

Sep 12, 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-00073

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on August 8, 2018 at 3:11 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For the Petitioner: [REDACTED], petitioner's wife

For the Respondent [REDACTED], Nursing Home Administrator

**STATEMENT OF ISSUE**

At issue is the facility's intent to discharge the petitioner due to non-payment of bill for services based on federal regulations 42. C.F.R. § 483.15. The burden of proof was assigned to the respondent by clear and convincing evidence.

### **PRELIMINARY STATEMENT**

By Nursing Home Transfer and Discharge Notice dated June 15, 2018, the respondent notified the petitioner he was to be discharged from the nursing facility effective July 15, 2018, due to non-payment of bill for services.

██████████, Business Office Manager (BOM), and ██████████ social worker both appeared as witnesses for the respondent. The petitioner submitted a one-page exhibit, which was marked and entered as Petitioner's Exhibit "1". The respondent submitted an 11-page exhibit, which was marked and entered as Respondent's Exhibits "1" through "4".

### **FINDINGS OF FACT**

1. On April 11, 2018, the petitioner was admitted to the nursing facility through ██████████. He was receiving Medicaid when he entered the nursing facility and effective March 1, 2018, had a patient responsibility of \$2,195.90. Effective July 1, 2018, the patient responsibility decreased to \$2,150.90 (Respondent's Exhibit 2).
2. The respondent prorated the petitioner's responsibility for April 2018 from the date he was admitted to the facility. He was billed \$1,464 for April 2018. The respondent asserts the petitioner made partial payments and has refused to pay more than \$1,000 per month (Respondent's Exhibit 3).
3. The facility has made several attempts to assist the petitioner with updating the income information with the Department of Children and Families (DCF) to possibly lower the patient responsibility. The petitioner's wife has not cooperated (Respondent's Testimony).

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 as of August 2018, the petitioner has an outstanding balance of \$5,657.60 (Respondent's Exhibit 3).
5. On June 15, 2018, the respondent issued a Nursing Home Transfer and Discharge Notice to the petitioner with an effective date of July 15, 2018. The petitioner was being discharged due to non-pay of bill for services (Respondent's Exhibit 1).
6. The petitioner timely requested the appeal.
7. The petitioner's representative did not dispute owing the money. She claims she doesn't have the money and she is unsure where DCF got their numbers to calculate the patient responsibility.
8. The petitioner remains in the facility pending the hearing decision. The petitioner's outstanding balance to the facility, as of the date of the hearing, was \$5,657.60.

#### **CONCLUSIONS OF LAW**

9. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding, pursuant to Section 409.285, Fla. Stat.
10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
11. 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.

12. The above authority allows for a resident to be discharged from the nursing facility for failure to pay for his or her stay.

13. In this instant case, the petitioner's representative does not deny paying \$1,000 per month to the facility and owing the facility money based on the patient responsibility of \$2,195.50.

14. Based on the evidence and testimony, the respondent has established the petitioner has refused to pay the full patient responsibility at the facility. This is one of the six (6) reasons provided in federal regulation (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. The respondent has met its burden.

15. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The facility 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.

16. 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**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is hereby denied, as the facility's action to discharge the petitioner is correct and in accordance with Federal Regulations. The facility may proceed with the discharge as discussed in the Conclusions of Law, 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 12 day of September, 2018,  
in Tallahassee, Florida.

*Pamela B. Vance*

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Copies Furnished To: [REDACTED] Petitioner  
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[REDACTED]