

FILED

Jul 07, 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. 21N-00025

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 June 8, 2021 at 11:23 a.m.

APPEARANCES

For the Petitioner: [REDACTED] pro se

For the Respondent: [REDACTED] administrator

STATEMENT OF ISSUE

Petitioner appeals the respondent's action to discharge her from [REDACTED] [REDACTED] (the "Facility"). 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 conducted as a telephonic hearing.

[REDACTED] brother of Petitioner, appeared as a witness for Petitioner.

██████████ Social Services Director (“SSD”), and ██████████ Business Office Manager (“BOM”), appeared as witnesses for Respondent. ██████████, case manager/care coordinator, Sunshine Health, appeared as witness for Respondent.

The Nursing Home Transfer and Discharge Notice was marked and entered as Administrative Exhibit one (“1”).

Petitioner did not submit any exhibits at the hearing. Respondent’s submitted evidence was marked and entered as Respondent’s Exhibits one (“1”) through five (“5”). The record was held open through June 15, 2021 for the Respondent to submit the Admissions Contract and for Petitioner to submit a written response.

On June 8, 2021, Respondent submitted one page of Advocate for Residents contact numbers to the Office of Appeal Hearings. This document was not marked and entered into the record as it provided no substantive value.

On June 15, 2021, Petitioner submitted a written statement to the Office of Appeal Hearings. This was marked and entered as Petitioner’s Exhibit one (“1”).

The record closed on June 15, 2021.

Petitioner’s Position

Petitioner took the position that she cannot afford to pay the facility all of her income except \$130.00 as she has other expenses she is required to pay. Petitioner believes that her stay at the facility would be fully covered by insurance.

Respondent’s Position

Respondent took the position that they have worked with Petitioner to have her pay her patient responsibility. Petitioner has not paid after Respondent has given

reasonable and appropriate notice to her for the services she 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. Petitioner, age 58, was admitted to the Facility on [REDACTED] 2021 with insurance with Sunshine Health Long Term Care. (Hr'g R.)
2. On February 18, 2021, Petitioner signed a *Notice of Medicare Non-Coverage* presented by Respondent which showed the "effective date of your current skilled services will end February 22, 2021." (Resp't Ex. 1.)
3. On February 23, 2021, Respondent documented in case notes Petitioner had an eviction notice from her home and Sunshine was looking for housing. (Resp't Ex 5 at 2.)
4. Sunshine Health is a Medicare HMO which covered Petitioner as she initially came into the facility. Sunshine Health representative explained a determination was made that Petitioner's home was an unsafe discharge location due to the home having flooding and mold. Representative additionally reported she has been attempting to locate other facilities for Petitioner, but facilities she has contacted have no beds available. Sunshine is presently working to assist Petitioner with obtaining Section eight (8) housing. (Resp't Wit. 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.

5. Petitioner's home flooded and her son did not know what to do when that happened. They now have furniture in storage, which is a bill she must pay so that she does not lose her belongings. The landlord has rescinded her eviction notice, but they are looking for a home so they can move and she can go home. (Hr'g R.)

6. On March 8, 2021, Department of Children and Families issued a Notice of Case Action informing Petitioner that her application for Medicaid was approved and the amount she was expected to pay the nursing facility or provider was \$1895.00 effective February 2021. (Resp't Ex. 2.)

7. On March 11, 2021, Respondent documented in case notes discussing Petitioner's financial responsibility while in the facility. Petitioner was informed her patient responsibility was \$1895.00. Petitioner's response was documented as "she has no money and is not able to pay her portion... you can get rid of me." (Resp't Ex. 5 at 3.)

8. On March 24, 2021, Respondent issued Petitioner a *Nursing Home Transfer and Discharge Notice* ("Notice") citing "Your bill for services at this facility have not been paid after reasonable and appropriate notice to pay." Respondent additionally noted on the Notice "You have been properly notified several times to pay your portion responsibility to the facility. We are giving you 30 days notice [sic] of discharge for nonpayment." According to the Notice, the effective date of the discharge was [REDACTED] 2021. (Admin. Ex. 1.)

9. On March 31, 2021, Respondent issued a bill to Petitioner. The bill shows charges for February 2021 of \$406.07 as the patient liability. The bill shows charges for

March 2021 of \$1895.00 as the patient liability. The bill shows charges for April 2021 as prebilled patient liability of \$1895.00. (Resp't Ex. 4 at 2.)

10. On April 9, 2021, Petitioner timely requested an appeal to challenge Respondent's action. (Appeal R.)

11. On May 31, 2021, Respondent issued Petitioner which shows the charges for February through May 2021 as unpaid and the prebilling of June 2021 patient liability in the amount of \$1895.00. (*Id.* at 1.)

12. Respondent attempted in February and March 2021 trying to work out a payment plan with Petitioner but was told she was unable to do a payment plan due to other bills. (Hr'g R.)

13. Respondent confirmed that Sunshine Health will not cover all of the bills. (*Id.* and Resp't Wit. Test.)

14. As of the day of the hearing, Petitioner's balance due to Respondent was \$7,986.07. Petitioner has refused to make any payment to Respondent since first bill was presented. Petitioner has maintained her position from day one that she intended to return home. (Hr'g R.)

15. Petitioner did not understand at admission to the facility she would need to pay for the stay. Petitioner believed all charges would be covered by her insurance and Medicaid. Petitioner does not believe she owes the facility the patient responsibility. (Hr'g R.)

16. Petitioner does not understand how the patient responsibility is fair as she has other bills outside the facility so that she does have a home for herself to go to and for her son, age 19, to live in while she is in the facility. (Hr'g R.)

CONTROLLING LAW

17. 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.

18. Federal Regulations appearing 42 C.F.R. § 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]

19. 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.

CONCLUSIONS OF LAW

20. The above controlling authorities require residents be provided at least 30 days advance notice of a proposed transfer or discharge. The findings show Notice was signed by Respondent on March 24, 2021 with an effective discharge date of [REDACTED] 2021. The undersigned concludes Respondent appropriately provided Petitioner notice of intent to transfer or discharge her from the facility.

21. The above controlling authorities allow six reasons for discharging a resident from a facility, which includes the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. The findings further show the reason listed for discharge as bill for services rendered had not been paid after reasonable and appropriate notice to pay and includes appeal rights. The undersigned concludes Respondent's reason for discharge is one of the of the six reasons allowed for discharging a resident from a facility.

22. The findings show Respondent provided Petitioner a bill for February and March 2021 on March 31, 2021 which showed the bill for February was unpaid. The findings further show Petitioner's bill as of the hearing date was \$7986.07. The findings additionally show the amount billed to Petitioner each month is \$1895.00 which is the patient responsibility as assigned by Department of Children and Families Medicaid determination. The findings show Petitioner's claim of inability to pay her bill with the facility due to other bills for housing her son. The findings also show Petitioner's belief she should not be responsible for paying a portion as it should be covered by insurance. The undersigned concludes Respondent notified Petitioner of her obligation to pay and presented her with bills showing her obligations. The undersigned further concludes Petitioner has not paid or made arrangements to pay her patient responsibility for any month since February 2021. The undersigned concludes Respondent's reason for discharge due to non-payment of her bill is appropriate.

23. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently

preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

24. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

25. After careful review of the evidence and testimony, the undersigned concludes that Respondent met its burden of proof. The undersigned concludes that the Respondent's discharge of 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. 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, 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 07 day of July, 2021,

in Tallahassee, Florida.



Melissa Roedel
Hearing Officer
Suite I, Room 129
2415 North Monroe Street
Tallahassee, FL 32303-4190
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

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