

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

[REDACTED]

APPEAL NO. 20N-00020

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned reconvened a telephonic nursing home discharge hearing in the above-referenced matter on June 25, 2020 at 2:23 p.m.

APPEARANCES

For Petitioner: Nancy Wright, Attorney for the petitioner.

For Respondent: [REDACTED] Executive Director for [REDACTED]
[REDACTED]

STATEMENT OF ISSUE

The petitioner appeals the respondent's action discharging him from the facility at the [REDACTED]

The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in Title 42 Code of Federal Regulations Section 483.15 and Section 400.0255(15), Florida Statutes.

SUMMARY OF PROCEEDINGS

The hearing originally convened on April 22, 2020 at 10:03 a.m.

The petitioner was present and represented himself.

The respondent was represented by [REDACTED] Executive Director for

[REDACTED]

Appearing as witnesses for the petitioner were his son, [REDACTED] (Pet'r Wit.1.), and [REDACTED] (Pet'r Wit.2.), District Manager for the Office of Ombudsman.

Appearing as witnesses for the respondent were [REDACTED] Business Office Manager (BOM) (Resp't Wit.1.), and [REDACTED] Social Services Director (SSD) (Resp't Wit.2.).

Appearing as an observer was Kelci Kemmerer, Hearing Officer for the Office of Appeal Hearings (OAH).

The petitioner's son requested a continuance to allow more time for his attorney to work with the Department of Children and Families (DCF) to obtain approval for the petitioner's application for Institutional Care Program (ICP) Medicaid. The facility's Executive Director did not object. The petitioner's request for a continuance was granted. The hearing was rescheduled to May 6, 2020 at 2:00 p.m.

On May 4, 2020, the petitioner' attorney, Nancy Wright, Esq., submitted a Notice of Appearance and filed a Motion for a Continuance. However, due to the short notice, all parties called in to the scheduled hearing.

On May 6, 2020, the hearing reconvened as scheduled. The petitioner's attorney, Nancy Wright, was present. [REDACTED] and [REDACTED] were present for the respondent. The petitioner's attorney requested for a continuance on the record.

The respondent did not object. The request for a continuance was granted. The hearing was rescheduled to reconvene on June 25, 2020 at 2:00 p.m.

The hearing convened as scheduled on June 25, 2020 at 2:23 p.m.

The petitioner, his son, [REDACTED] and [REDACTED] were present for the reconvened hearing. Additionally, [REDACTED] (Pet'r Wit.3.), petitioner's daughter in law, appeared as a witness for the petitioner.

The respondent's BOM and SSD were also present for the reconvened hearing.

A Nursing Home Transfer and Discharge Notice was issued on January 23, 2020 with an effective date of [REDACTED] 2020. The facility is seeking to discharge the petitioner due to his "...bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

The Hearing Officer took judicial notice of Title 42 Code of Federal Regulations Section 483.15, as the petitioner's attorney opined that the facility issued a discharge notice while the petitioner's application for ICP Medicaid was pending and may not discharge the petitioner while his application for Medicaid is in a pending status. Based on the evidence and testimony presented, the undersigned concludes that the petitioner's application for ICP Medicaid was no longer in a pending status at the time of the hearing. The undersigned further concludes that the petitioner was not harmed in this matter, as the Nursing Home Transfer and Discharge Notice was issued on January 22, 2020, with an effective date of [REDACTED] 2020; he is currently residing at the facility pending the outcome of the hearing.

Evidence was submitted and were labeled as the Petitioner's Exhibits "1" – "9". The petitioner's evidence included a duplicate of the Notice of Case Action dated May 6, 2020; the duplicate NOCA was excluded as evidence.

Evidence was submitted by the respondent and was entered as the Respondent's Exhibits "1" – "2". [REDACTED] stated during the hearing that additional evidence was emailed to the OAH email address, but none was received as of the writing of this Final Order.

The record was held open until 5:00 p.m. on July 9, 2020 to allow both parties to submit additional evidence.

On July 9, 2020, Ms. Wright submitted the Petitioner's Proposed Final Order. Ms. Wright submitted additional evidence, which was entered as the Petitioner's Exhibits "10" – "12".

The record was closed at 5:00 p.m. on July 9, 2020.

Petitioner's Position

The petitioner took the position that his application for ICP Medicaid was pending at the time the Nursing Home Transfer and Discharge Notice was issued in January 2020, and that the facility cannot discharge him from the facility, as it is not adhering to the guidelines set forth in the federal regulations.

Respondent's Position

The respondent took the position that the petitioner's application for ICP Medicaid dated January 22, 2020 has been approved for the months of April 2020, May 2020, June 2020 and ongoing months and that his ICP Medicaid case is no longer in a pending status.

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. The petitioner, age 77, was admitted into the facility on [REDACTED] 2018 in the hopes that he would get strong enough to be discharged to his home.

2. The respondent met with the petitioner's son and daughter-in-law at admission and informed both of what was needed by DCF and to establish a Qualified Income Trust (QIT) account. (Resp't Wit. 1 Test.) The facility was trying to work with the petitioner and his family to get his bill paid. The petitioner's former designated representative, [REDACTED] sent an email to the petitioner's son on March 17, 2019 and March 20, 2019 to inquire about documents that were requested by DCF to approve the petitioner's application for ICP Medicaid. (Resp't Wit. 1 Test.) The BOM also sent three emails on September 11, 2019 to the petitioner's son and reviewed the documents that were needed by DCF. (Resp't Wit. 1 Test.) The BOM sent multiple emails to the petitioner's son to request for him to send verifications to DCF to get the petitioner's application for ICP Medicaid approved. (Resp't Wit. 1 Test.) The facility's records contain a gap in the dates between March 2019 and September 2019, which was due to not being able to access [REDACTED] email account to retrieve all correspondence for dates in between that recorded the correspondence that transpired between [REDACTED] and the petitioner's son. [REDACTED] no longer works for the facility. (Resp't Wit. 1 Test.)

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.

3. The facility was previously under a different management company, which was more lenient regarding collecting payments from the petitioner for the balance owed to the facility. (Resp't Wit. 1 Test.) The petitioner's bill with the facility was close to \$100,000 when the new management company took over and requested for the facility to begin the process to discharge the petitioner from the facility. (Resp't Wit.1 Test.)

4. The petitioner receives \$220 in Social Security income and \$3200 in private pension and has a patient responsibility in the amount of \$1809.65. (Resp't Wit. 1 Test.) The petitioner owes the facility a total of \$25,000 in patient responsibility and \$65,000 in private pay. (Resp't Wit. 1 Test.) The petitioner was subsequently approved for ICP Medicaid on May 6, 2020 beginning April 2020 and ongoing months, but his previous applications have been denied and are currently in a denied status. (Resp't Wit. 1 Test.) The petitioner's balance owed to the facility is close to \$100,000 as of the date of the hearing. (Resp't Wit. 1 Test.)

5. The respondent issued monthly billing statements to the petitioner and to the petitioner's son to inform of the amounts owed to the facility. (Resp't Wit.1 Test.) The respondent's evidence includes the monthly billing statements from the month of April 1, 2019 through January 1, 2020 to show that the petitioner was billed for a total amount of \$73,212.30. (Resp't Ex. 2 at 1-10.) The amount owed to the facility by the petitioner has reached \$100,000 as of the date of the hearing. (Resp't Wit. 1 Test.)

6. The petitioner's son was told by the facility that the petitioner was a charity case and that he stopped looking for a new facility for the petitioner after he was told this. (Pet'r Wit. 1 Test.) The petitioner's son denies having a current email address and

does not recall speaking with [REDACTED] regarding the amount owed to the facility. (Pet'r Wit. 1 Test.) The petitioner's son denies receiving Notices of Case Action (NOCA) from DCF requesting verifications. (Pet'r Wit. 1 Test.) The petitioner's evidence includes NOCAs denying the petitioner's applications for ICP Medicaid and are dated July 29, 2019, December 4, 2019, and February 24, 2020 and were addressed to the petitioner and to [REDACTED] at [REDACTED] (Pet'r Ex. 4 at 2-27.)

7. The petitioner's evidence includes a Declaration of [REDACTED] (Declaration), who is the Senior Human Services Program Specialist for DCF. The Declaration includes paragraph 4, which states, "DCF approved ICP Medicaid...beginning April of 2020, going forward, but denied eligibility for January, February and March of 2020." (Pet'r Ex. 3 at 8.) The Declaration includes paragraph 5, which states, "DCF is continuing to review ICP Medicaid eligibility for ([REDACTED]) from the month of the first application, March 2019, through December of 2019." (Pet'r Ex. 3 at 8.) The petitioner was provided the opportunity, post-hearing, to provide evidence from DCF that the petitioner's application for ICP Medicaid is currently in a pending status. The petitioner provided evidence, post-hearing, which includes NOCA dated July 6, 2020 which indicates that the petitioner's ICP Medicaid application dated January 22, 2020 was approved for the months of March 2019 through June 2019. (Pet'r Ex. 12 at 1-4.)

8. The petitioner's son received billing statements from the facility, but his copies were marked "Medicaid Pending". (Pet'r Wit. 1 Test.) The petitioner's son was told the balance due would "go away" and to not worry about it. (Pet'r Wit.1 Test.) The

petitioner's evidence includes a billing statement, dated June 1, 2020, which shows a balance due in the amount of \$90,434.28. The statement also includes a sticker which states: "Medicaid Pending Please be advised that an application for Medicaid has been filed by the [REDACTED]...You are required to pay at this time the resident's monthly income minus \$130. If for any reason the application is DENIED then you would be liable for the balance." (Pet'r Ex. 10.) The petitioner's evidence also includes the NOCA dated May 6, 2020 approving ICP Medicaid beginning April 2020, May 2020, June 2020 and ongoing months. (Pet'r Ex. 1 at 1-3.) The petitioner's son had no clue that the petitioner would be discharged from the facility. (Pet'r Wit. 1 Test.) The petitioner's son thought the facility was paid in full. (Pet'r Wit. 1 Test.) The petitioner's son was not aware that the petitioner has a patient responsibility and believes Medicaid owes the facility. (Pet'r Wit. 1 Test.) The DCF determination of the amount of the patient responsibility is currently under appeal because one-half of the petitioner's pension is court-ordered to go to his ex-spouse, per their divorce decree. (Pet'r Wit. 1 Test.)

CONTROLLING LAW

9. Section 400.0255(15), Florida Statutes, 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.

10. 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—

...

(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...

CONCLUSIONS OF LAW

11. The petitioner provided evidence that indicates that he was denied ICP Medicaid in July 2019, December 2019, and February 2020 and includes an approval notice dated May 6, 2020. The petitioner provided, post-hearing, that he was later approved for ICP Medicaid for the months of March 2019 through June 2019. The respondent nor the petitioner provided any evidence to show that his ICP Medicaid case is currently in a pending status. Therefore, the undersigned concludes that the petitioner does not currently have a pending ICP Medicaid application. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) his stay at the facility. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

12. 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.

13. 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.

14. The undersigned concludes the respondent has given the petitioner reasonable and appropriate notice to pay for the petitioner's stay at the facility. Based on the findings and cited authorities, the undersigned concludes that the facility's action to discharge the petitioner is in accordance with the federal guidelines.

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 _____ day of _____, 2020,
in Tallahassee, Florida.

Paula Ali
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
[REDACTED] Respondent
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Agency for Health Care Administration
Nancy Wright, Esq.
[REDACTED]