

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

FILED

Aug 19, 2019

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 19N-00061

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on July 17, 2019 at 3:15 p.m., at [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED], pro se

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

STATEMENT OF ISSUE

At issue is the facility's intent to discharge the petitioner due to non-payment of bill or services based on 42 C.F.R. § 483.15. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated May 9, 2019, the respondent notified the petitioner he was to be discharged from the nursing facility effective June 9, 2019, due to non-payment of bill for services.

The respondent originally dated the Nursing Home Transfer and Discharge Notice effective date for July 9, 2019 on the petitioner's copy and explained that it should have been dated for 30 days from the issuance date. The respondent tried to correct the notice, but the petitioner pointed out that his Discharge Notice that he signed indicated that he had until July 9, 2019 to stay in the facility. The Nursing Home is honoring that Discharge Notice with the July 9, 2019 date.

██████████ Director of Nursing, appeared as a witness for the respondent. The petitioner submitted no exhibits. The respondent submitted documents into evidence that were marked and entered as Respondent's Exhibits "1" and "2".

FINDINGS OF FACT

1. The petitioner was admitted to ██████████
December 2018.
2. Within the first few days of residents coming to the facility, the staff members notify new residents what they need to pay regarding their patient responsibilities.
3. The petitioner is covered by Medicaid and currently has a \$663 patient responsibility.
4. On April 3, 2019, the petitioner received a monthly paycheck. On April 8, 2019, the petitioner, the respondent and witness checked the petitioner's bank account

balance on the respondent's computer. Once the funds in his account were verified, the respondent verbally agreed to start paying the facility the following month. When the next month came, the petitioner refused to pay. Due to the petitioner refusing to pay, the respondent proceeded to issue the discharge notice to the petitioner (Respondent's testimony).

5. The petitioner recalls checking his account balance and making an agreement with the Administrator to pay his patient responsibility of \$663 plus an additional \$50 a month to help cover his balance that he owed to the facility beginning in June. However, less than an hour later the respondent presented him with the discharge notice and the petitioner refused to pay the respondent (Petitioner's testimony).

6. Prior to May 9, 2019, the respondent and the service worker, on many occasions, visited the petitioner to advise him that he needed to pay.

7. The petitioner was under the impression that Medicaid was covering his stay at the facility and that he did not need to pay his patient responsibility (Petitioner's testimony).

8. The petitioner currently owes \$6,149.64 through the month of July 2019 (Resp. Exh. 2).

9. The petitioner did not see why he would need to pay the facility if he was being discharged. When questioned about the services offered to the petitioner prior to the discharge notice, the petitioner agreed that he would have to pay for these services since he was a resident at the facility. At the time of the hearing, the petitioner has not paid the facility any money.

CONCLUSIONS OF LAW

10. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding, pursuant to § 409.285, Fla. Stat.

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

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

13. 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.

...

(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*)

14. The May 9, 2019 Nursing Home Transfer and Discharge Notice indicates the reason for discharge as : “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay. The resident was given a 61-day Discharge due to non-payment of services being rendered for his care.”

15. The above-cited authority sets forth conditions must exist for a nursing home to involuntarily discharge a resident. The undersigned concludes the reason provided by the respondent in the discharge notice is included in the authority as a valid reason for involuntary discharge.

16. The petitioner does not deny owing the facility \$6,149.64. The petitioner recalls meeting with the Administrator to review his bank account balance and making an agreement with the facility to help pay off his balance, but he still did not pay the facility. The petitioner also stated that he should have to pay for his services prior to the facility issuing him a Discharge Notice.

17. Based on the evidence and testimony, the respondent has established the petitioner has an outstanding balance of \$6,149.64 after reasonable and appropriate notice to pay for services received at the respondent’s facility.

18. Establishing that the reason for 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.

19. 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 [REDACTED]

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.

DONE and ORDERED this 19 day of August , 2019,

in Tallahassee, Florida.



Hearing Officer
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Copies Furnished To: , Petitioner
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Agency for Health Care Administration