

Nov 10, 2021

Office of Appeal Hearings  
Dept. of Children and FamiliesSTATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

[REDACTED]

APPEAL NO. 21N-00060

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on September 22, 2021, at 9:19 a.m.

**APPEARANCES**

For the petitioner: [REDACTED] the petitioner's nephew and guardian

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

**STATEMENT OF ISSUE**

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

**SUMMARY OF PROCEEDINGS**

The petitioner did not submit any exhibits. The respondent submitted two evidence packets which were accepted into evidence and marked as Respondent's Exhibits one ("1") through four ("4") and six ("6") through fourteen ("14."). There was no

Exhibit five ("5"). The record was held open until September 24, 2021, for the respondent to provide monthly billing statements issued to the petitioner and the document of guardianship. The respondent submitted an additional evidence packet which was accepted into evidence and marked as the Respondent's Exhibits Fifteen ("15") and sixteen ("16"). No evidence was received from the petitioner. The record was closed on September 24, 2021.

### **Petitioner's Position**

The petitioner has been trying to get Medicaid approved but was not able to. The petitioner has made some payments to the facility, but the monthly amount billed by the facility is more than the monthly income coming in.

### **Respondent's Position**

The respondent offered to help the petitioner with the Medicaid application, but the petitioner rejected the help. The respondent has no issue with the petitioner; it only needs the outstanding bills to be paid.

### **FINDINGS OF FACT<sup>1</sup>**

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. At the time of admittance, the petitioner's services at the Facility were paid by Medicare Part A. The petitioner's Medicare payments to the Facility ended on October 18, 2019. (Resp't Test. September 22, 2021.)

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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.

2. On October 19, 2019, the Facility began billing the petitioner for services as a self-paid resident. The petitioner submitted several Medicaid applications to the Department of Children and Families (“DCF”) which were denied. The petitioner has a current Medicaid application pending eligibility determination with DCF. (Resp’t Ex. 16 and Pet’r Test. September 22, 2021.)

3. The petitioner is responsible to pay for services provided by the Facility each month starting from October 19, 2019, through September 2021. She has paid a total of \$6,148.00 (\$5,348.00 and \$800.00). The petitioner’s monthly income is deposited into her bank account on a monthly basis. A portion of her money/funds goes to pay her life insurance and other insurances. (Pet’r Test. September 22, 2021.)

4. The facility sent the petitioner monthly billing statements by mail to her guardian’s address at [REDACTED]. Her guardian confirmed that he received the monthly billing statements, and he is aware that there is an outstanding balance owed to the Facility, for services provided to the petitioner from October 2019 through August 2021. The guardian believes the amount may be lower as the petitioner’s patient responsibility has not yet been determined by DCF. (Resp’t Ex. 16.)

5. On July 12, 2021, the respondent issued a Nursing Home Transfer and Discharge Notice (“Notice”), informing the petitioner that she was to be discharged from the facility effective [REDACTED] 2021. The reason cited was “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” (Resp’t Ex. 1.)

6. On August 12, 2021, the petitioner timely requested an appeal to challenge the respondent’s action. (Appeal R.)

7. The petitioner owes the respondent \$210,332.16 for services through August 31, 2021, which is shown on the monthly billing statement dated September 1, 2021.

(Resp't Ex. 16.)

8. The petitioner's guardian was not aware of the actual amount owed until the date of this hearing but is aware that money is owed to the Facility. (Pet'r Test. September 22, 2021.)

### **CONTROLLING LAW**

9. 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.

10. 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.

...

11. 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**

12. On July 12, 2021, 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.

13. 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.

14. 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.

15. 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, she may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

16. 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 \$210,332.16 for services through August 31, 2021.

17. 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.

### **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, Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190. 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 10 day of November, 2021,  
in Tallahassee, Florida.

*Christiana Gopaul Narine*

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Hearing Officer  
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Copies Furnished To: [REDACTED] Petitioner  
[REDACTED] Respondent  
[REDACTED]  
Agency for Health Care Administration  
[REDACTED]