

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

**FILED**

Aug 15, 2019

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 19N-00059

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, a nursing home discharge hearing in the above-referenced matter convened before the undersigned on June 28, 2019 at 10:00 a.m., at [REDACTED]

[REDACTED]

**APPEARANCES**

For the petitioner: [REDACTED] the petitioner's son and Power of Attorney (POA)

For the respondent: [REDACTED] Facility Manager [REDACTED]  
[REDACTED]

**STATEMENT OF ISSUE**

At issue is whether the facility's intent to discharge the petitioner due to non-payment of a bill for services based on Federal Regulations found at 42 C.F.R. § 483.15 is correct. A Nursing Home Transfer and Discharge Notice was issued on April 23,

2019. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

### **PRELIMINARY STATEMENT**

The respondent submitted one exhibit, which was accepted into evidence and entered as Respondent's Exhibit "1". The record was left open until July 5, 2019 for submission of additional evidence from the respondent. On June 28, 2019 and after the hearing, the respondent submitted an additional exhibit, which was accepted into evidence and entered as Respondent's Exhibit "2". The record closed on July 5, 2019.

At the request of the undersigned, the Agency for Health Care Administration (AHCA) conducted an on-site inspection of the facility, the results had not been submitted to the Office of Appeal Hearings (OAH) prior to the June 28, 2019 scheduled hearing. On July 29, 2019, the OAH received a letter from AHCA which informed that an unannounced visit to the nursing facility was completed and there were violations. The undersigned reopened the record and entered the letter into evidence as Hearing Officer's Exhibit "1". The record closed on July 29, 2019.

### **FINDINGS OF FACT**

1. The petitioner (86) entered the facility on December 8, 2018. The petitioner was receiving Medicare part A when she entered the nursing facility. The Medicare part A ended on January 2019; therefore, the petitioner became a private pay resident responsible for the total amount of the facility's bill for services rendered.
2. The respondent submitted an Institutional Care Program (ICP) Medicaid application on February 15, 2019 on behalf of the petitioner, the respondent explained she requested the necessary documents needed to submit for the ICP Medicaid application

from the petitioner's POA. On March 19, 2019, the Department of Children and Families (DCF) mailed the petitioner's POA and the respondent a Notice of Case Action (NOCA) that indicated the February 15, 2019 ICP Medicaid application was denied due to DCF did not receive all the information requested to determine eligibility.

3. On April 23, 2019, the respondent issued the petitioner and her POA a Nursing Home Transfer and Discharge Notice that indicated petitioner would be discharged from the facility effective May 23, 2019, due to non-payment of bill for services.

4. The petitioner's past due balance was \$26,937.42 for the months of February 2019 through April 2019 and continues to accumulate.

5. The petitioner's POA did not dispute the amount owed to the facility and he acknowledged being aware of the financial obligation to the facility. He submitted an ICP Medicaid application on or about May 2019, DCF pended the petitioner for verification of assets. The petitioner's POA submitted all necessary documents for the petitioner's ICP Medical eligibility to be determined. As of the hearing date, he had not yet received notification from DCF informing him of the status of the ICP Medicaid application.

6. The respondent explained the facility has access to DCF's on-line query when a patient applies and submit applications. The respondent reviewed the petitioner's case status and verified her case was closed on June 21, 2019.

7. No documentation was provided at the hearing to show an ICP Medicaid benefits application was pending with DCF for the petitioner.

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

10. 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;** (emphasis added)

(F) The facility ceases to operate.

11. The Department of Health and Human Services, Centers for Medicaid and Medicare Services, State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities states in part:

A resident cannot be transferred for non-payment if he or she has submitted to a third party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

12. According to the above authority, the facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the facility. As of the date of the hearing, the petitioner's balance owed to the facility was \$26,937.42. This fact is not disputed.

13. Based on the evidence and testimony, the respondent has established the petitioner has refused to pay what she owes to the facility. Numerous applications for ICP Medicaid benefits were submitted to DCF. DCF denied the petitioner's applications for ICP Medicaid benefits as it did not receive all the information requested to determine eligibility. The hearing officer concludes that the facility has given the petitioner reasonable and appropriate notice to pay for her stay at the facility. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid) for a stay at the facility. This is one of the six (6) reasons provided in federal regulations (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. The respondent has met its burden.

14. Establishing that the reason 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.

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.

#### **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, 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  15  day of  August , 2019,

in Tallahassee, Florida.

[Redacted Signature]

[Redacted Name]  
Hearing Officer  
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1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
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Copies Furnished To: [Redacted], Petitioner  
[Redacted] Respondent  
Agency for Health Care Administration  
[Redacted]