

Apr 09, 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. 19N-00005

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 8, 2019 at 12:48 p.m. at the [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED], pro se

For the Respondent: [REDACTED] Social Services Director

ISSUE

At issue is the facility's intent to discharge the petitioner due to non-payment of a bill for services. A Nursing Home Transfer and Discharge Notice was issued on January 4, 2019. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. § 483.15.

PRELIMINARY STATEMENT

The petitioner submitted no exhibits at the hearing. The petitioner presented one witness who testified: [REDACTED], District Ombudsman Manager. The respondent presented one witness who testified: [REDACTED], administer with the facility. The respondent submitted two exhibits, which were accepted into evidence and entered as Respondent's Exhibits "1" – "2".

The record was left opened until March 22, 2019 to allow the respondent to submit additional evidence. On March 21, 2019, the respondent submitted the additional evidence, which was entered and marked as Respondent's Exhibit "3".

FINDINGS OF FACT

1. The petitioner entered the facility on April 30, 2018.
2. On November 14, 2018, the Department of Children and Families (DCF) mailed the petitioner a notice indicating her Medicaid application dated October 17, 2018 was denied as "You or a member(s) of your household do not meet the disability requirements." (Respondent's Exhibit 2) The petitioner's Medicaid case with DCF remains closed.
3. On January 4, 2019, the facility issued the petitioner a Nursing Home Transfer and Discharge Notice. The reason for the discharge was "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." The notice also indicated the petitioner's date of discharge as January 4, 2019. (Respondent's Exhibit 1)
4. The respondent submitted a statement, dated February 25, 2019, that indicated the petitioner's outstanding balance (Respondent's Exhibit 3) as follows:

| Date | Description | Charges | Credits | Balance |
|------------|---|------------|---------|--------------------|
| | BALANCE FORWARD | | | \$63,626.19 |
| 03/01/2019 | Room & Board charges Mar 01-31 2019 (STD) (31@235.00) | \$7,285.00 | | |
| 01/31/2019 | Medical Supplies (1@436.35) | \$436.35 | | |
| 02/25/2019 | Medical Supplies (1@351.21) | \$351.21 | | |
| 03/01/2019 | Incontinent Supplies (1@350.00) | \$350.00 | | |
| | BALANCE DUE | | | \$72,048.75 |

This statement only includes transactions up to 02/25/2019. All Transactions processed after 02/25/2019 will appear on your next statement.

| Total | Current 3/2019 | 30 2/2019 | 60 1/2019 | 90 12/2018 | 120 11/2018 | 150 10/2018 | 180 9/2018 | 210 + 8/2018 |
|-------------|-------------------|--------------|--------------|---------------|----------------|----------------|---------------|-----------------|
| \$72,048.75 | \$7,635.00 | \$7,281.21 | \$8,472.54 | \$48,660.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |

5. The petitioner has not made any payments toward either the ongoing balance or outstanding balance. The petitioner alleged the respondent never provided her with monthly bills. The respondent and the petitioner discussed if the petitioner was able to pay \$450 per month, however, at the hearing, the respondent explained that both parties never discussed or agreed to a payment arrangement.

6. The respondent explained another reason for the petitioner's discharge was because she does not meet the Level of Care for skilled nursing.

7. The petitioner wishes to remain in the facility until she is able to secure a place to live when she leaves the facility.

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 at 42 C.F.R. § 483.15, set 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;

10. The reason for the petitioner's discharge is she had not paid her bill for services to the facility. The petitioner's current outstanding balance is \$72,0248.75. In February 2019, the facility billed the petitioner \$7,285 per month for room and board; \$436.35 per month for medical supplies; \$351.21 per month for additional medical supplies; and \$350 per month for incontinent supplies.

11. The respondent explained another reason for the discharge was because she does not meet the Level of Care for skilled nursing. This is irrelevant as the discharge notice indicated the reason for the discharge was non-payment. The undersigned will only rule on whether the facility's discharge due to nonpayment is valid.

12. The evidence indicates the respondent and the petitioner never discussed a payment arrangement toward her outstanding balance and the petitioner never made any payments toward her ongoing and outstanding balances.

13. The controlling authorities require a higher standard of proof in nursing home discharge hearings; there must be substantial and credible evidence at the level of clear and convincing¹. The undersigned concludes the respondent's evidence does not rise to the level of clear and convincing and the evidence submitted does not indicate the petitioner has failed, after reasonable and appropriate notice, to pay for her stay at the facility.

14. 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.

15. 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.

¹ State v. Graham, 240 So.2d 486 (1974), states, "Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. (Id. quoting Slomowitz v. Walker, 429 So.2d 797, 800 (Fla. 4th DCA 1983))."

16. Although the petitioner's appeal is granted, her financial debt to the facility is apparent and undisputed, this order does not relieve the petitioner of her debt to the facility and it does not relieve her of any future debts incurred while at the facility. This order does not preclude any future discharge actions to be taken by the facility.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is GRANTED. The facility has not established that this discharge is permissible under federal or state regulations; therefore, the facility may not proceed with the discharge at this time.

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.)

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DONE and ORDERED this 09 day of April, 2019,
in Tallahassee, Florida.

[REDACTED]
Hearing Officer
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Office: 850-488-1429
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Copies Furnished To: [REDACTED], Petitioner
[REDACTED] Respondent
Agency for Health Care Administration
[REDACTED]