

FILED

Jun 24, 2020

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

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00011

PETITIONER,

Vs.

CASE NO.

ADMINISTRATOR

[REDACTED]

RESPONDENT,

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on May 19, 2020 at 1:32 p.m.

APPEARANCES

For Petitioner: [REDACTED] *pro se*

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

STATEMENT OF ISSUE

Petitioner appeals Respondent's action to discharge him from [REDACTED]
[REDACTED] (the "Facility"). Respondent carries the burden of proof by
clear and convincing evidence.

SUMMARY OF PROCEEDINGS

By Nursing Home Transfer and Discharge Notice, dated January 2, 2020,
Respondent informed Petitioner that he was to be discharged from the facility effective

██████████ 2020. The notice did not include an attached written order for the discharge or transfer. The reasons cited are:

(1) “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.”

(2) “Your health has improved sufficiently so that you no longer need the services provided by the facility.”

On January 29, 2020, Petitioner timely requested an appeal to challenge Respondent’s action.

To ensure the safety of all individuals during the Coronavirus pandemic and per the Governor’s directive, this hearing was changed from an in-person hearing to a telephone hearing. The appeal was continued from three prior occasions per Petitioner’s request.

██████████ Social Services Director (“SSD”) and ██████████ Business Office Manager (“BOM”) with the facility, appeared as witnesses for Respondent.

No representative from the Agency for Health Care Administration (“AHCA”) was present. At the request of the Office of Appeal Hearings (“OAH”), AHCA conducted an on-site inspection of the facility on March 3, 2020 and found no violations. The AHCA report was marked as Hearing Officer’s Exhibit 1.

Petitioner did not submit any exhibits. Respondent submitted an evidence packet which was accepted and marked as the Respondent’s Composite Exhibit 1. The record was left open through close-of-business on May 19, 2020 for Respondent to submit additional document and extend through June 2, 2020 for Petitioner to submit

evidence of his immigration status. Respondent's information was timely received and marked as Respondent's Exhibit 2.

On May 29, 2020, Petitioner contacted OAH requesting additional time to submit his evidence. The undersigned granted Petitioner an additional 15 days from his original June 2, 2020 to submit his evidence. On June 17, 2020, Petitioner contacted OAH requesting additional time. The undersigned denied his request and closed the record on June 17, 2020.

Petitioner's Position

Petitioner took the position that he still needs rehabilitative services to recover from a stroke. Additionally, Petitioner maintains he is a "green card" holder; therefore, he should be allowed to remain at the facility.

Respondent's Position

Respondent took the position that since the medical director has determined that Petitioner's health has improved sufficiently so that he no longer need the services provided by the facility. Additionally, since Petitioner has not paid for the services he receives at the facility after reasonable and appropriate notice, Respondent has requested that Petitioner be discharged.

FINDINGS OF FACT¹

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 Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rules of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

1. Petitioner was admitted to Respondent's [REDACTED] (the "Facility") since [REDACTED] 2015. Petitioner has been receiving Institutional Care Program ("ICP") Medicaid to pay for his services at the facility. His last month of eligibility was November 2018. (SSD Test.)
2. Petitioner is alert and makes his own decisions. (P Comp 1 at 29.)
3. On September 22, 2016, the United States Citizenship and Immigration Services sent a letter to Petitioner informing him that because he failed to complete an I-698 form to adjust status in order to finalize the process, he was "not eligible to receive a replacement for I-551, Permanent Resident Card per Sec 8 CFR 264.5." (Resp Ex. 2.)
4. Petitioner has retained legal counsel to assist him with his immigration issues. He was unable to submit evidence of his legal status because he is not allowed to leave the facility and his attorney will not send his documents to him without his signature authorizing the release. (Pet'r Test.)
5. In November 2018, Respondent applied for ICP Medicaid on Petitioner's behalf to continue his eligibility. Shortly after, Respondent received a notice from the Department of Children and Families indicating Petitioner's ICP coverage was being terminated effective December 1, 2018 due his immigration status. (SSD Test.)
6. ICP Medicaid coverage assists residents with their nursing home expenses, if they meet certain eligibility criteria. Petitioner gained private-pay status effective December 1, 2018.
7. Petitioner does not have a pending application for Medicaid on file with the facility. Respondent has been issuing monthly statements to Petitioner; however, he has not made any payments to Respondent. (BOM Test.)

8. As of the day of the hearing, the balance due to Respondent is \$85,966.13. (R Comp Ex.1 at 41.) Petitioner did not dispute the amount.

9. On November 21, 2019, the Interdisciplinary Team (“IDT”) met with Petitioner for a care plan meeting to discuss his needs. During that meeting, the facility’s Medical Direction has concluded that Petitioner was medically stable to transition to alternative placement. (NHA Test).

10. On January 2, 2020, Respondent issued a 30-day notice to Petitioner. The notice indicates the discharge location as [REDACTED]

[REDACTED] The facility’s medical director did not sign the notice. The notice did not include an attached written order for the discharge or transfer. The SSD signed the notice as a designee to validate the medical reason for discharge. (R Comp 1 at 1.)

11. Case notes from Petitioner’s file indicate that the facility’s medical director, [REDACTED] ordered the medical discharge. (Resp’t Comp 1 at 29.) The SSD has had regular meetings with Petitioner and had offered to assist him transitioning out of the facility. The SSD has provided relevant information about the discharge location. (Resp’t Comp 1 at 25-28.)

12. The only issue before the hearing officer is whether the discharge is in accordance with federal regulations. Any issues concerning Petitioner’s allegations of improper protocol by facility staff or treatment Petitioner received while residing at the facility are not within the jurisdiction of the hearing officer. These issues must be addressed with AHCA.

13. At the request of OAH, AHCA had reviewed the discharge initiated by the facility through an unannounced visit. Hearing Officer’s Exhibit 1 is a letter from AHCA dated

March 17, 2020 stating, "A representative from the Agency for Health Care

Administration (AHCA) completed an unannounced visit at [REDACTED]

[REDACTED] on March 3, 2020. The purpose of the visit was to determine if the facility complied with the requirements of CFR 483.12 in taken action to discharge a resident. Based on interview and facility documentation, it has been determined that there were no violations." (HO Ex. 1.)

14. Despite his multiple complaints about the services there, Petitioner wants to remain at the facility. As of the day of this hearing, Petitioner is still in the facility pending a hearing decision.

CONTROLLING LAW

15. Section 400.0255(15), Florida Statutes ("F.S."), provides the Department of Children and Families, Office of Appeal Hearings, jurisdiction over the subject matter of this proceeding and the parties. This section further prescribes this order as the final administrative decision of the Department of Children and Families.

16. Section 400.0255, Florida Statutes addresses Resident transfer or discharge; requirements and procedures; hearings and states in part:

(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.**

[Emphasis added]

17. Title 42 Code of Federal Regulations Section 483.15 sets 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—

(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; or

(F) The facility ceases to operate.

[Emphasis added]

18. The above-cited authorities set forth the nursing facility discharge process. In this instant case, the medical reason Petitioner is being discharged for is that Respondent believes his health has improved sufficiently so that he no longer needs the services provided by the facility. The facility's medical director ordered the discharge; however, he did not sign the discharge. The discharge notice did not include an

attached written order from the medical director. The SSD signed the notice as a designee. This is one of two reasons.

19. The second reason is that Petitioner has failed, after reasonable and appropriate notice, to pay for his stay at the facility. Petitioner did not deny the charges or dispute the outstanding balance owed to the facility. Petitioner maintains he is a legal resident but has not submitted the necessary paperwork to the facility. Petitioner does not have a pending ICP Medicaid application on file with Respondent. Petitioner does not wish to leave the facility.

CONCLUSIONS OF LAW

20. Based on the evidence presented, the nursing facility has not established that Petitioner should be discharged because his health “has improved sufficiently so the resident no longer needs the services provided by the facility.” The discharge notice was not signed by the medical director or any appropriate medical designee and no written order from the medical director was attached to the notice.

21. However, the evidence shows Petitioner has not been paying for his stay at the facility. The nursing facility has established that: “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”. This is one of the six separate reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

22. 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 resident for a safe and orderly transfer or discharge from the Facility. The undersigned cannot and has not considered either of these issues. The undersigned has considered only whether the discharge is for a lawful reason.

23. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and AHCA requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the AHCA's health care facility complaint line at (888) 419-3456.

DECISION

Based on the foregoing Findings of Fact, Controlling Law 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 June , 2020,

in Tallahassee, Florida.



Roosevelt Reveil
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
[Redacted]
Agency for Health Care Administration