicaid reinstatement for his wife about a month prior to the hearing date.
3. The facility administrator stated the facility was informed on September 27, 2017 by the Medicaid Program that there was a monthly patient responsibility of \$995 in the petitioner's case.
4. The facility's office manager stated the patient responsibility was \$995 monthly upon admission and this increased to \$1,018 in February, 2018. He acknowledged the petitioner's husband may have been misinformed as to the patient responsibility at the time of his wife's admission to the facility. He also stated the petitioner was denied Medicaid coverage in February, 2018 due to being over the asset limit. Although the Medicaid coverage was canceled at that time, the petitioner's Medicaid HMO provider (Sunshine Health) paid the facility charges for February and March, 2018. There has been no payment since April 1, 2018. The total arrearages at the time of the hearing was \$9,047.

CONCLUSIONS OF LAW

5. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

6. Federal Regulations, appearing at 42 C.F.R. § 483.15, set forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(c) Transfer and discharge—(1) Facility requirements—(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

...

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

7. The petitioner's husband contends he was given false information as to the patient responsibility payment when his wife was first admitted to the facility. He believes there should be no patient responsibility because of this.

8. However, the documents submitted by the facility establish that a patient responsibility payment was in fact required by the Medicaid Program. The documents also show the petitioner's Medicaid coverage was canceled effective February 1, 2018 and there has been no payment to the facility since April 1, 2018. Although the

petitioner's husband stated he requested reinstatement of his wife's Medicaid coverage, no document or other evidence was submitted to establish the Medicaid coverage was ever approved or reinstated after it was canceled on February 1, 2018. In any event, even if the Medicaid coverage had been subsequently approved, there would still have been past due charges for the patient responsibility portion of the payments.

9. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for a stay at the facility. This is one of the six reasons provided in 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident.

10. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

11. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge, as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

NOTICE OF RIGHT TO APPEAL

The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Office of Appeal Hearings, Bldg. 5, Rm.255, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 13 day of June, 2018,

in Tallahassee, Florida.



Rafael Centurion
Hearing Officer
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FINAL ORDER (Cont.)

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Copies Furnished To: [REDACTED], Petitioner

[REDACTED]
RESPONDENT

[REDACTED], RN

AGENCY FOR HEALTH CARE ADMINISTRATION

[REDACTED]