

FILED

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

Nov 09, 2018

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 18N-00107

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a nursing home discharge hearing in the above-referenced matter convened before the undersigned on September 25, 2018 at 10:00 a.m., at

[REDACTED]

APPEARANCES

For the petitioner: [REDACTED], pro se

For the respondent: [REDACTED]

[REDACTED]

STATEMENT OF ISSUE

At issue is whether 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 is correct. A Nursing Home Transfer and Discharge Notice was issued on August 7, 2018. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

PRELIMINARY STATEMENT

Witnesses for the respondent were [REDACTED], Office Manager, [REDACTED], Social Services Director, and [REDACTED] Director of Nursing; and observing telephonically for the respondent was [REDACTED] cooperating attorney¹.

At the request of the undersigned, the Agency for Health Care Administration (AHCA) conducted an on-site inspection of the facility and found no violations.

The respondent submitted three exhibits, which were accepted into evidence and entered as Respondent's Exhibits "1" through "3".

The record was left open until October 5, 2018 for submission of evidence from the petitioner. On October 4, 2018, the petitioner submitted evidence, which was accepted into evidence and entered as Petitioner's Exhibit "1." The record closed on October 5, 2018.

FINDINGS OF FACT

1. The petitioner (37) entered the facility on April 13, 2018. The petitioner was receiving Community Medicaid Program benefits when he entered the nursing facility. The Community Medicaid Program benefits do not cover Long Term Care in the nursing facility; therefore, the petitioner became a private pay resident responsible for the total amount of the facility's bill for services rendered.
2. The respondent attempted to assist the petitioner in the process of completing an Institutional Care Program (ICP) Medicaid application on various dates during the period

¹ Not registered with the State of Florida bar license.

of May 18, 2018 through September 24, 2018; however, the petitioner refused to fill out an application for ICP Medicaid coverage.

3. As of the hearing date, no Medicaid application had been submitted for the petitioner to the Department of Children and Families (DCF).
4. On August 7, 2018, the respondent issued the petitioner a Nursing Home Transfer and Discharge Notice which indicated the petitioner would be discharged from the facility effective September 7, 2018 due to non-payment of bill for services.
5. The respondent provided a transaction report of the facility's charges for the petitioner's care. The report shows that as of September 2018, the petitioner has an outstanding balance of \$37,008.87.
6. The petitioner is not disputing owing the money. The petitioner argued he wanted more information regarding the ICP Medicaid coverage and how that Program will affect him financially. The petitioner receives spousal support of \$1,000.00 per month. Additionally, the petitioner is concerned regarding changing his Community Medicaid Program benefits because it may affect his prescriptions to be filled or services rendered to see a doctor.
7. The petitioner acknowledged receipt of the non-payment notices and monthly statements informing him of the outstanding balance owed to the facility.
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 \$37,008.87.

CONCLUSIONS OF LAW

9. 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.

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. According to the above authority, the facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the facility. As of the date of the hearing, the petitioner's balance owed to the facility was \$37,008.87. Based on the evidence and testimony, the respondent has established the petitioner has refused to pay what he owes to the facility. The respondent made numerous attempt to assist the petitioner to apply for ICP

Medicaid. The petitioner refused to assist the respondent. This is one of the six (6) reasons provided in federal regulations (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. The respondent has met its burden.

13. 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.

14. 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, in accordance with all 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 09 day of November, 2018,

in Tallahassee, Florida.



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Hearing Officer
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