

FILED

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

Jun 28, 2021
Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 21N-00019

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 April 7, 2021, at 10:34 a.m.

APPEARANCES

For the Petitioner: [REDACTED] pro se

For the Respondent: John Bradley, Nursing home attorney

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.

The respondent's counsel presented five witnesses who testified: [REDACTED]
[REDACTED] Nursing Home Administrator and Executive Director, [REDACTED]
[REDACTED] Business Office Manager, [REDACTED] Regional Vice President of
Operations, [REDACTED] Director of Social Services, and [REDACTED]
[REDACTED] Medical Director at the Facility.

The petitioner did not submit any evidence 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 21, 2021 for the petitioner to submit proof he was paying, and for the respondent to submit copies of the petitioner's bills, Medicaid information and a new medical assessment from a different medical doctor. On April 11, 2021, the respondent submitted copies of the petitioner's bills and Medicaid information. It was marked and entered as Respondent's Exhibits two ("2") through twelve ("12"). On April 13, 2021, the petitioner submitted evidence and it was marked and entered as Petitioner's Exhibits one ("1") and two ("2").

On April 19, 2021, the petitioner requested to leave the record open for additional time as the respondent had not completed or scheduled a new medical assessment. On April 20, 2021, the undersigned issued an Order Granting the Petitioner's Request to Leave the Record Open giving the respondent an additional twenty-one days to provide a new medical assessment. On April 21, 2021, the respondent submitted the

requested information and it was marked and entered as Respondent's Exhibits thirteen ("13") through fifteen ("15"). The record was closed on May 12, 2021.

Petitioner's Position

The petitioner took the position that the doctor is lying and he still needs services to recover from a stroke. He claims he would die if he was discharged from the Facility. He was paying \$9000 every month but just over the last two years he hasn't been paying the facility.

Respondent's Position

The respondent took the position that the medical director has determined that the petitioner's health has improved sufficiently so that he no longer needs the services provided by the facility. Additionally, the petitioner has not paid for the services he receives at the facility after reasonable and appropriate notice. 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] 2015. (Resp't Test.)
2. On October 9, 2015, the petitioner applied for Institutional Care Program ("ICP") Medicaid benefits with the Department of Children and Families. On November 10, 2015, a Notice of Case Action ("NOCA") was mailed to the petitioner and the Facility

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.

stating the petitioner's application is denied as he did not provide verification of noncitizen status. (Resp't Ex. 6.)

3. On December 17, 2015, the petitioner reapplied for ICP Medicaid benefits. On January 19, 2016, a NOCA was mailed to the petitioner and the Facility stating the petitioner's application is denied as he does not meet citizenship requirements. (Resp't Ex. 7.)

4. On March 5, 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 reasons cited are:

(1) "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

(4) "Your health has improved sufficiently so that you no longer need the services provided by this facility."

5. The Notice was signed by [REDACTED], [REDACTED] and the petitioner on March 5, 2021. (*Id.*)

6. On March 5, 2021, the petitioner timely requested an appeal to challenge the respondent's action. (Appeal R.)

7. As of the day of the hearing, the balance due to the Facility is \$143826.20. The respondent is giving the petitioner monthly bills. [REDACTED] began working with the Facility in August 2020 and the previous Business Officer Manager was also giving monthly bills to the petitioner. The petitioner has made no attempts to make a payment. (M.B. Test.)

8. The petitioner is recovering from a previous stroke and he can't walk. He can't do anything himself and feels that if he is discharged from the Facility, he will die. He claims he was paying \$9,000 every month but for the past two years he hasn't been paying the Facility. (Pet'r Test.)

9. The petitioner's evidence submitted after the hearing includes two trust fund withdrawals by the petitioner on January 2, 2019 for \$284.47 and January 2, 2020 for \$600.00, both listed as for personal use. (Pet'r Ex. 1 at 2-3.) He also included eleven monthly bills from the respondent indicating the total amount he owes. The petitioner circled five charges on a statement dated March 1, 2021 for therapy that he wrote "Lied" next to. (Pet'r Ex. 1.)

10. The respondent's Medical Director reviewed the petitioner's medical condition and agreed with the discharge notice and signed the Notice. [REDACTED] did not review the discharge location and later confirmed that there is no medical reason why the petitioner cannot take care of himself. The physician assistant sees the petitioner regularly, not [REDACTED]. The petitioner cannot ambulate without assistance and needs help bathing. He is able to complete other daily tasks such as toileting, dressing and feeding by himself. It is usual to discharge patients who need help with daily activities. ([REDACTED] Test.)

11. The petitioner disputed the fact that he can take care of himself and asked for a new medical assessment by a different doctor as he believes [REDACTED] is not credible. (Pet'r Test.) The respondent agreed to the petitioner's request.

12. J.A. later specified that he is just documenting that the petitioner is medically stable and is not stating that he can take care of himself. ([REDACTED] Test.)

13. The respondent submitted a new medical assessment that was signed off by a different doctor on April 20, 2021. Following the evaluation there is a page signed by a physician indicating to discharge to the same hotel as stated on the Notice. (Resp't Ex. 14.)

14. The respondent also included a new Notice with no discharge date filled in and it was not signed by the petitioner. The notice was signed by [REDACTED] and the physician assistant who completed the most recent medical assessment on the petitioner. It was signed and dated on April 20, 2021 and the reason cited for discharge is:

(1) "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

(Resp't' Ex. 15.)

CONTROLLING LAW

15. 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.

16. 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.**

[Emphasis added]

17. 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

18. The above-cited authorities set forth the nursing facility discharge process. In this instant case, the medical reason the petitioner is being discharged for is that the respondent believes the petitioner's health has improved sufficiently so that he no longer needs the services provided by the facility. The facility's medical director ordered the discharge; and he signed the discharge. This is one of two reasons indicated on the Notice.

19. The second reason is that the petitioner has failed, after reasonable and appropriate notice, to pay for his stay at the Facility. The petitioner does not have a

pending ICP Medicaid application on file with the respondent. The petitioner does not wish to leave the facility.

20. Based on the evidence presented, the nursing facility has not established that the petitioner should be discharged because his health “has improved sufficiently so the resident no longer needs the services provided by the facility.” The discharge notice was properly signed by the medical director however during his testimony, [REDACTED] later specified that he was only stating that the petitioner is medically stable and was not able to confirm whether or not he could take care of himself.

21. After reviewing the evidence, testimony, pertinent rules and regulations, the undersigned does not find that the petitioner can be discharged due to his health “has improved sufficiently so the resident no longer needs the services provided by the facility.”

22. However, the evidence shows the petitioner has not been paying for his stay at the facility. The nursing facility has established that: “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”. This is one of the six separate reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

23. 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.

24. 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 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 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, 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 28 day of June, 2021,

in Tallahassee, Florida.



Ashley Brunelle
Hearing Officer
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