

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

FILED

Dec 15, 2020

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]
[REDACTED]
[REDACTED]

APPEAL NO. 20N-00094

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on October 29, 2020 at 2:04 p.m.

APPEARANCES

For the Petitioner: [REDACTED] pro se

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

STATEMENT OF ISSUE

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

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.

██████████ the petitioner's son, appeared as a witness for the petitioner. ██████████ Social Worker, ██████████ Business Office Manager, and ██████████ Assistant Director of Nursing, all appeared as witnesses for the respondent.

On October 30,2020, the undersigned issued an Order Establishing Date and Time for Hearing Conducted to both parties as the undersigned did not state the date of time of the hearing on the record.

The petitioner did not submit any exhibits at the hearing. The respondent submitted an evidence packet that was marked and entered as Respondent's Exhibits "1" through "4."

Petitioner's Position

The petitioner's witness took the position that his father is not incompetent and has attempted to become his father's Power of Attorney ("POA") to assist with paying his father's bill but the facility won't allow it. The petitioner has not received his social security check in the last four or five months because S.N. has been using the petitioner's pension income for his own food and shelter.

Respondent's Position

The respondent took the position that the petitioner has been approved for Medicaid and is obligated to pay the facility \$2,052.19 each month beginning July 2020.

The petitioner receives both Social Security and pension income each month but has not paid the facility anything since he arrived on [REDACTED] 2020. The respondent is giving the petitioner monthly bills and also mailing them to [REDACTED], per the petitioner's request. The petitioner has not paid after the facility has given reasonable and appropriate notice to the petitioner for the services he receives at the facility and the respondent has requested that the 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. The petitioner was admitted to the respondent's Facility on [REDACTED] 2020. (Resp't Test.)
2. On June 26, 2020, the Facility attempted to reach [REDACTED] via telephone, but his voicemail was not set up. The petitioner received skilled services and therapy at the Facility until July 2, 2020. The petitioner agreed to stay at the Facility after his therapy was completed. (*Id.*)
3. The Facility applied for Medicaid for the petitioner and the petitioner was approved for Medicaid beginning in June 2020. The petitioner is obligated to pay the facility \$0 for June 2020 and \$2,052.19 a month beginning July 2020. (Resp't Ex. 2.)
4. On July 2, 2020, the petitioner's son came to the Facility and the NHA and [REDACTED] had a discussion with him regarding the money the petitioner owed to the facility. The petitioner's son was rude and outspoken when he came to the Facility. The BOM

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.

also tried to reach the [REDACTED] on the phone following the meeting but was unable to reach him. (Resp't Wit. [REDACTED]. Test.)

5. On September 18, 2020, the respondent issued a Nursing Home Transfer and Discharge notice ("Notice"), informing the petitioner that he was to be discharged from the facility effective [REDACTED] 2020. (Resp't Ex. 1.) The reason cited is:

(1) "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

6. On September 23, 2020, the petitioner timely requested an appeal to challenge the respondent's action. (Appeal R.)

7. As of the day of the hearing, the balance due to the Facility is \$8,076.37 as no money has been paid to the Facility. The respondent is giving the petitioner monthly bills and also mailing them to [REDACTED] per the petitioner's request. (Resp't Wit. [REDACTED] Test.)

8. The petitioner agreed to have his social security check to be sent directly to the Facility to go towards his monthly amount owed. At the time of the hearing, the respondent has received correspondence from the Social Security Administration ("SSA") stating the petitioner's check has not been released to the petitioner for the last three months and they will be releasing all of those funds to the Facility in approximately ten to fifteen days. (*Id.*)

9. [REDACTED] does not currently have POA over his father. The facility will not assist in helping him get POA and he has attempted to bring his own notary to the facility to make this happen, but the facility was not allowing visitors due to the COVID-19 pandemic. [REDACTED] is unable to contact the petitioner's bank or the SSA to assist with getting his father's bills paid without being his father's POA. (Pet'r Wit. Test.)

10. The respondent is not claiming that the petitioner is incompetent but that he has cognitive issues that result in him having good days and bad days. (Resp't Ex. 4.) The respondent is not willing to sign as the notary allowing the petitioner's son to be the petitioner's POA, as they believe the petitioner may not be fully aware of what is going on. (Resp't Wit. ■■■ Test.)

11. The respondent understands that the petitioner has not received his Social Security checks for the last three months due to the SSA hold. The respondent is requesting that the petitioner pay the income he has been receiving from his June, July and August Social Security checks as well as his pension checks, to the Facility to assist with his outstanding debt. (*Id.*)

12. ■■■. receives disability payments, is not employed, and has been evicted from his apartment recently. ■■■ has been using the petitioner's income to assist him with his own personal bills for food and other expenses but has not used it to pay for his father's expenses at the Facility. (Pet'r Wit. Test.)

13. The petitioner has worked hard for his Social Security and pension income prior to being admitted to the Facility and the petitioner deserves to use it to pay his bills for the services rendered at the facility. (Resp't Test.)

CONTROLLING LAW

14. 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 Florida Statutes Section 409.285.

15. 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.

...

16. 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

17. On September 18, 2020, 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.

18. 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.

19. 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.

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

21. 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 \$8,076.37 for services beginning July 1, 2020 through October 31, 2020.

22. 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 upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the petitioner is in

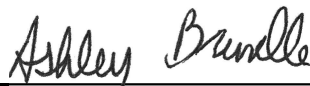
accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance with all applicable Agency for Health Care Administration requirements.

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 15 day of December, 2020,

in Tallahassee, Florida.



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