

**FILED**

Nov 06, 2020

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

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00085

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 October 21, 2020 at 2:01 p.m.

**APPEARANCES**

For Petitioner: The petitioner was present and represented himself.

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

[REDACTED]

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's action to discharge him 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 August 3, 2020 with an effective date of [REDACTED] 2020. The facility is seeking to discharge the petitioner due to his "...bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

Appearing as witnesses for the respondent were [REDACTED] Director of Social Services (Resp't Wit. 1.) and [REDACTED] Business Office Manager (BOM). (Resp't Wit.2.)

Evidence was submitted and was entered as the Respondent's Exhibits "1" – "2". The petitioner provided duplication of the evidence provided by the respondent; therefore, his evidence was excluded.

The record was held open until 5:00 p.m. on October 21, 2020 to allow the respondent to submit additional evidence. Evidence was received and entered as the Respondent's Exhibits "3" – "4".

The respondent provided another copy of the Nursing Home Transfer and Discharge Notice, which was excluded to avoid duplication. The additional evidence also included emails between the Director of Social Services and long-term care transition care manager, [REDACTED] which discussed the petitioner's transitional housing. The emails included unredacted information concerning another resident. Therefore, this evidence was excluded due to its irrelevancy and due to the unredacted information regarding another resident.

The record was closed at 5:00 p.m. on October 21, 2020.

### **Petitioner's Position**

The petitioner took the position that he offered to pay \$25 per week but the facility rejected his offer.

### **Respondent's Position**

The respondent took the position that the facility sends monthly billing statements to the petitioner. The respondent contends that the facility last received a payment from the petitioner on July 17, 2020.

### **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 into the facility, with Medicare as payor source, on [REDACTED] 2020. (Resp't Wit. 2 Test.) The petitioner later became a long-term care resident and was approved for Institutional Care Program (ICP) Medicaid shortly thereafter. (Resp't Wit. 2 Test.)

2. The petitioner's income is a total of \$1741, minus \$130 for personal needs and other out-of-pocket medical expenses, resulting in a patient responsibility amount of \$1224.01. (Resp't Wit. 2 Test.)

3. The respondent began mailing monthly billing statements to the petitioner on June 16, 2020. (Resp't Wit. 2 Test.) The respondent received three payments from the petitioner in the amounts of \$200 and \$50 on July 16, 2020, and \$25 on July 17, 2020.

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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.

(Resp't Wit. 2 Test. and Resp't Ex. 2 at 1-2.) The balance owed to the respondent, as of the date of the hearing, is \$7069. (Resp't Wit. 2 Test.) The current balance due is in the amount of \$7669. (Resp't Ex. 4.)

4. The petitioner does not deny that he owes the facility. (Pet'r Test.) The petitioner does not dispute receiving the billing statements. (Pet'r Test.) The petitioner paid \$200 in the form of a money order. (Pet'r Test.) The petitioner would like to make payment arrangements with the facility. (Pet'r Test.) The petitioner's wife and stepdaughter have living expenses and other bills and need his income to survive. (Pet'r Test.) The petitioner receives \$1100 per month in income after all deductions. (Pet'r Test.)

#### **CONTROLLING LAW**

5. 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.

6. 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**

7. The findings show that the petitioner was given a monthly billing statement to inform him 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) his 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.

8. 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.

9. 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.

10. The undersigned concludes the respondent has given the petitioner reasonable and appropriate notice to pay for his 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 06 day of November, 2020,  
in Tallahassee, Florida.



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