

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

FILED

Sep 08, 2020

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00067

PETITIONER,

Vs.

CASE NO.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on August 17, 2020 at 2:14 p.m.

APPEARANCES

For Petitioner: [REDACTED] ([REDACTED]), Senior Advocate with Comfort and Joy Advocates

For Respondent: [REDACTED] Director of Nursing, Nursing Home Administrator

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDING

By Nursing Home Transfer and Discharge Notice, dated May 28, 2020, Respondent informed Petitioner that he was to be discharged from the Facility effective [REDACTED] 2020. The reason cited is: "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

On June 2, 2020, Petitioner timely requested an appeal to challenge Respondent's action.

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. The undersigned rescheduled the appeal from July 21, 2020 on Petitioner's behalf after Petitioner's mother called the office stating she thought the hearing was set for Thursday.

[REDACTED] (" [REDACTED] "), District Ombudsman, Petitioner and [REDACTED] Petitioner's mother and Power of Attorney ("POA") appeared as witnesses for Petitioner.

[REDACTED] Corporate Secretary, [REDACTED] Social Services, [REDACTED] Medicaid Coordinator and [REDACTED] Business Office with [REDACTED] appeared as witnesses for Respondent.

No representative from the Agency for Health Care Administration ("AHCA") was present. At the request of the Office of Appeal Hearings ("OAH"), AHCA conducted an on-site inspection of the Facility on July 6, 2020 and found no violations. The AHCA investigation report was marked as Hearing Officer's Exhibit 1.

Petitioner did not submit any exhibits. Respondent submitted exhibits which were admitted into evidence as Respondent's Composite Exhibits 1 – 3. The record

was closed on August 17, 2020 after the hearing was concluded. Post hearing, on August 18, 2020, Respondent submitted an updated itemized bill indicating the outstanding balance due to Respondent to date for Petitioner's stay at the Facility. Respondent already provided testimony on the amount due to date. The undersigned found good cause to reopen the record and accept the updated bill as Respondent's Exhibit 4. The record closed on August 18, 2020.

Petitioner's Position

The Advocate took the position that Petitioner needs more time to find out why the Department of Children and Families ("DCF") denied his previous applications. The Advocate just applied again for ICP Medicaid on Petitioner's behalf so he can remain at the Facility.

Respondent's Position

Respondent took the position that since Petitioner has not paid his full bill for the services he receives at the Facility after reasonable and appropriate notice, 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. Petitioner was admitted to [REDACTED] (the "Facility") on January 24, 2020 as a private pay resident for a maximum of 60 days of therapy covered by his FHC Commercial insurance plan as a 3rd party payer.

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.

Petitioner was responsible for his daily \$65.00 co-payment. Petitioner reached his 60th day on March 23, 2020 and FHC stopped making payments on his behalf. Effective March 24, 2020, Petitioner attained full private pay status. (Resp't Comp Ex. 2 at 2.)

2. On February 7, 2020, Petitioner's mother applied for ICP Medicaid on Petitioner's behalf. (Resp't Comp Ex. 2 at 4-12.)

3. On March 10, 2020, DCF issued a Notice of Case Action ("NOCA") to the Facility indicating it denied Petitioner's February 7, 2020 ICP Medicaid application for not receiving all the information necessary to determine eligibility. (Resp't Comp Ex. 1 at 3.)

4. On March 17, 2020, Respondent submitted a \$3,900.00 (\$65 X 60 days) bill to Petitioner's parents for the co-payments and an additional \$1,820.00 to cover the remaining 7 days of March 2020, which they paid. That same day, thinking the staff at the Facility were taking advantage of them, the parents hire an Advocate to assist them with Petitioner's ICP Medicaid application. (Resp't Comp Ex. 2 at 3 & 13.)

5. On March 24, 2020, the Advocate applied for ICP Medicaid on Petitioner's behalf. (Resp't Comp Ex. 1 at 32-33.)

6. On May 28, 2020, Respondent issued a 30-day Transfer and Discharge Notice to Petitioner informing him that he was to be discharged from the Facility effective [REDACTED] 2020 for not paying his bill for services he received at the Facility after reasonable and appropriate notice to pay. The Notice was signed by the Facility Administrator thirty days prior to the discharge date. (Resp't Comp Ex. 1 at 27-29.)

7. On June 2, 2020, Petitioner timely requested an appeal to challenge Respondent's action. (Hr'g R.)

8. On July 28, 2020, DCF issued a NOCA to the Facility indicating it denied Petitioner's March 24, 2020 ICP Medicaid application effective March 2020 forward for not receiving all the information necessary to determine eligibility. (Resp't Comp Ex. 3 at 4.)

9. Respondent has been issuing monthly statements to Petitioner requesting payments for its services since the March 17, 2020 payment but has not received any payments. (█ Test.)

10. As of the day of the hearing, the balance due to Respondent is \$12,364.85 (\$10,430.50 through June 30, 2020 (Resp't Comp Ex. 2 at 25-30.) + \$1,934.25 for July 2020 (Resp't Comp Ex. 3 at 2-3.) for pharmacy services and is \$42,463.21 for room & board (Resp't Comp Ex. 4.) Petitioner did not dispute the amounts.

11. Respondent issued a discharge notice to Petitioner he has failed to fully pay his bill for services provided by the Facility. Petitioner does not have a pending application for ICP Medicaid on file with the Facility. (█, █ and █ Test.)

12. The Advocate acknowledged that the Facility must be paid for its services, but explained Petitioner needs more time to explore Medicaid eligibility so he can fulfill his obligations to the Facility. The Advocate contends that no one at the Facility has diligently helped Petitioner with his initial ICP application like they should. (█ Test.)

13. The only issue before the hearing officer is whether the discharge is in accordance with federal regulations. Any issues concerning allegations of improper protocol and lack of assistance with Petitioner's ICP application leveled by the Advocate against the Facility staff are not within the purview of this administrative proceeding or

jurisdiction of the hearing officer. Therefore, these issues will not be addressed in the Final Order.

14. Petitioner's mother has recently applied for Supplemental Security Income (SSI) through Social Security Administration on his behalf. (█ Test.)

15. In an abundance of caution, while waiting to address the denial of Petitioner's applications with DCF, the Advocate applied for ICP on Petitioner's behalf earlier today (day of the hearing.) (Access number: █). (█ Test.)

16. At the request of OAH, AHCA had reviewed the discharge proposed by the Facility through an unannounced visit. Hearing Officer's Exhibit 1 is a letter from AHCA dated July 16, 2020 stating:

Representatives from the Agency for Health Care Administration (AHCA) completed an unannounced visit at █ on July 6, 2020. The purpose of the visit was to determine if the facility complied with the requirements of CFR 483.12 in taking action to discharge a resident.

Based on interview and facility documentation, it has been determined that there were no violations.

17. Petitioner wants to remain at the Facility. As of the day of this hearing, Petitioner is still in the Facility pending a hearing decision.

CONTROLLING LAW

18. Section 400.0255(15), Florida Statutes ("F.S."), 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.

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

...

20. 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.

[Emphasis added]

CONCLUSIONS OF LAW

21. On May 28, 2020, Respondent issued a 30-day Transfer and Discharge Notice to Petitioner informing him that he was to be discharged from the Facility effective [REDACTED] 2020 for not paying his bill for services he received at the Facility after reasonable and appropriate notice to pay.

22. 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.

23. Based on the evidence presented, the Facility has established that Petitioner has not been paying for his stay at the Facility. This is one of six reasons permitted for discharge from the Facility in accordance with the above Federal Regulations for which a nursing Facility may involuntarily discharge a resident.

24. After careful review of the evidence and testimony, the undersigned concludes that Respondent has met its burden of proof. Respondent's proposed action to discharge Petitioner for non-payment of a bill for services is proper.

25. 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 and that the requirements of the controlling authorities have been met.

26. 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 08 day of September, 2020,

in Tallahassee, Florida.



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Copies Furnished To:  Petitioner
 Respondent

Agency for Health Care Administration
