

**FILED**

Nov 19, 2020

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

Office of Appeal Hearings  
Dept. of Children and Families

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APPEAL NO. 20N-00104

PETITIONER,

Vs.

Administrator

██  
████████████████████  
████████████████████

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on November 12, 2020 at 9:13 a.m.

**APPEARANCES**

For Petitioner: ██████████ *pro se*

For Respondent: ██████████ Administrator

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging Petitioner from ██████████  
████████████████████ (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

**SUMMARY OF PROCEEDINGS**

By Nursing Home Transfer and Discharge Notice, dated October 6, 2020, Respondent informed Petitioner that she was to be discharged from the Facility effective

██████████ 2020. The reason cited is: “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.”

On October 13, 2020, Petitioner timely requested an appeal to challenge Respondent’s action.

██████████ Business Office Manager, appeared as witnesses for Respondent. Respondent submitted evidence marked and entered as Respondent’s Exhibits “1.” The record closed on November 12, 2020.

### **Petitioner’s Position**

Petitioner took the position that she offered to pay \$100 a month; the Facility accepted two payments, then rejected any additional payments.

### **Respondent’s Position**

Respondent took the position that Petitioner has not paid her full bill for the services she received at the Facility and Petitioner’s discharge is appropriate.

### **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. By Nursing Home Transfer and Discharge Notice, dated October 6, 2020, Respondent informed Petitioner that she was to be discharged from the facility, effective ██████████ 2020. The reason for discharge or transfer was marked as, “Your bill for services at this facility has not been paid after reasonable and appropriate notice to

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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.

pay.” The location Petitioner was to be discharged to was shown as [REDACTED]  
[REDACTED] in [REDACTED] Florida. (Resp’t Ex. 10.)

2. Petitioner was admitted into the Facility on [REDACTED] 2019. Petitioner was approved for Institutional Care Program (ICP) Medicaid. Petitioner’s patient responsibility is \$2009.84. Petitioner’s current balance owed to the Facility is \$33,615.16. (Hr’g R.)

3. Petitioner believes that the last monthly billing statement received from Respondent was provided in September 2020. Petitioner made two payments of \$100 towards her balance, before Respondent would no longer accept payments. (Id.)

4. Petitioner does not deny that she owes the Facility. Petitioner believes that the need to take care of her adult son is urgent due to his health circumstances. (Id.)

5. Petitioner believes that the Facility is not listening to her regarding discharge planning and where she would prefer to go. Petitioner believes her needs cannot be met at the nursing home she is to be discharged to. (Id.)

### **CONTROLLING LAW**

6. 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.

7. 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.

...

8. 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

9. On October 6, 2020, Respondent issued a 30-day Transfer and Discharge Notice to Petitioner informing her that she was to be discharged from the Facility, effective [REDACTED] 2020, for not paying her bill for services she received at the Facility, after reasonable and appropriate notice to pay.

10. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator 30 days prior to the discharge date. The Notice also indicated the reason and effective date of the discharge, and appeal rights.

11. Based on the evidence presented, the nursing facility has established that non-payment of bill for services is the reason for discharge. This is one of the six reasons

provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

12. 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.

13. 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 meets the controlling authorities.

14. The Findings show that the initial discharge was addressed in a written notice and was signed by the Facility administrator and physician. A 30-day advance notice was given, and a discharge location of [REDACTED] was given.

15. 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

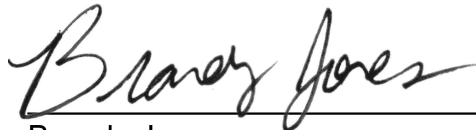
discharge action, as described in the Conclusions of Law and in accordance with all applicable Agency for Health Care Administration requirements.

**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  19  day of  November , 2020,

in Tallahassee, Florida.



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