

Aug 22, 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-00067

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on July 18, 2019 at 11:15 a.m., at [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED] Plenary Guardian

For the Respondent: [REDACTED] Administrator

STATEMENT OF ISSUE

At issue is whether the facility's intent to discharge 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 June 3, 2019. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

PRELIMINARY STATEMENT

Petitioner was not present; however, she was represented by her daughter/plenary guardian, [REDACTED].

Present as a witness for Respondent was [REDACTED] (SA), Business Office Manager.

Petitioner presented four exhibits which were accepted into evidence and marked as Petitioner's Exhibits "1" through "4." Respondent presented four exhibits which were accepted into evidence and marked as Respondent's Exhibits "1" through "4." The discharge notice was entered as Hearing Officer Exhibit "1." The record closed at the conclusion of the hearing.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioner, age 75, entered the nursing facility on September 14, 2018. Petitioner was initially admitted for skilled services through her managed care Medicare provider, [REDACTED]. On September 30, 2018, Petitioner became Medicaid pending (Respondent Testimony).
2. Several applications for Institutional Care Program (ICP) benefits have been filed on behalf of Petitioner. Petitioner has consistently been denied for having assets that are too high to qualify for ICP benefits (Petitioner Testimony).
3. On November 27, 2018, the Department of Children and Families mailed written notice to Petitioner that her Medicaid application dated October 22, 2018 was being denied for the reason: The value of assets is too high for this program (Pet. Ex. 1).

4. Petitioner has a life insurance policy with a countable death benefit cash surrender value of \$9,385.63 as of November 26, 2018 (Pet. Ex. 2).
5. On January 23, 2019, the Department of Children and Families mailed written notice to Petitioner that her application for Medically Needy benefits dated December 26, 2018 was approved. Petitioner was enrolled with a \$913.00 monthly Share of Cost (SOC) (Pet. Ex. 1).
6. Petitioner's representative misconstrued the aforementioned notice as an approval for Medicaid ICP benefits. She thought nursing facility coverage would be provided based on the verbiage contained in the notice "Your application for Medically Needy dated December 26, 2018 is approved."
7. Once Petitioner's representative became aware that ICP benefits were not approved; she continued to work diligently towards obtaining the necessary Medicaid coverage.
8. As of the date of the hearing, Petitioner is still in possession of her life insurance policy which is the basis of her ineligibility for ICP benefits.
9. An appeal has been filed regarding the denial of ICP Medicaid benefits and is still pending¹.
10. Petitioner's representative explained that despite exhaustive efforts on her part, as plenary guardian, to have the life insurance policy surrendered, she has been unsuccessful. To date, the life insurance carrier has not honored her appointment as

¹ The undersigned takes administrative notice that on June 13, 2019 Petitioner requested a Medicaid appeal (19F-04824), subsequent to requesting this nursing home appeal, and subsequent to the nursing home discharge hearing, Petitioner withdrew her Medicaid appeal on July [REDACTED]

November 1, 2018	\$896.22	Check 5053
November 28, 2018	\$867.31	Check 5054
December 12, 2018	\$867.31	Payment method not provided
January 29, 2019	\$896.22	Check 5056
March 26, 2019	\$896.22	Check 5057
March 26, 2019	\$896.22	Check 5058
May 2, 2019	\$896.22	Payment method not provided
June 18, 2019	\$867.31	Check 5061
July 12, 2019	\$867.31	Check 5062

17. On June 3, 2019, Respondent issued a Discharge Notice to Petitioner's representative informing her that Petitioner would be discharged from the nursing facility effective July 4, 2019, due to non-payment of bill for services. An invoice was included with the notice notifying the representative that the outstanding balance owed through April 30, 2019 was \$65,391.11 (HO Ex. 1).

18. On June 7, 2019, Petitioner's representative requested a hearing on behalf of Petitioner to challenge the facility's action.

19. The nursing facility provided Petitioner's representative with monthly statements showing the balance each month.

20. Petitioner's representative acknowledged she received monthly statements indicating the outstanding balance for services her mother received. She also acknowledged owing the facility a substantial outstanding balance which she asserts she cannot pay.

21. Petitioner remains in the facility pending the hearing decision. The petitioner's outstanding balance to the facility, as of the date of the hearing, was \$84,635.61.

CONCLUSIONS OF LAW

22. 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 409.285, Florida Statutes. This order is the final administrative decision of the Department of Children and Families under Section 409.285, Florida Statutes.

23. This proceeding is a de novo proceeding pursuant to Rule 65-2.056, Florida Administrative Code.

24. 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.

25. The undersigned's jurisdiction is limited to the above six reasons and will only consider if the discharge is for a legal reason based on any of the six allowable reasons listed above.

26. 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 \$84,635.61. Respondent paid [REDACTED], an agency specializing in long-term Medicaid representation, \$1,000.00 to assist Petitioner's representative with the Medicaid application process. As of the date of the hearing, Petitioner is still in possession of her life insurance policy which is the basis of her ineligibility for ICP Medicaid benefits. She is not Medicaid eligible. Based on the evidence and testimony, Respondent has established Petitioner has refused to pay what she owes to 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. Respondent has met its burden.

27. 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.

28. 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 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 22 day of August, 2019,

in Tallahassee, Florida.

[REDACTED]
[REDACTED]
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
[REDACTED], Representative