

**FILED**

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

Aug 12, 2020  
Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00057

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on August 5, 2020 at 2:04 p.m. All parties appeared by telephone from different locations.

**APPEARANCES**

For the Petitioner: [REDACTED] daughter and Power of Attorney (POA)

For the Respondent: [REDACTED] Administrator  
[REDACTED] Social Services Director

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging Petitioner from [REDACTED] [REDACTED] (the "Facility") due to non-payment of the bill for services. The facility has the burden of proof to establish by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of Title 42 of the Code of Federal Regulations Chapter 483.15 and Section 400.0255, Florida Statutes.

### **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.

On May 12, 2020, the Office of Appeal Hearings (OAH) received a request to appeal the discharge of the Petitioner from the Facility due to non-payment of the bill.

On May 18, 2020 the undersigned issued an "Order to Produce Notice" to the Facility which was due to the OAH by May 28, 2020.

On June 4, 2020, a "Preliminary Order to Dismiss" was issued to the Facility for failure to respond to the "Order to Produce Notice". The Facility responded on June 9, 2020 with proof of submission of the notice via fax.

The appeal hearing was scheduled for July 6, 2020 at 11:00 a.m. On July 6, 2020, the Petitioner's daughter and POA appeared but the Facility did not appear.

On July 7, 2020, the undersigned issued an "Order to Show Good Cause" to the Facility for failure to appear at the hearing. On July 15, 2020, the Facility responded and requested that the hearing be rescheduled as the failure to appear was an oversight due to administrative priorities directly related to the Facility and managing a COVID-19 outbreak. Good Cause was granted, and the hearing rescheduled for August 5, 2020 at 2:00 p.m.

The respondent presented evidence which was accepted into record and marked as Respondent's Composite Exhibit "1". The petitioner did not submit any documents as evidence for the hearing. At the time of the hearing, no notice of facility violations

from the Agency for Health Care Administration (AHCA) was available for review. The record closed on August 5, 2020.

### **Petitioner's Position**

Petitioner's daughter took the position that she is unable to comply with the Facility's request and that her father should not be discharged as he is not capable of taking care of himself, nor is she able to care for him as she is disabled as well. The POA objects to the discharge stating that she finds the nursing homes' plans to discharge her father to be disgusting. The POA stated that she does not have the money to take care of her father, and she cannot assist the nursing home in establishing Medicaid eligibility for him and that a Guardian Ad Litem needs to be assigned. She believes the nursing home is harassing her and for that reason refused to provide her living address on the record but stated that the Final Order can be mailed to her previous address and she will eventually get the mail.

### **Respondent's Position**

Respondent took the position that the Facility attempted to assist the Petitioner's daughter with applying for Medicaid but that she will not cooperate. The petitioner is charged as a private pay resident since he has not been determined eligible for Medicaid. The only way they can continue to care for him is if the private pay rate is paid or he is determined eligible for Medicaid. The Facility believes that it has complied with the Federal and State statutes in issuing the Notice to Discharge.

### **FINDINGS OF FACT**

1. The petitioner has been residing in the facility since [REDACTED] 2020. (Resp't Ex. 1 at 9.)

2. The petitioner's daughter had previously agreed to assist the facility with processing the application for Medicaid coverage as the petitioner's Medicare coverage would soon be exhausted. (*Id.* at 9.)

3. A Nursing Home Transfer and Discharge Notice was issued on April 28, 2020 with an effective date of [REDACTED] 2020.

4. The petitioner's daughter has made four payments since May 11, 2020.

DATE	CHECK AMOUNT
May 11, 2020	\$6,500
June 11, 2020	\$2,500 (2 checks \$1,200 and \$1,300)
July 14, 2020	\$3,000
	The balance due at the time of the hearing: \$41, 000

(*Id.* at 4 & Resp't Test.)

5. The daughter did not dispute the total amount, or the payments made.

6. The petitioner is incapacitated and unable to represent himself. (Resp't & Pet'r Test.)

7. The daughter stated that she has Power of Attorney, but a Guardian Ad Litem should be assigned to her father because she does not desire to continue handling his affairs as she is disabled and cannot take care of him and herself. (Pet'r Test.)

### **CONTROLLING LAW**

8. 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.<sup>1</sup>

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.

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<sup>1</sup> 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.

### **CONCLUSIONS OF LAW**

10. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for his stay at the facility. This is one of the six reasons provided in the authority noted above for which a nursing facility may involuntarily discharge a resident.

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.

### **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   12   day of   August  , 2020,

in Tallahassee, Florida.



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