

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

[REDACTED]

APPEAL NO.: 20N-00025

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on April 16, 2020 at 3:43 p.m.

APPEARANCES

Petitioner: [REDACTED], pro se

Respondent: [REDACTED]
Director of Social Services

STATEMENT OF ISSUE

Petitioner is appealing Respondent's action to proceed with discharging him from the facility by Nursing Home Transfer and Discharge Notice issued on February 26, 2020. Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

[REDACTED] Social Service Trainee, appeared as an observer with Respondent.

Respondent moved Exhibits 1-3 into evidence.

Petitioner's Position

Petitioner takes the position that he has other bills to pay and does not have enough money to pay the nursing facility. Petitioner indicated he has a heart condition and unable to work. Petitioner does not want to live in an assisted nursing facility because he wants his money. Petitioner wants to live in his own apartment and get his children back from the State.

Petitioner wants to leave the facility and waiting on his stimulus check to help him obtain a place to stay. Petitioner wants to remain at the nursing facility until he receives his stimulus check.

Respondent's Position

Respondent takes the position that Petitioner is required to pay his nursing facility bill and has refused to provide any income towards his balance. Petitioner receives income from social security administration. Petitioner uses a wheelchair for mobility and can perform his activities of daily living on his own. Petitioner no longer needs the services of the nursing facility.

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. Petitioner is a resident of [REDACTED] (Resp't Ex. 1 at 5.) Petitioner remained in the care of the Nursing facility as of the date of this hearing. (Hr'g R.) On

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.

██████████ 2020, Petitioner was admitted to the nursing facility for short-term rehabilitation due to his stay in the hospital through Well-Care. (Hr’g R.) Petitioner’s coverage under Well-Care managed care for his rehabilitation at the nursing facility ended on February 26, 2020. (Resp’t Ex. 1 at 2.)

2. On February 26, 2020, the facility issued Petitioner a Nursing Home Transfer and Discharge Notice. (Resp’t Ex. 1 at 5.) The reasons for the discharge were “your bill for services at this facility has not been paid after reasonable and appropriate notice to pay”; (*Id.*) and “Your health has improved sufficiently so that you no longer need the services provided by this facility”. (*Id.*)

3. Respondent issued an invoice for room and board to Petitioner. (Resp’t Ex. 2 at 2.) The invoice showed Petitioner was billed from February 27, 2020 through April 30, 2020 for a total amount of \$17,856.00. (*Id.*)

4. Petitioner refuse to apply for Medicaid long term care to continue receiving services from the nursing facility. (Resp’t Ex. 1 at 2.) Petitioner pays his storage bill, phone bill, and private loan using his Social Security income and does not have enough money to pay nursing facility. (Hr’g R.)

5. Petitioner is a private patient and he is responsible for his bill at the nursing facility. (Resp’t Ex. 1 at 2.) Petitioner did not make payments towards his room and board at the nursing facility. (Hr’g R.)

6. Petitioner receives \$808.00 in income from Social Security Administration. (*Id.*)

7. Petitioner refused to establish a payment plan towards his nursing facility bill. (*Id.*)

CONTROLLING LAW

8. 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 (“F.S.”). In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

9. 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.

CONCLUSIONS OF LAW

10. Based on the evidence presented, the hearing officer concludes that, although the facility had two reasons for discharging Petitioner, the facility has met the burden of proof to establish Petitioner has been given reasonable and appropriate notice of the need to pay for his stay at the facility. Based on the evidence presented, the nursing

facility has established 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 regulation (Title 42 Code of Federal Regulations Section 483.15) for which a nursing facility may involuntarily discharge a resident. The evidence shows Petitioner received income from SSI. Petitioner has not made any payments towards his outstanding balance and has not made a payment plan with facility to reduce his outstanding balance.

11. 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.

12. 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.

13. The undersigned concludes Respondent has given 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 Petitioner is in accordance with the federal guidelines.

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 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 _____ day of _____, 2020, in

Tallahassee, Florida.

Allison Smith-Dossou
Hearing Officer
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Copies Furnished To:

Petitioner

Respondent

Agency for Health Care Administration