

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

**FILED**

May 28, 2019

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 19N-00007

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, a hearing in the above-referenced matter was convened on April 23<sup>rd</sup>, 2019 at 10:00 a.m. at the [REDACTED] located in [REDACTED].

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED], Director of Social Services and [REDACTED] from the Business Office.

**ISSUE**

At issue is the facility's intent to discharge the petitioner due to non-payment of a bill for services. The facility has the burden of proof to establish by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. § 483.15 and Section 400.0255, Florida Statutes.

**PRELIMINARY STATEMENT**

The hearing was originally scheduled for March 12<sup>th</sup>, 2019. However, a continuance was granted at the petitioner's request.

By way of a Nursing Home Transfer and Discharge Notice (DN) dated January 15<sup>th</sup>, 2019, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to non-payment. On January 17<sup>th</sup>, 2019, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as an observer for the petitioner via phone but not giving testimony was [REDACTED] from the Long-Term-Care Ombudsman Program.

Appearing as observers for the respondent were [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

The petitioner did not submit any documents as evidence for the hearing.

The respondent's Exhibits 1 through 4 were admitted into evidence. On the record, 2 exhibits were inadvertently marked as Exhibit 3. The second of these has now been marked as Exhibit 5.

The record was held open until the close of business April 30<sup>th</sup>, 2019 to allow the petitioner to submit evidence; however, no documents were received within the allotted time frame, and the record was then closed.

A letter dated February 22<sup>nd</sup>, 2019 from the Agency for Health Care Administration (AHCA) was sent to the Office of Appeal Hearings, stating that the representative did not find the facility in violation of any laws or rules.

**FINDINGS OF FACT**

1. The petitioner has been residing in the facility since August of 2018 and remained in the care of the Facility as of the date of the hearing.
2. The petitioner was covered by Medicare from August 2018 through November 2018.
3. An application for Medicaid was submitted on behalf of the petitioner on October 29<sup>th</sup>, 2018. By way of a Notice of Case Action (NOCA) dated November 8<sup>th</sup>, 2018, the Florida Department of Children and Families (DCF) informed the petitioner that her Medicaid application dated October 29<sup>th</sup>, 2018 was approved. The reason stated on the notice was "You are eligible for the months listed below: August 2018 through December 2018. Amount you are expected to pay the nursing facility is \$797." (Respondent's Exhibit 4).
4. By way of another NOCA dated November 8<sup>th</sup>, 2018 from DCF addressed to [REDACTED], business office representative for the nursing home, states that [REDACTED] "must pay the new nursing facility or your new provider \$822 per month". (Respondent's Exhibit 4). The respondent stated that the information from ACCESS in the Department of Children's and Families computer system showed that the patient liability was \$823 instead of \$822 but no documentation was presented with the \$823 amount.
5. The facility's director of social services testified that the petitioner was made aware on November 13<sup>th</sup>, 2018 that her Medicare days were exhausted and that the petitioner refused to sign the notification stating that she had more Medicare days. This was done verbally in the petitioner's room. (Respondent's Exhibit 2).

6. On November 26<sup>th</sup>, 2018, the social worker, business office representative and the administrator held a meeting with the petitioner to discuss discharge goals. The petitioner was also made aware of her patient responsibility to be effective December 1<sup>st</sup>, 2018. The petitioner stated that she needs long term care and refused to pay patient responsibility to the facility. The petitioner agreed to make a discharge decision by 4 p.m. on that same date. When the same staff reconvened, the petitioner expressed not being ready to decide on an Assisting Living Facility (ALF) and the social worker was to provide the petitioner with more resources available to her.

(Respondent's Exhibit 2).

7. On December 3<sup>rd</sup>, 2018, the social worker, business office representative and the administrator met again with the petitioner. The petitioner had not selected an ALF, and a broader list of ALFs in the area was provided. The business office representative educated the petitioner of the current balance and the petitioner refused to sign authorize form of payment. (Respondent's Exhibit 2).

8. On January 15<sup>th</sup>, 2019, another meeting was held with the petitioner regarding failure to comply with her patient responsibility. The administrator issued the 30-day discharge notice (DN), which the petitioner signed. (Respondent's Exhibit 1).

9. The DN indicated that a bill for services rendered had not been paid after reasonable and appropriate notice to pay as the reason for discharge. The discharge would be effective February 14<sup>th</sup>, 2019, and [REDACTED] was listed as the petitioner's discharge location. (Respondent's Exhibit 1).

10. On February 1<sup>st</sup>, 2019 and February 5<sup>th</sup>, 2019 two other meetings were held with the petitioner to discuss a payment plan. The petitioner declined to discuss a payment plan and stated that she is working with a realtor to take out equity from her home but does not know how long it will take.

11. On February 8<sup>th</sup>, 2019, another meeting took place to set up a payment plan. Two representatives from Ombudsman were present. The petitioner was unable to come up with a payment plan or an active agreement.

12. The respondent provided a balance statement, dated March 7<sup>th</sup>, 2019, for dates of service from January 2019 through March 2019 in the amount of \$3,123.90 with a balance forward from November and December 2018 of \$654.90. Added to this is the patient responsibility for April 2019 of \$823 which the petitioner paid on April 8<sup>th</sup>, 2019. The total remaining balance due as of the date of hearing was \$3,123.90. The petitioner made two payments in total, one on December 7<sup>th</sup>, 2018 in the amount of \$700 and one on April 8<sup>th</sup>, 2019 in the amount of \$823. (Respondent's Exhibit 4).

13. The petitioner argued that the admission packet states that Medicaid must be applied for within 15 days of the admission date and that the nursing home failed to apply for Medicaid in a timely fashion. She also argued that she does not have Medicaid legally as she never applied for it. She stated that she never provided her last three bank statements that Medicaid requires and that she never signed the Financial Information Release authorizing anyone to have access to her bank accounts, real estate information or anything else. The petitioner inquired with Medicaid and was told that all the information needed was provided to them.

14. Due to the petitioner's allegations, a medical investigator came to the facility on February 5<sup>th</sup>, 2019 and the allegation was found unsubstantiated.

15. The petitioner wants Medicare to be billed for everything because she does not have Medicaid. She is trying to sell her house. She feels that the bills should be written off as bad debt since she has done everything she can to pay the facility. The petitioner also claimed that the bills were mailed to her home in [REDACTED] and that was not her mailing address. She claims it took a while for her to receive them. The petitioner did not dispute any of the testimony presented by the respondent.

#### CONCLUSIONS OF LAW

16. 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.

17. 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;

...

(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.

...

(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.

(4) *Timing of the notice.* (i) Except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

...

(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.

...

18. On January 15<sup>th</sup>, 2019, the Facility issued the petitioner's DN. The Facility's reason for discharging the petitioner is that a bill for services rendered had not been paid after reasonable and appropriate notice to pay. This is one reason permitted for discharge from a Facility in accordance with the above Federal Regulation.

19. The Florida Statutes, Title 29, Section 400.0255, Resident transfer or discharge; requirements and procedures; hearings in part states:

...

(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility or include an attached written order for the discharge

or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.

...

(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident's legal guardian or representative, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge:

...

(10)

...

(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

20. In accordance with the above Federal Regulation and State Statute, the DN was signed by the Facility Administrator thirty days prior to the discharge date. The DN also indicated the reason and effective date of the discharge, the location to which Petitioner was to be discharged, and Petitioner's appeal rights along with other required assistance information.

21. The evidence submitted establishes that the petitioner's medical records were well documented with the Facility assisting the petitioner with the Medicaid application and securing payment for the Facility costs of services, and that petitioner refused to pay for the Facility costs. This is the basis for the petitioner's discharge.

22. The petitioner requested a hearing within ten days after receipt of the DN. Subsequently, the Facility did not discharge the petitioner pending the hearing decision.

23. Establishing that the reason(s) for a discharge is lawful is just one step in the discharge process. The Facility must also identify an appropriate transfer or discharge location and a safe and orderly transfer or discharge from the facility. The Hearing Officer cannot and has not considered either of these issues. The Hearing Officer only considered whether the discharge was for a lawful reason(s) and that the requirements of the controlling authorities have been met.

24. Discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the petitioner have concerns about the appropriateness of the discharge location or the discharge process, she may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

25. In accordance with the above authorities, the Facility seeks to involuntarily discharge the petitioner to [REDACTED] for the reason that a bill for services rendered has not been paid after reasonable and appropriate notice to pay.

26. After careful review of the evidence and testimony, the undersigned concludes that the respondent met its burden of proof. The undersigned concludes that the respondent's discharge of the petitioner for non-payment of a bill for services is proper.

### **DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described

in the Conclusions of Law and 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  28  day of  May , 2019,

in Tallahassee, Florida.



Alma Patino  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED], Petitioner  
[REDACTED] Respondent  
Agency for Health Care Administration