

FILED

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

Jun 08, 2021
Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 21N-00016

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 March 31, 2021, at 2:31 p.m.

APPEARANCES

For the Petitioner: [REDACTED] pro se

For the Respondent: [REDACTED] Executive Director

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.

██████████ and ██████████ the petitioner's daughter and son-in-law, appeared as witnesses for the petitioner. ██████████ Business Office Manager ("B.O.M"), appeared as a witness for the respondent.

The petitioner did not submit any exhibits at the hearing. The respondent's submitted evidence was marked and entered as Respondent's Exhibit one ("1"). The record was held open through April 7, 2021 for the respondent to submit communications with the petitioner's family members, and bills showing the amount the petitioner owes. The record was held open through April 12, 2021 for the petitioner to submit correspondence with the facility. The record was held open through April 19, 2021 for both parties to review all evidence and provide a response if they choose. On April 13, 2021 the respondent submitted the requested information and it was marked and entered as Respondent's Exhibits two ("2") through four ("4"). The record was closed on April 19, 2021.

Petitioner's Position

The petitioner's witnesses took the position that they were told that insurance would cover twenty to thirty days and the social worker at the Facility would apply for Medicaid on the petitioner's behalf once Medicare stopped paying. The facility never applied for Medicaid for the petitioner.

Respondent's Position

The respondent took the position that the Facility never agreed to apply for Medicaid for the petitioner. Soon after admission to the Facility, the family members of the petitioner were advised to apply for Medicaid and were sent information regarding the documents that the Department would need during the Medicaid application process. The respondent is unaware of where the petitioner's Social Security Disability Income ("SSDI") check is being deposited. The petitioner currently owes the Facility \$47722.29. The respondent is hand delivering the petitioner monthly bills as well as mailing the bills to D.B. and has continuously tried to contact the petitioner's family members with no response from them. The petitioner has not paid after the facility has given reasonable and appropriate notice to him 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 Facility on [REDACTED] 2020. (Resp't Test.)
2. On November 25, 2020, the respondent held a care plan meeting with the petitioner and his family and the family was advised to apply for Medicaid with the Department of Children and Families. (*Id.*)
3. On December 4, 2020, [REDACTED] informed the Facility that they were looking at getting the petitioner into an Assisted Living Facility ("ALF"). (Resp't Test.)

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.

4. On December 10, 2020, the respondent spoke with [REDACTED] and stressed the importance of retrieving the petitioner's ID for long term care Medicaid. (Resp't Ex. 4 at 3.) The respondent emailed [REDACTED] and [REDACTED] a checklist of items that are needed when applying for Medicaid benefits. The email also indicates that a consent form would need to be signed once they agree to have the Facility help apply for Medicaid for the petitioner. (*Id.* at 7-8.)

5. On January 1, 2021, the respondent emailed [REDACTED] to follow up on the conversation from December 29, 2020. The respondent reminded [REDACTED] that she needed to contact the B.O.M. to discuss plans for payments. D.B. was advised of the current outstanding balance of \$7387.20 plus an additional \$15267.00 for the month of January. (*Id.* at 9.)

6. On January 4, 2021, the respondent called [REDACTED] Assistant Living Facility regarding forms needed to help the resident transfer to an ALF.

7. On January 20, 2021, the respondent hand delivered to the petitioner and mailed [REDACTED] a collection letter informing them that the total balance due is \$39965.34. If payment is not received within 3 days of receipt of the letter, the account will be turned over to a collection agency or an attorney to collect the outstanding debt. (Resp't Ex. 2 at 7 & 8.)

8. On January 26, 2021, 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] 2021. (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."

9. On February 26, 2021, the petitioner timely requested an appeal to challenge the respondent's action. (Appeal R.)

10. As of the day of the hearing, the balance due to the Facility is \$47722.29. The petitioner is currently in [REDACTED] due to COVID-19 and wants to return back 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. Test. & Resp't Ex. 3.)

11. [REDACTED] confirmed she received a bill in December 2020 but did not receive any bills for 2021. ([REDACTED] Test.)

12. The petitioner lost his ID card around the time he was initially transferred to the Facility making it hard for the family to apply for the petitioner's Medicaid. [REDACTED] was told that the Social Worker would apply for Medicaid on behalf of the petitioner and now they are getting the run around on applying for Medicaid. ([REDACTED] & [REDACTED] Test.)

13. The respondent stressed the fact that they can't apply for Medicaid on behalf of the petitioner if the required documents are not submitted to them. There are companies that can assist with Medicaid applications if the family needs help with the process. The respondent is seeking payment and more communication from the petitioner's family. (Resp't Test.)

14. The record was held open for the petitioner to submit correspondence between his family members and the Facility regarding the application for the Medicaid. No information was submitted by the petitioner. (Hr'g R.)

CONTROLLING LAW

15. 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 Section 409.285, Florida Statutes.

16. 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.

17. 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

18. On January 26, 2021, 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.

19. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility's Executive Director thirty days prior to the discharge

date. The Notice also indicated the reason and effective date of the discharge, and appeal rights.

20. 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.

21. 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.

22. 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 \$47722.29 for services beginning November 19, 2020 through March 31, 2021. The findings show that the respondent reached out multiple times to the petitioner's family members to advise them to apply for Medicaid benefits and advise of them of the petitioner's overdue balance. The Facility attempted to reach the petitioner's family members regarding the outstanding balance but communication from the family members was limited.

23. 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

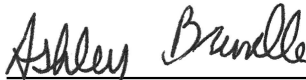
Based upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and 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, Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190. 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 08 day of June, 2021,

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]