

Jul 16, 2018

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

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. [REDACTED]

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter convened on July 5, 2018 at 9:38 a.m. at the [REDACTED]

APPEARANCES

For the Petitioner: The petitioner was present and was represented by his daughter, [REDACTED]

For the Respondent: [REDACTED] Administrator for the facility.

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 April 24, 2018 with an effective date of May 24, 2018.

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

PRELIMINARY STATEMENT

By notice dated April 24, 2018, the respondent informed the petitioner that the facility was seeking to discharge/transfer him due to nonpayment. On May 22, 2018, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as a witness for the petitioner was his stepdaughter, [REDACTED].

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

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

A letter dated June 1, 2018 from the Agency for Health Care Administration (AHCA) was sent to the undersigned, stating that the representative did not find the facility in violation of any laws or rules. This was entered as Hearing Officer Exhibit 1.

The record was closed at the end of the hearing.

FINDINGS OF FACT

1. The petitioner, age 67, has been residing in the respondent's facility since November 15, 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 BOM contends that the estimated patient responsibility was \$1191 prior to the change on July 2018. The BOM explained that the estimated patient responsibility, prior to July 2018, was calculated by the petitioner's Social Security income in the amount of \$1296, subtracted by the \$105 in personal needs that was to be kept by the petitioner. The BOM alleges that the petitioner's

daughter has not paid the estimated patient responsibility, as she is using the funds to pay for her personal expenses. The BOM contends that the facility has reported to the state, the misuse of the petitioner's personal funds by the petitioner's daughter.

3. The SSD contends that the facility reached out to the petitioner's daughter for her to submit the verifications to complete the Medicaid application. The SSD contends that the verifications were not received; therefore, the 30- day discharge notice was issued to the petitioner. The SSD contends that the petitioner's daughter was informed of the facility's intent to discharge her father from the facility. The SSD contends that a copy of the discharge notice was also sent to the local Ombudsman's office.

4. The BOM contends that the monthly billing statements are sent to the petitioner's representative at [REDACTED] from its home office. The Respondent's Exhibit 2 includes copies of the billing statements for the following dates: January 1, 2018, with a balance due in the amount of \$15085.94; April 1, 2018, with a balance due in the amount of \$36197.69; and May 1, 2018, with a balance due in the amount of \$49032.74. The BOM contends that the current balance owed to the facility, as of the date of the hearing, is \$57802.32. The BOM contends that the petitioner's Medicaid application is in a denied status.

5. The petitioner's daughter acknowledges that she received the monthly billing statements. The petitioner's representative contends that the petitioner's daughter has made attempts to provide the verifications needed, but is having a difficult time obtaining the award letter because the Social Security Administration will not release it to her since her father did not initiate the request. The petitioner's daughter explained

that she is not her father's power-of-attorney. The petitioner's representatives do not understand why the facility cannot request from SSA the necessary verifications. The petitioner's daughter contends that it was her understanding that once Medicaid was approved, the monies would be deducted from the petitioner's Social Security income, and that she would be getting a bill from the facility to inform her of the monthly amount due. The petitioner's daughter contends that she received bills for \$800 and \$359, which she paid. The petitioner's daughter contends that she did not receive a bill for \$1191. The petitioner's daughter argues that she is not paying her personal expenses with the petitioner's income. The petitioner's daughter contends that when she and the petitioner resided together, he gave his permission for her to use his income to pay the rent and other expenses. The petitioner's daughter argues that she could not cancel the payments that were scheduled to pay the expenses that the petitioner owed and were being paid from his bank account. The petitioner's daughter believes that the petitioner's bank account should include enough funds to pay the facility the estimated patient responsibility and will check his account to verify.

6. The BOM contends that, upon admission, the facility informs its residents' families that they are to pay to the facility the estimated patient responsibility until Medicaid is approved. The BOM explained that the estimated patient responsibility amount is calculated by including the income received by the resident, minus the \$105 set aside for the petitioner for his personal needs. The BOM explained that since the amount is estimated, the amount of the actual patient responsibility may be more or less than the estimated patient responsibility once Medicaid is approved.

7. The SSD contends that the petitioner's health has declined and that he has been signed up for hospice care.

CONCLUSIONS OF LAW

8. 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.

9. 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...

10. 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.

11. 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.

12. 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

FINAL ORDER (Cont.)

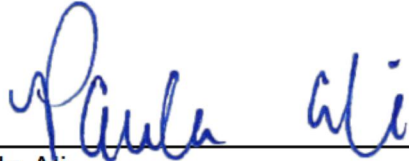
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must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 16 day of July, 2018,

in Tallahassee, Florida.



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