

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

FILED

Nov 21, 2019

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 19N-00109

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter was convened on
October 23, 2019 at 10:30 a.m. at [REDACTED]

[REDACTED].

APPEARANCES

For the Petitioner: [REDACTED] pro se

For the Respondent: [REDACTED] Executive Director

ISSUE

At issue is the facility's intent to discharge the petitioner due to non-payment
of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on
August 29, 2019 with an effective date of September 28, 2019.

The facility has the burden of proof to establish by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. § 483.15 and Section 400.0255, Florida Statutes.

PRELIMINARY STATEMENT

By a notice dated August 29, 2019, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to non-payment. On September 4, 2019, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as witnesses for the respondent were [REDACTED]

[REDACTED]

[REDACTED].

The petitioner did not submit any documents as evidence for the hearing.

The respondent submitted the notice of discharge as evidence for the hearing, which was marked as Respondent Exhibit 1. The respondent also submitted a billing statement, which was marked as Respondent Exhibit 2.

FINDINGS OF FACT

1. The petitioner was initially admitted to the facility on May 3, 2019 and was classified as a short-term stay. She was discharged to the hospital on May 7, 2019 and returned to the facility on May 22, 2019. Her stays at the facility up until then were covered by her insurer, [REDACTED]. On May 30, 2019, United Healthcare informed the petitioner and/or the facility that the stay would no longer be covered

because the petitioner no longer met the level of care requirements to be in a nursing facility.

2. On or about June 3, 2019, the petitioner obtained a new policy with [REDACTED] and submitted a claim for her stay at the facility, but this was denied. On June 6, 2019, a Medicaid application was submitted on behalf of the petitioner. On July 17, 2019, the petitioner was approved for institutional Medicaid coverage, with a patient responsibility amount of \$1,502 monthly. The petitioner has not made any payments to the nursing facility.

3. The petitioner was discharged to the hospital in mid-September 2019 and returned to the facility on October 4, 2019. As of the hearing date, the total amount due to the nursing facility was \$5,407.

4. The petitioner believed her insurer [REDACTED] would cover her stay at the nursing facility for 120 days. She also believes [REDACTED] denied some of the claims because she had been coded as a custodial patient rather than as a short-term stay. She reports that [REDACTED] covered her stay when she returned to the facility on October 4, 2019 as a short-term stay. She also claims the facility informed her Medicaid would cover the entire cost of her stay without any patient responsibility. The petitioner receives \$1,500 monthly from Social Security which goes towards her mortgage payment and to help support her children in college; therefore, she states she is unable to pay the patient responsibility cost.

CONCLUSIONS OF LAW

5. 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.

6. Federal Regulations, appearing at 42 C.F.R. § 483.15, set forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(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—

...

(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;

7. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for a stay at the facility. This is one of the six reasons provided in 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident. Although some of the charges may have been covered by Medicaid and/or United Healthcare, the petitioner still owes the facility a total of \$5,407 as of the hearing date.

8. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home 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.

9. 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

This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge, as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

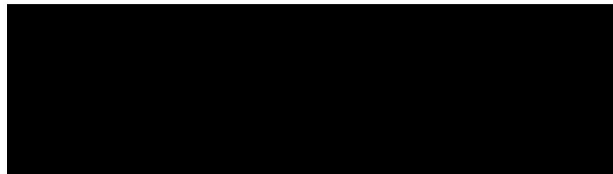
NOTICE OF RIGHT TO APPEAL

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 21 day of November, 2019,

in Tallahassee, Florida.



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:  Petitioner



Agency for Health Care Administration

 (second address)