

FILED

Mar 01, 2021

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-00115

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 February 3, 2021 at 2:08 p.m.

APPEARANCES

For Petitioner: [REDACTED] *pro se.*

For Respondent: [REDACTED], Administrator.

STATEMENT OF ISSUE

Petitioner is appealing Respondent's action on December 15, 2020 to discharge him from [REDACTED]

Respondent has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

SUMMARY OF PROCEEDINGS

Appearing as a witness for Respondent was [REDACTED] Business Office Manager ("BOM").

Evidence was submitted and was entered as Respondent's Exhibits "1" through "5."

The record was held open until 5:00 p.m. on February 5, 2021 to allow Respondent to submit billing statements.

No additional evidence was submitted.

The record was closed at 5:00 p.m. on February 5, 2021.

Petitioner's Position

Petitioner believes he will pay Respondent once Respondent provides the care and services promised in its brochure. Petitioner believes the male staff have refused to assist him when he is taking a shower. Petitioner believes Respondent sometimes does not administer the medications prescribed to him. Petitioner believes Respondent refuses to provide care to him and other residents. Petitioner believes he is capable of living on his own and that his family is assisting him in finding a place to live.

Respondent's Position

Respondent believes the facility sends monthly billing statements to Petitioner. Respondent believes Petitioner is reluctant to pay patient liability and sometimes may pay part of it or refuses to pay at all. Respondent believes Petitioner can shower on his own. Respondent believes the allegations regarding the male staff have been addressed. Respondent is seeking to discharge him from the facility.

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 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.

1. Petitioner was admitted into the facility on [REDACTED] 2019. (Hr'g R.)
2. Petitioner receives Social Security income in the amount of \$613. Petitioner was approved for Institutional Care Program ("ICP") Medicaid. Petitioner's monthly patient responsibility towards his care to Respondent was previously in the amount of \$475 but is now \$487. (Resp't Wit. Test)
3. Respondent has been delivering Petitioner's monthly billing statements directly to him for the past eight months. (*Id.*)
4. As of December 14, 2020, for the period beginning January 1, 2020, Petitioner owed Respondent \$4595.05. At the time of the hearing, Petitioner owed \$5,559.05. (Resp't Ex. 3 at 2 and *Id.*)
5. On December 15, 2020, a Nursing Home Transfer and Discharge Notice was issued, with an effective date of [REDACTED] 2021. Respondent is seeking to discharge Petitioner due to his "...bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Ex. 1.)
6. Petitioner does not deny that he owes the facility. Petitioner did not have each billing statement in front of him during the hearing but does not dispute receiving billing statements prior to receiving discharge notice from Respondent. (Hr'g R.)

CONTROLLING LAW

7. 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.

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...

(F) The facility ceases to operate.

(Emphasis added.)

CONCLUSIONS OF LAW

9. The findings show that Petitioner, as of the date of the hearing, has an outstanding balance of \$5,559.05 owed to Respondent. The findings show Respondent provided monthly billing statements to inform Petitioner of the balance owed. Petitioner does not deny receipt of the billing statements given to him. Based on the evidence presented, the undersigned concludes that Respondent has established that Petitioner has failed, after reasonable and appropriate notice, to pay for 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. Based on the findings and controlling authorities, the undersigned concludes that Respondent's action to discharge Petitioner is in accordance with the federal guidelines and may proceed with its discharge action.

10. Establishing that the reason for a discharge is lawful is just one step in the discharge process. Respondent 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.

11. Any discharge by Respondent 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. Respondent's action to discharge Petitioner is in accordance with Federal Regulations. Respondent 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 01 day of March, 2021,

in Tallahassee, Florida.



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