

FILED

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

Jan 20, 2021
Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 20N-00107

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on November 19, 2020 at 9:03 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED] pro se

For Respondent: [REDACTED] Business Director, [REDACTED]

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

Petitioner was not present; however, he was represented by his wife, [REDACTED]

Present as a witness for Respondent was [REDACTED] Social Services Director for the Facility (“Resp’t Wit.”).

The undersigned admitted one exhibit as Hearing Officer’s Exhibit “1”. Petitioner did not submit any exhibits. Respondent presented four exhibits which were accepted into evidence and marked as Respondent’s Exhibits “1” through “4.”

The record was left open through close of business on November 19, 2020 for the submission of additional evidence from Respondent. Respondent did not timely submit the additional evidence. The record closed on November 19, 2020 after Respondent failed to submit the additional evidence.

Petitioner’s Position

Petitioner took the position that she is paying \$1,500 a month and that she believed this was sufficient to keep her husband receiving care at the Facility based off conversations had with Facility administrators, [REDACTED] and [REDACTED]

Respondent’s Position

Respondent took the position that Petitioner has not been paying the full amount, currently \$2,627.57 monthly, of his patient liability since June 1, 2018. Petitioner has not fully paid for the services received at the facility after reasonable and appropriate notice and Respondent has requested that 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. Petitioner was admitted to the Facility on [REDACTED] 2017. (Hr’g R.)

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.

2. Beginning December 2018, Petitioner has been receiving Medicaid benefits to assist with covering a portion of the expenses at the Facility. Petitioner is responsible to pay his patient liability each month. (Hr'g R. & Resp't Ex. 1 – 3.)

3. Petitioner's patient liability for December 2018 was \$2,429.74, for January 2019 through May 2019 was \$2,508.74, for June 2019 was \$2,728.74, for July 2019 through September 2019 was \$2,672.74, for October 2019 through May 2020 was \$2,617.57, and for June 2020 ongoing was \$2,627.57. (Hr'g R. & Resp't Ex. 1 – 3.)

4. Petitioner pays \$1,500 monthly towards his patient liability at the Facility. (Hr'g R.)

5. Petitioner has not paid his full patient liability at the Facility from June 2018 to at least November 2020. (Hr'g R. & Resp't Ex. 4.)

6. Petitioner's wife received multiple billing statements from the Facility but did not understand the statements and believed that the \$1,500 a month she was paying to the Facility covered Petitioner's care/patient liability in full each month. (Hr'g R.)

7. Petitioner's wife was not aware until September 24, 2020 that the \$1,500 a month payment was not fully covering Petitioner's patient liability and that Petitioner was at risk of discharge due to non-payment. (Hr'g R.)

8. On October 9, 2020, Respondent issued a Discharge Notice to Petitioner's wife informing her that Petitioner would be discharged from the Facility effective [REDACTED] 2020, due to non-payment of bill for services. Documentation of Petitioner's outstanding balance was included with the Discharge Notice. (Hr'g Offc'r Ex. 1.)

9. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance to the Facility, as of November 12, 2020, was \$35,380.71. (Hr'g R. & Resp't Ex. 4.)

CONTROLLING LAW

10. 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.

11. Title 42 Code of Federal Regulations ("C.F.R.") 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.

CONCLUSIONS OF LAW

12. 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.

13. According to the above authority, a facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the facility. As of November 12, 2020, Petitioner's balance owed to the facility was \$35,380.71. As of the date of the hearing, Petitioner is approved for Medicaid and has a current patient liability of \$2,627.57 monthly.

14. Based on the evidence and testimony, Respondent has established Petitioner has only paid \$1,500 a month towards his patient liability, ranging from \$2,429.74 - \$2,728.74 a month, at the Facility. This is one of the six (6) reasons provided in federal regulations (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden.

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 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.

DECISION

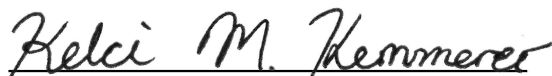
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance with all applicable AHCA 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. 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 20 day of January, 2021,

in Tallahassee, Florida.



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