

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-00056

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 23, 2020 at 10:09 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.

██████████ Assistant Administrator, ██████████ Business Office Manager ("BOM") and ██████████ Discharge Planner, all appeared as witnesses for the respondent.

The petitioner did not submit any exhibits. The respondent submitted the discharge notice that was accepted and marked as the Respondent's Exhibit "1". The record was left open through June 26, 2020 for the respondent to provide copies of the petitioner's bills and the repayment agreement. On June 25, 2020, the respondent timely submitted the requested information and it was marked and entered as Respondent's Exhibits "2" through "8." The record was closed on June 26, 2020.

Petitioner's Position

The petitioner's representative took the position that he is aware that he is not up to date paying for his father's Nursing home services, but he wasn't being reimbursed from the long-term care provider. The petitioner's representative was planning on making a \$20,000 payment at the end of the month.

Respondent's Position

The respondent took the position that the petitioner's representative pays at the end of the month and the payment posts the following month. This has led to the petitioner being constantly in arrears. When payments are made the payment covers the current month's bill, but the arrearage still remains. The respondent is taking

appropriate action in sending the petitioner's bills to his long-term care provider for the petitioner to receive reimbursement. 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 in [REDACTED] 2019. (Hr'g R.)

2. The petitioner's representative agreed to pay out of pocket for the nursing home bills due to being ineligible for the Medicaid assistance as he is over the asset limit. The petitioner does not have a pending application for Medicaid on file with the facility. (Hr'g R.)

3. On August 21, 2019, the respondent issued a Nursing Home Transfer and Discharge notice ("Notice") to the petitioner due to non-pay of services. The petitioner's representative and the respondent made an oral agreement that he would pay the monthly balance and part of the arrearage each month until the petitioner was current. After the agreement was made, the respondent rescinded the discharge notice. (Hr'g R.)

4. The respondent has been issuing monthly statements to the petitioner's representative. The petitioner's representative receives the bills every two months at

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.

his father's old residence. The bills are autogenerated by corporate office and the petitioner's representative is able to update the address at any time. (Hr'g R.)

5. The petitioner's representative was following through with the agreement until December 2019 when a payment was not received. (Hr'g R.)

6. On May 5, 2020, the respondent issued a 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. 1.)

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

8. The petitioner's representative is aware that he is not current with paying his father's bills at the Facility. (Hr'g R.)

9. As of the day of the hearing, the balance due to the respondent is \$30,935.06. (Hr'g R.)

10. The petitioner's representative did not dispute the oral repayment agreement. The petitioner was not being reimbursed by his long-term care provider, as the facility was not submitting the bills to them as he requested. (Hr'g R.) The statements were emailed to the long-term care provider each month and the reimbursement from the provider is not something the Nursing Home can expedite. (Resp't Ex. 4 & 5.)

11. The petitioner was upset that he made a \$30,000 payment on June 3, 2020 but the facility did not clear the check until 20 days later. The petitioner's representative was planning on making a \$20,000 payment to the facility at the end of the month.

Once the facility receives the payment, the next month's balance posts, leaving the petitioner still in arrearages. (Hr'g R.)

CONTROLLING LAW

12. 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 Florida Statutes Section 409.285.

13. 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.

...

14. 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

15. On May 5, 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.

16. 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.

17. 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.

18. 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.

19. 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 \$30,935.06 for services through June 2020.

20. 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.

Ashley Brunelle

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Copies Furnished To: [redacted] Petitioner
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Agency for Health Care Administration
[redacted]