

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

**FILED**

Sep 24, 2019

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]  
[REDACTED]  
[REDACTED]

APPEAL NO. 19N-00076

PETITIONER,

Vs.

Administrator

[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on August 26, 2019 at 8:30 a.m., a [REDACTED]

[REDACTED]

**APPEARANCES**

[REDACTED] [REDACTED]

[REDACTED]

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging him from the Facility, due to non-payment of a bill for services. Respondent carries the burden of proof by the standard of clear and convincing evidence in this appeal.

### **PRELIMINARY STATEMENT**

Petitioner appeared with his representative and called no witnesses [REDACTED]

[REDACTED], appeared as a witness for Respondent.

Petitioner submitted two exhibits, which were erroneously admitted into evidence and marked as Petitioner's Exhibits "1" – "3." Upon further review, the undersigned re-marked the exhibits as Petitioner's Exhibits "1" – "2." Respondent submitted three exhibits, which were admitted into evidence and marked as Respondent's Exhibits "1" – "3." The undersigned submitted one exhibit, which was admitted into evidence and marked as Hearing Officer's Exhibit "1." The record closed on August 26, 2019.

### **FINDINGS OF FACT**

1. Prior to the action under appeal, the Facility admitted Petitioner as a patient to its care (Resp't Test.). Petitioner remained in the care of the Facility at the date of hearing (Pet'r Test.).
2. On November 13, 2018, Respondent discussed with [REDACTED] the Medicaid process and provided a *Medicaid Homework List* (Resp't Ex. 3) that included a list of provisional items needed to apply for Medicaid (Resp't Ex. 1).
3. In the month of December, Respondent called [REDACTED] numerous times without success, and without a return call (*Id.*), to discuss payment to the Facility for services rendered as well as to discuss application for Medicaid (Resp't Test.).
4. On January 7, 2019 [REDACTED] tendered Respondent \$50.00 for services rendered (Resp't Ex. 2).

5. On January 16, 2019, Respondent called [REDACTED] and left a voicemail informing her that the Facility would issue a 30-day notice of discharge if it did not hear back from her (Resp't Ex. 1).
6. On January 21, 2019, [REDACTED] provided Respondent some of the provisional information requested on the *Medicaid Homework List*, but not everything required for Medicaid (*Id.*).
7. On January 24, 2019, Respondent filed a "blank" Medicaid application to "save the date" (*Id.*) rather than issue a 30-day discharge notice in hopes of resolving the matter (Resp't Test.).
8. On January 28, 2019, Respondent mailed a bill to [REDACTED] via FedEx to ensure that she received the bill (Resp't Ex. 1).
9. On January 31, 2019, [REDACTED] tendered Respondent \$200.00 for services rendered (Resp't Ex. 2).
10. On February 6, 2019, [REDACTED] tendered Respondent \$100.00 for services rendered (*Id.*).
11. On February 8, 2019, [REDACTED] provided Respondent a "Resident Ledger" that it believed pertained to income-producing property owned by Petitioner (Resp't Ex. 1).
12. On March 7, 2019, [REDACTED] tendered Respondent \$100.00 for services rendered (Resp't Ex. 2).
13. On March 26, 2019, Respondent filed a "blank" Medicaid application to "save the date" (Resp't Ex. 1).
14. On April 8, 2019, [REDACTED] tendered Respondent \$100.00 for services rendered (Resp't Ex. 2).

15. On May 20, 2019, Respondent requested [REDACTED] sign an information release so that it could attempt to get copies of Petitioner's bank statements, as [REDACTED] provided none to that date (Resp't Ex. 1).

16. On May 28, 2019, Respondent filed a "blank" Medicaid application to "save the date" (*Id.*).

17. Also, on May 28, 2019 [REDACTED] tendered Respondent [REDACTED] for services rendered (Resp't Ex. 2).

18. On June 21, 2019, Respondent provided a *Nursing Home Transfer and Discharge Notice* (the "Notice") to Petitioner (Pet'r Ex. 1).

19. The Notice indicated that a bill for services rendered remained unpaid after reasonable and appropriate notice to pay as the reason for discharge, a discharge effective date of July 21, 2019 [REDACTED]'s home residence as Petitioner's discharge location, and the Facility Administrator's signature (*Id.*).

20. Respondent provided a balance statement, dated August 14, 2019, for dates of service from November 1, 2018 through August 1, 2019 in the amount of \$63,498.49 after a deduction of \$650.00 tendered by [REDACTED] for services rendered (Resp't Ex. 2).

21. [REDACTED] stipulated that \$63,498.49 remained due and owing to Respondent (Pet'r Test.). However, Petitioner had no ability to pay that amount and if discharge [REDACTED] harbored great concern for Petitioner's physical wellbeing, given his physical condition and the size/weight discrepancy between the two (*Id.*).

22. Respondent acknowledged [REDACTED] concern and assured her that it would do all that is required to ensure Petitioner's safe transition to her residence (Resp't Test.).

However, Respondent must pursue the discharge due to the non-payment of rendered services (*Id.*).

### **CONCLUSIONS OF LAW**

23. 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 that section, this Order is the final administrative decision of the Department of Children and Families.

24. The Code of Federal Regulations, Title 42, Section 483.15, Admission, transfer and discharge rights in relevant part states:

...  
(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); or**

(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.

(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.

...

25. On June 21, 2019, the Facility issued Petitioner the Notice. The Facility's reason for discharging 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 the Facility in accordance with the above Federal Regulation.

26. 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...

...

(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.

27. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date. The Notice 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.

28. The evidence submitted establishes that Petitioner's medical records were documented with the Facility's attempts to assist [REDACTED] with securing payment for the Facility's costs of services in the way of billing statements and Medicaid application. Petitioner was unable to pay for the Facility costs of services or provide the required provisional information needed to apply for Medicaid, though no evidence suggests Petitioner was unable to provide this information. This is the basis for Petitioner's discharge.

29. Petitioner requested a hearing within ten days after receipt of the Notice. Subsequently, the Facility stayed Petitioner's discharge pending the hearing decision.

30. 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 undersigned cannot and has not considered either of these issues. The undersigned only considered whether the discharge was for a lawful reason(s) and that the requirements of the controlling authorities have been met.

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

32. In accordance with the above authorities, the Facility seeks to involuntarily discharge Petitioner to LS for the reason that a bill for services rendered has remained unpaid after reasonable and appropriate notice to pay.

33. After careful review of the evidence and testimony, the undersigned concludes that Respondent met its burden of proof. The undersigned concludes that Respondent's discharge of 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 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   24   day of   September  , 2019,

in Tallahassee, Florida.



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