

**FILED**

Dec 23, 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-00125

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, a hearing in the above-referenced matter convened on November 21, 2019 at approximately 1:15 p.m. at the [REDACTED]

[REDACTED]

**APPEARANCES**

For the Petitioner: The petitioner was not present and was represented by his wife and power-of-attorney, [REDACTED]

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

**ISSUE**

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on September 27, 2019 with an effective date of October 26, 2019.

The respondent carries the burden of proof by clear and convincing evidence.

### **PRELIMINARY STATEMENT**

By notice dated September 27, 2019, the respondent informed the petitioner that the facility was seeking to discharge/transfer him due to nonpayment. On October 7, 2019, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as a witness for the respondent was [REDACTED] Business Office Manager (BOM).

Evidence was received and entered as the Respondent's Exhibits 1 through 3.

The record was held open until 5:00 p.m. on December 5, 2019 to allow the respondent to provide a status update, if any, for the issue under appeal. No updates were provided by the deadline date.

The record was closed at 5:00 p.m. on December 5, 2019.

### **FINDINGS OF FACT**

1. The petitioner was admitted into the respondent's facility after his discharge from [REDACTED] in October 2018. The petitioner's insurance benefits were later exhausted; he became a private pay resident, as there were no other payor sources.

2. The petitioner's wife applied for Institutional Care Program (ICP) Medicaid, but was denied due to not receiving verifications. The petitioner receives approximately \$2500 in Social Security income. The petitioner was subsequently approved for Medicaid in September 2019. The patient responsibility is \$243.

3. The respondent contends that the facility is owed a balance for the months of November 2018 through August 2019 when the petitioner was not eligible for ICP Medicaid and was private pay. The facility's records show that the petitioner has a balance due in the amount of \$108534.98, minus the \$8459.70 that was previously owed for the month of September 2019, prior to being approved for ICP Medicaid (Respondent's Exhibit 3).

4. The respondent contends that the petitioner's wife was mailed monthly billing statements to inform of the debt owed to the facility.

5. The petitioner's wife does not dispute that money is owed to the respondent. The petitioner's wife does not dispute receiving monthly billing statements from the facility and believes she may have misplaced them when she was evicted from her home. The petitioner's wife argues that she owes several creditors and does not have the money to pay to the facility. The petitioner's wife argues that her place of residence is not a suitable discharge location for her husband.

#### **CONCLUSIONS OF LAW**

6. 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.

7. Federal Regulations appearing 42 C.F.R. § 483.15, Admission, transfer and discharge rights, sets 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—

(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; or...

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. Based on the evidence presented, the nursing facility has established that 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 federal regulation (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident.

10. 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**

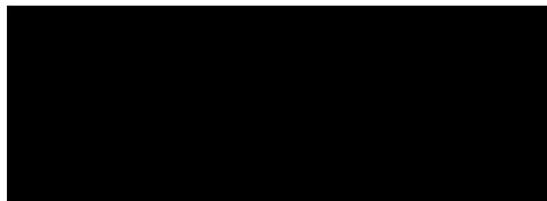
This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge, as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

**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 23 day of December, 2019,

in Tallahassee, Florida.



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FINAL ORDER (Cont.)

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Copies Furnished To: [REDACTED] Petitioner

[REDACTED]

Respondent

[REDACTED]

Agency for Health Care Administration