

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

FILED

Jun 06, 2018

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 18N-00021

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on April 25, 2018 at 1:12 p.m., at [REDACTED] [REDACTED] Florida.

APPEARANCES

For the Petitioner:

[REDACTED]

For the Respondent:

[REDACTED] Administrator

STATEMENT OF ISSUE

At issue is the facility's intent to discharge the petitioner due to non-payment of a bill for services based on federal regulations found at 42 C.F.R. § 483.15. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

PRELIMINARY STATEMENT

On February 26, 2018, the respondent issued a Discharge Notice to the petitioner informing him that he was to be discharged from the nursing facility effective March 28, 2018, due to (1) non-payment of bill for services, (2) your needs cannot be met in this facility and (3) the safety of other individuals in this facility is endangered. There was no physician's signature on the Discharge Notice nor was there a physician's order for discharge attached to the Discharge Notice.

On March 5, 2018, the petitioner timely requested a hearing to challenge the facility's action. The undersigned will only address the issue of non-payment in this order as there must be either a physician signature on the Discharge Notice or an attached physician's order of dismissal.

Appearing as a witness for the petitioner was [REDACTED] ombudsman, with the Florida Ombudsman Program.

Appearing as witnesses for the respondent were [REDACTED] Director of Nursing, [REDACTED] Business Office Manager and [REDACTED] for the facility.

Evidence was received and entered as the Respondent's Composite Exhibit 1. The record was held open until May 5, 2018 for the petitioner to provide proof of his payments to the nursing facility. The petitioner requested additional time to provide his evidence. Additional time was granted and the record was kept open until May 16, 2018. No additional evidence was received. The record was closed on May 16, 2018.

FINDINGS OF FACT

1. The petitioner (age 58) was admitted to the nursing facility on October 13, 2017. He was receiving Medicaid when he entered the nursing facility and had a patient

responsibility of \$1,024 for the month. Effective November 2017 through December 2017, the petitioner's patient responsibility changed to \$804, in January 2018; his patient responsibility changed to \$1,046, in February 2018 it was \$826 and March 2018 it was \$827. The petitioner receives gross monthly Social Security Disability Income (SSDI) of \$1,152.

2. The respondent prorated the petitioner's patient responsibility for October 2017 from the date he was admitted to the Nursing Facility. He was billed \$627.57 for October 2017. The respondent asserted the petitioner did not pay his patient responsibility for October 2017, December 2017, January 2018 and April 2018.

Additionally, the respondent asserted that the petitioner only made partial payments of \$325 for November 2017, \$700 for February 2018 and \$580 for March 2018 (Respondent's Composite Exhibit 1).

3. The nursing facility provided the petitioner with monthly statements with the balance owed each month. In addition to the monthly statements, facility staff met with the petitioner each month and discussed payment options. The nursing facility advised the petitioner to sign his SSDI check over to the facility but he refused (Respondent's Composite Exhibit 1).

4. The respondent provided its transaction report of the facility's charges to the petitioner and the petitioner's payments to the facility. The report shows that the petitioner has an outstanding balance of \$4,156.57 owed to the facility as of May 2018.

5. At the hearing, the petitioner disputed owing any money to the nursing facility and did not agree with his patient responsibility as determined by the Department of Children and Families. The petitioner asserts that his patient responsibility should be

lower as he has a child support garnishment from his SSDI. The record was held open for the petitioner to provide his payments made to the nursing facility but he has not provided any evidence to support his claim.

CONCLUSIONS OF LAW

6. 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.
7. Federal Regulations appearing at 42 C.F.R. § 483.15 set forth the reasons a facility may involuntarily discharge a resident as follows:
 - (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—
 - (A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
 - (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
 - (D) The health of individuals in the facility would otherwise be endangered;
 - (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;... **(emphasis added)**
 - (F) The facility ceases to operate.
8. The above authority allows for a resident to be discharge from the Nursing Facility for failure to pay for his or her stay.

9. The undersigned reviewed the petitioner's patient responsibility and the payments he made to the facility. The following table shows the actual charges and the petitioner's payments, resulting in an outstanding balance owed to the facility.

Months	Patient Responsibility	Amount Paid
Oct-17	\$627.57	\$0.00
Nov-17	\$804.00	\$325.00
Dec-17	\$804.00	\$0.00
Jan-18	\$1,046.00	\$0.00
Feb-18	\$826.00	\$576.00
Feb-18	\$0.00	\$124.00
Mar-18	\$827.00	\$580.00
Apr-18	\$0.00	\$0.00
May-18	\$827.00	\$0.00
Total	\$5,761.57	\$1,605.00
	\$5,761.57	
	-\$1,605.00	
Balance Owed	\$4,156.57	

10. According to the above authority, the facility may not discharge a resident from its facility except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for their stay at the facility. The petitioner acknowledged that he was informed that he owed the facility for services but claimed that he paid the facility and does not have an outstanding balance. The petitioner was given an opportunity to provide proof of his payments to the facility but has not provided such evidence. The facility has established that it is owed for services provided to the petitioner in the amount of \$4,156.57.

11. The hearing officer concludes that the facility has given the petitioner reasonable and appropriate notice to pay for his stay at the facility. The Discharge Notice states that a doctor must sign the Discharge Notice or a written order for discharge must accompany the Discharge Notice except for “Your bills for service at the facility has not been paid” and “This facility is closing.” As this ruling is for a nonpayment for service, the Discharge Notice does not need to be signed by a doctor. 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.

12. Establishing 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.

13. 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


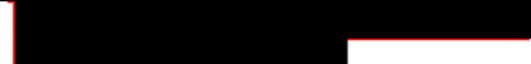
The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the 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 06 day of June, 2018,

in Tallahassee, Florida.



Christiana Gopaul-Narine
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To:  Respondent

Agency for Health Care Administration