

Dec 18, 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-00133

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter convened on December 13, 2018 at 2:26 p.m. at the [REDACTED] Florida.

APPEARANCES

For the Petitioner: The petitioner was not present and was represented by her daughter, [REDACTED]

For the Respondent: [REDACTED] Nursing Home Administrator (NHA) for Cross Care Center.

ISSUE

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on September 27, 2018 with an effective date of October 28, 2018.

The respondent carries the burden of proof by clear and convincing evidence.

PRELIMINARY STATEMENT

By notice dated September 27, 2018, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to nonpayment. On October 5, 2018, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as a witness for the petitioner was her son [REDACTED]

Appearing as witnesses for the respondent were [REDACTED] Corporate Business Office Manager (BOM), and [REDACTED] Social Services Director (SSD).

Evidence was received and entered as the Respondent's Exhibits 1 through 2.

The record was closed at the end of the hearing.

FINDINGS OF FACT

1. The petitioner, age 73, has been residing in the respondent's facility since February 10, 2017.

2. The BOM contends that the petitioner's representative has not provided the necessary verifications to approve the Medicaid application, nor has she paid the private portion that is due to the facility. The patient responsibility was \$1253 in January 2018 before the Institutional Care Program (ICP) Medicaid, according to the Notice of Case Action dated January 16, 2018 (Respondent's Exhibit 2). The BOM explained that the petitioner's daughter was to complete the recertification process in June 2018, with the assistance of [REDACTED]. The BOM explained that since the recertification process was not completed, she applied for ICP Medicaid on the petitioner's behalf. The BOM further explained that the application was denied because the petitioner's daughter failed to provide verifications to the Department of Children and Families

(DCF). The BOM contends that the petitioner's daughter is not paying the petitioner's patient responsibility in addition to the balance owed for private pay.

3. The facility's records show that the petitioner has a balance owed in the amount of \$55936.13 as of the date of the hearing (Respondent's Exhibit 2). The SSD contends that she communicated with the petitioner's daughter in an attempt to help her submit the verifications needed to complete the ICP Medicaid application. The NHA contends that the last month payments were received through the ICP Medicaid program was in June 2018.

4. The petitioner's daughter does not dispute the statements made by the BOM. The petitioner's daughter acknowledges receiving monthly billing statements from the facility. The petitioner's daughter argues that she has submitted verifications to DCF but has not been able to get in contact with anyone to assist her with the petitioner's case. The petitioner's daughter argues that she paid \$2000 to the facility in September 2018 and was informed that it does not have a record of the payment. The petitioner's son contends that Qualified Medicare Beneficiary (QMB) was approved but that more information was needed from the facility.

5. The Respondent's Exhibit 2 includes the ACCESS Florida Individual Medicaid Eligibility History screen for the petitioner's case with DCF. The Individual Medicaid Eligibility History screen shows that the petitioner's ICP Medicaid case is currently in a denied status.

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. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

7. Federal Regulations appearing 42 C.F.R. § 483.15, sets 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; or...

8. 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.

9. Based on the evidence presented, the undersigned concludes that 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 federal regulation (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident.

10. 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 describe 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 18 day of December, 2018,
in Tallahassee, Florida.



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