

FILED

Oct 02, 2019

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

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]
[REDACTED]
[REDACTED]

APPEAL NO. 19N-00088

PETITIONER,

Vs.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative nursing home discharge hearing in the above-reference matter at 1:06 p.m. on August 13, 2019, at

[REDACTED]

APPEARANCES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT OF ISSUE

At issue is whether the respondent's (Facility) intent to discharge the petitioner due to non-payment, is proper. The respondent carries the burden of proof by clear and convincing evidence.

PRELIMINARY STATEMENT

The petitioner was not present at the hearing. Appearing as witnesses from the Facility were [REDACTED], [REDACTED]

The respondent submitted four exhibits, entered Respondent Exhibits "1" through "4". The petitioner did not submit exhibits. The record was closed on August 13, 2019.

FINDINGS OF FACT

1. The petitioner was transferred from a hospital to the Facility under Medicare coverage on November 9, 2018 (Facility's representative testimony).
- 2 [REDACTED] is a third-party billing company contracted by the Facility to provide monthly billing statements to its residents and their families (Facility's representative testimony).
- 3 [REDACTED] also provides residents and their families assistance completing and submitting Institutional Care Program (ICP) Medicaid applications (Respondent Exhibit 3).
- 4 [REDACTED] mailed the petitioner's son monthly billing statements and submitted ICP applications on behalf of the petitioner in April 2019 and May 2019. The ICP applications were denied due to not providing the required documents to determine eligibility (Respondent Exhibit 2).
5. The petitioner has not paid the Facility for his stay since he was admitted; his current balance is \$58,826.47 (Respondent Exhibit 4).
6. The petitioner's son agreed he received the Facility's monthly billing statements and agreed the Facility has not been paid for the petitioner's stay.

7. The petitioner's son also agreed he did not provide the necessary asset verification for the ICP applications, because he does not know where the petitioner keeps the documents; and the petitioner is not capable of assisting in providing the documents due to his medical condition.

8. On July 8, 2019, the Facility sent the petitioner's son a Nursing Home Transfer and Discharge Notice (signed by [REDACTED]) notifying its intent to discharge/transfer the petitioner due to, "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Respondent Exhibit 1).

9. The petitioner's son said he is not capable of caring for the petitioner; therefore, he does not want the Facility to discharge the petitioner to him.

10. The Facility's representative explained that the petitioner cannot remain in the Facility without payment.

CONCLUSIONS OF LAW

11. 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.

12. Title 42 of the Code of Federal Regulations § 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. (emphasis added) For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(F) The facility ceases to operate...

13. In accordance with the above authority, one of six reasons for which a Facility may involuntarily discharge a resident is for non-payment, "after reasonable and appropriate notice."

14. The evidence submitted establishes the Facility's Nursing Home Transfer and Discharge Notice, dated July 8, 2019, lists the reason for transfer/discharge as "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

15. The petitioner's son agreed that the Facility has not been paid for the petitioner's stay after reasonable and appropriate notice to pay.

16. 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 cannot and has not considered either of these issues. The Hearing

Officer only considered whether the discharge is for a lawful reason and that the requirements of the controlling authorities have been met.

17. Any discharge by the 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.

18. In careful review of the cited authority, evidence and testimonies, the undersigned concludes the Facility has met its burden of proof. The undersigned concludes the Facility's intent to discharge the petitioner due to non-payment, is proper.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the petitioner's appeal is denied. The Facility's action to discharge the petitioner is in accordance with Federal Regulations. The Facility may proceed with the discharge, as described in the Conclusions of Law and in accordance with 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 02 day of October , 2019,

in Tallahassee, Florida.



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