

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

FILED

Jul 28, 2020

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00047

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above- referenced matter on June 17, 2020 at 10:06 a.m.

APPEARANCES

For the Petitioner: [REDACTED] son of the petitioner,
Power of Attorney and representative

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

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

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. This appeal was continued one time per the respondent's request.

██████████ Director of Social Services, appeared as a witness for the respondent.

The petitioner's representative did not submit any exhibits. The respondent submitted an evidence packet which was accepted and marked as the Respondent's Exhibits "1" through "3."

Petitioner's Position

The petitioner's representative took the position that he is unable to pay the facility as he does not have access to his father's bank accounts. The petitioner's representative does not have access to the petitioner's bank accounts, only his older brother ("S.P.") has access to. Due to S.P.'s other responsibilities he has told the petitioner's representative to handle paying the Facility, but he has no access to the petitioner's accounts. The petitioner's representative dropped off paperwork under the closed door at the facility, giving the facility permission to directly receive the petitioner's Social Security checks.

Respondent's Position

The respondent took the position that they have been working with the petitioner's sons for several months now in trying to get payment. The respondent was initially sending the bills to S.P. as he was arranging a payment plan with the facility. The respondent did not receive the signed paperwork from the petitioner's

representative to have the petitioner's Social Security checks direct deposited to the facility instead of the petitioner. The petitioner has not paid for the services he receives at the facility after reasonable and appropriate notice and the respondent has requested that the 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. The petitioner was admitted to the respondent's Facility on [REDACTED] 2019 on a short-term basis and later became a long-term resident on September 24, 2019. (Hr'g R.)

2. The petitioner is receiving Medicaid benefits to assist with covering a portion of the expenses at the facility. The petitioner is responsible to pay his patient liability each month. The petitioner receives Social Security retirement income that is directly deposited into his bank account on a monthly basis. (Hr'g R.)

3. S.P. is the only individual that has access to the petitioner's bank accounts as the petitioner is incapable of accessing them. The facility was in contact with S.P. early on in the petitioner's stay to make arrangements to make partial payments while they figured out the process in getting the petitioner's Social Security checks sent to the facility to pay for his stay. S.P. informed the petitioner's representative to handle the payment of the facility as S.P. was busy with other responsibilities. (Hr'g R.)

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.

4. In January or February 2020, the respondent's witness presented the petitioner's representative paperwork to sign. The signed paperwork was slid under the door of the respondent's witness's office; however, the respondent's witness did not receive it. (Hr'g R.)

5. On April 10, 2020, the respondent issued a Nursing Home Transfer and Discharge notice ("Notice"), informing the petitioner that he was to be discharged from the facility effective [REDACTED] 2020. The reason cited is:

(1) "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Ex. 2.)

6. On April 10, 2020, the Notice was mailed to the petitioner's representative as the petitioner is incapable of signing. (Resp't Ex. 1.)

7. On April 13, 2020, the petitioner's representative timely requested an appeal to challenge the respondent's action. (Appeal R.)

8. As of the day of the hearing, the balance due to the respondent is \$6,017.03. (Hr'g R.)

9. The petitioner's bills were initially mailed to S.P. as he was originally coordinating the payments. (Hr'g R.)

10. The petitioner's representative was not aware of the actual amount owed until he received the discharge notice. He previously did not receive bills but was aware money was owed as he was in contact with the facility. (Hr'g R.)

CONTROLLING LAW

11. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties; this order is the

final administrative decision of the Department of Children and Families pursuant to Section 409.285, Florida Statutes.

12. Florida Statutes Section 400.0255, Resident transfer or discharge; requirements and procedures; hearings, 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.

...

(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident's legal guardian or representative...

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form must state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form must clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

...

13. Title 42 Code of Federal Regulations Section 483.15, Admission, transfer and discharge rights, states in relevant part:

...

(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)

CONCLUSIONS OF LAW

14. On April 10, 2020, the Facility issued the petitioner the Notice. The Facility's reason for discharging the petitioner is that bills for services rendered had not been paid after reasonable and appropriate notice to pay. This is one reason permitted for discharge from the Facility in accordance with the above Federal Regulation.

15. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date.

The Notice also indicated the reason and effective date of the discharge, and appeal rights.

16. Establishing that the reason(s) for a discharge is lawful is just one step in the discharge process. The Facility must also identify an appropriate transfer or discharge location and a safe and orderly transfer or discharge from the facility. The undersigned cannot and has not considered either of these issues. The undersigned only considered whether the discharge was for a lawful reason(s) and that the requirements of the controlling authorities have been met.

17. Discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the petitioner have concerns about the appropriateness of the discharge location or the discharge process, he may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

18. In accordance with the above authorities, the Facility seeks to involuntarily discharge the petitioner for the reason that a bill for services rendered has remained unpaid after reasonable and appropriate notice to pay. The evidence submitted establishes that the petitioner has an outstanding balance of \$6,017.03 for services through June 2020.

19. After careful review of the evidence and testimony, the undersigned concludes that the respondent met its burden of proof. The undersigned concludes that the respondent's discharge of the petitioner for non-payment of a bill for services is proper.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the 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 28 day of July, 2020,

in Tallahassee, Florida.



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Copies Furnished To: [Redacted] Petitioner
[Redacted] Respondent
Ms. Arlene Mayo-Davis
Agency for Health Care Administration
[Redacted]