

Jan 15, 2021

Office of Appeal Hearings
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 20N-00106

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on November 19, 2020, at 8:41 a.m. and reconvened on November 24, 2020 at 8:34 a.m.

APPEARANCES

For Petitioner: [REDACTED] Petitioner's daughter and authorized representative

For Respondent: [REDACTED] Nursing Home Administrator

STATEMENT OF ISSUE

Petitioner's representative appeals Respondent's action to discharge Petitioner from [REDACTED] (the "Facility"), due to the bill for services has not been paid after reasonable and appropriate notice to pay. Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

On November 19, 2020 and on the record, Petitioner's representative advised she had not received Respondent's evidence. The undersigned reset the hearing for November 24, 2020 at 8:30 a.m. to allow Petitioner's representative an opportunity to receive and review Respondent's evidence.

██████████ Business Office Manager, and ██████████ Director of Nursing, appeared as witnesses for Respondent.

Petitioner's representative submitted one exhibit, which was accepted into evidence and entered as Petitioner's Exhibit "1". Respondent submitted eleven exhibits, which were accepted into evidence and entered as Respondent's Exhibits "1" through "12".

Petitioner's Position

Petitioner's representative took the position that she offered to make payment arrangements in monthly installments; however, the Facility rejected the offer. Additionally, the Facility discussed the possibility to apply for Medicaid benefits with the Department of Children and Families. Petitioner and Petitioner's representative do not wish to apply for Medicaid benefits.

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. During the hearing process, Petitioner's representative requested to make payment arrangements. Respondent argued it is required to receive payments in full and cannot

receive monthly installments when a bill is considered overdue according to the company's policy.

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, age 78, was admitted into the skilled nursing Facility on [REDACTED] 2020. During the period of August 5, 2020 through August 31, 2020, the Facility discussed with Petitioner's representative the long term care process, delay in payments with Medicare, co-pays due and applying for Medicaid benefits. (Resp't Ex. 2 at 3.)
2. Petitioner's Medicare benefits covered the skilled nursing Facility services through September 26, 2020. (Pet'r Ex. 1 at 4.) On October 2, 2020, Respondent issued a billing statement to Petitioner. (Hr'g R.)
3. During the period of October 8, 2020 through October 15, 2020, the parties discussed Petitioner's financial responsibility since her insurance ended coverage on September 26, 2020. Petitioner and her representative did not apply for Medicaid benefits. (Resp't Ex. 2 at 1 – 2. & Hr'g R.)
4. Respondent issued a Nursing Home Transfer and Discharge Notice to Petitioner, dated October 15, 2020, Respondent informed Petitioner that she was to be discharged from the Facility, effective [REDACTED] 2020. The reason for the discharge or transfer was marked as, "Your bill for services at this facility has not been paid after reasonable and appropriate notice". (Resp't Ex. 12.)

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.

5. Respondent issued a billing statement to Petitioner and Petitioner's representative through certified mail on October 22, 2020. (Hr'g R.)
6. Petitioner's representative does not deny that Petitioner owes the Facility and affirmed receiving the October 22, 2020 billing statement by certified mail. (Hr'g R.)
7. As of the day of the hearing, the balance owed to Respondent is \$15,015.00. (Resp't Ex. 11. & Hr'g R.)

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—

(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; (emphasis added)

(F) The facility ceases to operate.

...

10. Section 400.0255, Florida Statutes, 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.

...

CONCLUSIONS OF LAW

11. Based on the evidence presented, the nursing Facility has established that Petitioner is being discharged due to non-payment. This is one of the six reasons provided in Federal Regulations for which a nursing facility may involuntarily discharge a resident.
12. On October 15, 2020, the Facility issued a Nursing Home Transfer and Discharge Notice to Petitioner and Petitioner's representative. Respondent's reason for discharging Petitioner is that a bill for services rendered has not been paid after reasonable and appropriate notice to pay.
13. 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 informed Petitioner of her appeal rights.
14. The evidence submitted establishes that Petitioner has an outstanding balance of \$15,015.00 as of the date of the hearing. Petitioner's representative acknowledged an outstanding balance has accrued since September 26, 2020, when Medicare ended payments for Petitioner's services at the Facility. The findings show Petitioner and her representative did not file an application for Medicaid benefits.

15. 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.

16. Any discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and the Agency for Health Care Administration (“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.

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

DECISION

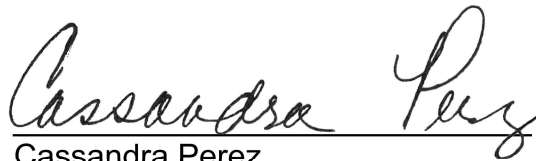
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility’s action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance with all applicable AHCA.

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. 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 January, 2021,

in Tallahassee, Florida.



Cassandra Perez
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Copies Furnished To: [redacted] Petitioner
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Agency for Health Care Administration
[redacted]