

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

FILED

Jul 15, 2020

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00051

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on June 11, 2020 at 9:04 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED] Power of Attorney ("POA")

For Respondent: [REDACTED] Signature Healthcare Administrator and CEO

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

Petitioner was not present; however, she was represented by [REDACTED] POA. Her daughter, [REDACTED] was present but did not testify.

Present as a witness for Respondent was [REDACTED] Business Office Manager.

Petitioner did not submit any exhibits. Respondent presented five exhibits which were accepted into evidence and marked as Respondent's Exhibits "1" through "5."

Petitioner's Position

Petitioner's POA took the position that he has been trying hard to resolve the matter but the POA documentation is insufficient to cash in or reassign Petitioner's life insurance policy nor is it sufficient to access a trust account. He has tried to liquidate the assets in order to apply for and qualify for Medicaid but all attempts have been unsuccessful.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance for which payment in full has not been received nor has Medicaid been secured, despite several communications between the Facility and Petitioner's POA.

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 age 63. (Hr'g R.)
2. Petitioner entered the Facility on [REDACTED] 2019. (Resp't Ex. 1.)
3. At admission, Petitioner was covered under Well Med Insurance and traditional Medicare. Medicare provided coverage for the first 100 days of her admission. She then transitioned to private pay. (Resp't Wit. Test.)

4. Petitioner's private pay services were paid in full for November 2019 and December 2019. In January 2020, she began to accrue a balance. (Resp't Ex. 1.)

5. Petitioner has a life insurance policy with a cash surrender value of approximately \$8,700 and a bank account established as a trust with approximately \$1,700. (Hr'g R.)

6. The Facility contacted Petitioner's POA on several occasions to offer suggestions and options for proceeding with a Medicaid application, to include consulting an attorney. (Resp't Ex. 4.) Also suggested was Medicaid Done Right, a paid service that assists applicants in applying for Medicaid. (Hr'g R.)

7. Petitioner's POA did not obtain assistance through Medicaid Done Right or an attorney to assist with spend-down of assets and/or applying for Medicaid. (Hr'g R.)

8. Petitioner's POA, despite exhaustive efforts on his part to have the life insurance policy surrendered or obtain the authority to access the trust account, has been unsuccessful. The POA documentation has been deemed insufficient to allow the POA to liquidate Petitioner's assets to pay the Facility or secure Medicaid. (Hr'g R.)

9. To date, Petitioner has not applied for Medicaid benefits. (Hr'g R.)

10. Petitioner receives a net Social Security benefit of \$993. (Hr'g R.)

11. Petitioner made the following payments to the Facility: (Resp't Ex. 1.):

February 2020	\$2,000
March 2020	\$ 750
April 2020	\$ 863

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.

12. On March 13, 2020, the Facility mailed written notice to Petitioner's POA regarding an outstanding balance of \$15,361. Payment was requested within seven days of the letter's date. (Resp't Ex. 2.)

13. On April 3, 2020, the Facility mailed written notice to Petitioner's POA regarding an outstanding balance of \$24,361. It states in part: We have attempted to collect the past due balance of \$15,361. We can no longer continue to care for [Petitioner] without payment in full. (Resp't Ex. 3.)

14. On April 16, 2020, Respondent issued a Discharge Notice to Petitioner's POA informing him that Petitioner would be discharged from the Facility effective [REDACTED] 2020, due to non-payment of bill for services. (Resp't Ex. 5.) Documentation of Petitioner's outstanding balance was included with the Discharge Notice. (Hr'g R.)

15. Petitioner's outstanding balance is undisputed. (Hr'g R.)

16. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance to the Facility, as of the date of the hearing, was \$47,017. (Hr'g R.)

CONTROLLING LAW

17. 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.

18. Title 42 Code of Federal Regulations ("C.F.R.") 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; (emphasis added)

(F) The facility ceases to operate.

...

CONCLUSIONS OF LAW

19. Based on the evidence presented, the nursing facility has established that Petitioner is being discharged due to non-payment. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

20. According to the above authority, the facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the facility. As of the date of the hearing, Petitioner's balance owed to the facility was \$47,017. As of the date of the hearing, Petitioner has not applied for Medicaid and she is still in possession of her life insurance policy and a trust account.

21. Based on the evidence and testimony, Respondent has established Petitioner has refused to pay what she owes to the facility. This is one of the six (6) reasons provided in federal regulations (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden.

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 15 day of July , 2020,

in Tallahassee, Florida.

Shelly Goodfellow

Shelly Goodfellow
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] RN
Agency for Health Care Administration
[REDACTED]