

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

FILED

Oct 16, 2020

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00078

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened a nursing home discharge hearing in the above-referenced matter on September 29, 2020 at 2:08 p.m.

APPEARANCES

For Petitioner: The petitioner was present and represented herself.

For Respondent: [REDACTED] Facility's Administrator for [REDACTED]
[REDACTED]

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to discharge her from the facility at the [REDACTED].

The respondent has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in Title 42 Code of Federal Regulations Section 483.15 and Section 400.0255(15), Florida Statutes.

SUMMARY OF PROCEEDINGS

A Nursing Home Transfer and Discharge Notice was issued on July 21, 2020 with an effective date of [REDACTED] 2020. The facility is seeking to discharge the petitioner due to her "...bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

Appearing as a witness for the respondent was [REDACTED] Business Office Manager (BOM). (Resp't Wit.1.)

Evidence was submitted and was entered as the Hearing Officer's Exhibit "1" and the Respondent's Exhibit "1".

The record was held open until 5:00 p.m. on September 29, 2020 to allow the respondent to submit additional evidence. Evidence was submitted and entered as the Respondent's Exhibits "2" – "4".

The record was closed at 5:00 p.m. on September 29, 2020.

Petitioner's Position

The petitioner took the position that she should not be held liable for the balance owed to the facility because she has Medicaid. The petitioner believes she should only have to pay \$750 per month to the facility and keep the rest of her income.

Respondent's Position

The respondent took the position that the facility sends monthly billing statements to the petitioner and her son. The respondent contends that the facility last received a payment from the petitioner in the amount of \$750 in February 2020.

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 into the facility in [REDACTED] 2020. (Resp't Wit. 1Test.)
2. The petitioner's income is a total of \$2397, minus \$130 for personal needs, resulting in a patient responsibility amount of \$2267. (Resp't Ex. 3 at 2.)
3. The respondent mailed monthly billing statements for the months of February 2020, March 2020, April 2020, May 2020, June 2020, July 2020, August 2020, and September 2020, to the petitioner's son at [REDACTED] (Resp't Ex. 4 at 1-15.)
4. The billing statement dated February 1, 2020 shows a payment of \$750 was made on January 14, 2020, with a total balance due in the amount of \$1006.37. (Resp't Ex. 4 at 1.)
5. On July 21, 2020, the respondent mailed a letter to the respondent's son to inform him that the petitioner's account is seriously past due. (Resp't Ex. 2.) The letter states: "...we are demanding the payment in full to be made within the next 10 days. Non-payment will leave us no other alternative than to refer the account elsewhere...we will be issuing a 30 day discharge notice..." (Resp't Ex. 2.)

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.

6. The billing statement dated September 1, 2020 shows a total balance due in the amount of \$19290.48. (Resp't Ex. 4 at 15.) The respondent has not received any payments from the petitioner since February 2020. (Resp't Wit. 1 Test.)

7. The petitioner does not deny that she owes the facility. (Pet'r Test.) The petitioner has been receiving the billing statements but can only afford to pay \$750. (Pet'r Test.) The petitioner does not have the money to pay the facility what is owed. (Pet'r Test.) The petitioner's son is using her income to make repairs to her home. (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.

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—

...

(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...

CONCLUSIONS OF LAW

10. The findings show that the petitioner and her son were mailed several monthly billing statements to inform them of the balance owed to the facility prior to the date the Nursing Home Transfer and Discharge Notice was issued. The petitioner does not deny receipt of the billing statements. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) her stay at the facility. This is one of the six reasons provided in federal regulations 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 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.

12. 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.

13. The undersigned concludes the respondent has given the petitioner reasonable and appropriate notice to pay for her stay at the facility. Based on the

findings and cited authorities, the undersigned concludes that the facility's action to discharge the petitioner is in accordance with the federal guidelines.

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 16 day of October, 2020,

in Tallahassee, Florida.



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