

Feb 07, 2019

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-00153

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 10, 2019 at 3:08 p.m., at [REDACTED] in [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED], pro se

For the Respondent: [REDACTED]
Nursing Home Administrator (NHA)

STATEMENT OF ISSUE

At issue is:

- I. 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

- II. the facility's intent to discharge the petitioner due to his health improving sufficiently as he no longer needs the services provided by the facility.

The burden of proof was assigned to the respondent by a preponderance of evidence.

PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated November 2, 2018, the respondent notified the petitioner he was to be discharged from the nursing facility effective December 3, 2018, due to non-payment of bill for services and his health has improved sufficiently so that he no longer needs the services provided by the facility.

██████████ Business Office Manager; ██████████, Vice President of Business Services; ██████████, Director of Rehabilitation; and ██████████ Vice President of Clinical Services all appeared as witnesses for the respondent. The petitioner submitted no exhibits. The respondent submitted a 47-page evidence packet, which was marked and entered as Respondent's Exhibits "1" through "10".

FINDINGS OF FACT

1. On October 4, 2018, the petitioner was admitted to the nursing facility from the hospital due to ██████████ and ██████████. The petitioner also had ██████████ and an ██████████ (Respondent's Exhibit 8).
2. The petitioner's scheduled discharge from ██████████ and ██████████ ██████████ was set for October 24, 2018 (Respondent's Exhibit 6).
3. On October 22, 2018, the respondent issued NOTICE OF MEDICARE NON-COVERAGE informing the petitioner, effective October 24, 2018, his Medicare provider

and/or health plan determined Medicare will no longer pay for his skilled nursing services (Respondent's Exhibit 3).

4. On October 23, 2018, the petitioner appealed the non-pay notice with [REDACTED]. On October 24, 2018, the petitioner's appeal was denied (Respondent's Exhibit 4).

5. On October 24, 2018, the petitioner was discharged from [REDACTED] and [REDACTED]. The petitioner met with the social worker to discuss his plans to return home (Respondent's Exhibits 6 and 7).

6. On October 29, 2018, the petitioner advised the respondent, because he is a fall risk, his only barrier to returning home was the flight of stairs he had to climb to his second-floor apartment. The petitioner did not feel the therapy provided was enough to prepare him to return home without falling (Respondent's Exhibit 7).

7. The petitioner did not apply for Medicaid.

8. The respondent provided the petitioner's billing statements showing charges incurred with no payments made to the respondent. Effective January 1, 2019, the billing statements show the petitioner has an outstanding balance of \$28,975.55 (Respondent's Exhibit 2).

9. On November 2, 2018, the respondent issued a Nursing Home Transfer and Discharge Notice to the petitioner with an effective date of December 2, 2018. The petitioner was being discharged due to non-pay of bill for services and his health has improved and he no longer needs the services provided. The doctor's call-in order was submitted with notice (Respondent's Exhibits 1 and 5).

10. The petitioner timely requested the appeal.

11. The petitioner does not deny the respondent has not been paid since he entered the facility. He further feels his health and safety are more important than his bill at the facility.

12. The respondent contends they have made several attempts to assist the petitioner and he refuses. They have offered multiple times to apply for Medicaid under the Institutional Care Program and he refuses.

13. 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 \$28,975.55.

CONCLUSIONS OF LAW

14. 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 409.285, Fla. Stat.

15. This order is the final administrative decision of the Department of Children and Families under Section 409.285, Fla. Stat.

16. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

17. 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...

(F) The facility ceases to operate.

...

(2) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

...

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—

...

(B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

...

(3) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section; and

(iii) Include in the notice the items described in paragraph (c)(5) of this section.

...

(5) *Contents of the notice.* The written notice specified in paragraph (c)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

(vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 *et seq.*); and

(vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act. (*emphasis added*).

18. The above authority allows for a resident to be discharged from the nursing facility for failure to pay for his or her stay and when his or her health has improved sufficiently so the resident no longer needs the services provided by the facility.

19. In this instant case, on November 2, 2018, the facility issued a discharge notice to the petitioner. The facility's reason for discharging the petitioner for failure to pay for his stay and his health has improved sufficiently.

20. The petitioner's does not deny owing the facility \$28,975.55. The petitioner claims he is still in need of more services because he is a fall risk if he returns home.

21. The respondent provided a notice of discharge, effective October 24, 2018, from [REDACTED], citing the petitioner has met all his goals determined at his initial admission to the nursing facility.

22. Additionally, the petitioner's healthcare provider agreed with the respondent's action to discharge the petitioner from the skilled nursing activities based on the assessment of having met all previously set goals.

23. Based on the evidence and testimony, the respondent has established the petitioner has an outstanding balance of \$28,975.55 after reasonable and appropriate notice to pay for services received at the respondent's facility and the petitioner's health has improved sufficiently so that he no longer needs the services provided by the facility.

24. Establishing that the reason(s) 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.

25. 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 of 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.

FINAL ORDER (Cont.)



18F- 00153

PAGE -9

DONE and ORDERED this 07 day of February, 2019,
in Tallahassee, Florida.



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Copies Furnished To:  Petitioner
 Respondent
Agency for Health Care Administration
