

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

FILED

Jul 16, 2021

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 21N-00026

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 May 27, 2021 at 9:51 am and reconvened on June 15, 2021 at 9:47 a.m.

APPEARANCES

For Petitioner: [REDACTED] Petitioner's wife

For Respondent: [REDACTED] Nursing Home Administrator

STATEMENT OF ISSUE

Petitioner appeals Respondent's action discharging Petitioner 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] [REDACTED] On May 27, 2021 and on the record, Petitioner's representative advised

she had not received Respondent's evidence. The undersigned reset the hearing for June 15, 2021 at 9:45 a.m. to allow Petitioner's representative an opportunity to receive and review Respondent's evidence.

Witness for Petitioner was [REDACTED], District Ombudsman Manager, with the Florida Ombudsman Program. Witnesses for Respondent were [REDACTED] Business Office Manager, and [REDACTED] Director of Social Service, [REDACTED] Director for Nurse on May 27, 2021 and [REDACTED], Regional Assistant with Consultant Healthcare on June 15, 2021 appeared as witnesses for Respondent.

At the request of the undersigned, the Agency for Health Care Administration (AHCA) conducted an on-site inspection of the facility, the results had not been submitted to the Office of Appeal Hearings (OAH) prior to the May 27, 2021 and June 15, 2021 scheduled hearings.

Petitioner's Position

Petitioner's representative took the position that she acknowledges she owes the balance with the facility. She applied for Medicaid benefits with the Department of Children and Families ("DCF"). The application remains pending.

Respondent's Position

Respondent took the position that Petitioner has not paid her full bill for the services she received at the Facility and Petitioner's discharge is appropriate. At this time, Petitioner has not made any attempts to pay the balance owed to 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. Petitioner, age 78, was admitted into the skilled nursing Facility on [REDACTED] 2020. (Hr'g R.)
2. Petitioner's Medicare benefits covered the skilled nursing Facility services through December 21, 2020. (Resp't Ex. 1 at 4-5.)
3. On January 21, 2021, Respondent issued a billing statement to Petitioner and Petitioner's representative. (Resp't Ex. 2 at 6.) Respondent continue to issue monthly billing statement to Petitioner and Petitioner's representative. (*Id.* at 8-13 and Hr'g R.)
4. Facility made numerous attempts to contact Petitioner's representative to make payments and offered to assist in submitting a Medicaid application. Petitioner's representative explained she cannot afford to pay for the nursing home stay. (Hr'g R. and Resp't Wit. Test.)
5. Respondent contracted with Consultant Healthcare to assist patience and family in applying for Medicaid benefits. Consultant Healthcare requested documentations from Petitioner's representative to include with the Medicaid application. No documents were submitted. (Resp't Wit. Test)
6. Respondent issued a *Nursing Home Transfer and Discharge Notice* to Petitioner, dated April 9, 2021, Respondent informed Petitioner that she was to be discharged from the Facility, effective [REDACTED] 2021. The reason for the discharge or transfer

¹ Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rule of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

was marked as, "Your bill for services at this facility has not been paid after reasonable and appropriate notice." (Resp't Ex. 1 at 1-2.)

7. Petitioner's representative requested a hearing on April 16, 2021. (Hr'g R.)

8. Petitioner's representative acknowledged she received some of the monthly billing statements showing the balance for each month and calls from the Facility. (Hr'g R.)

9. Senior Medicaid Solutions ("SMS") applied on May 27, 2021 with DCF for Medicaid benefits on behalf of Petitioner and seeking coverage effective May 2021 and ongoing. SMS is pending documentations from Petitioner to submit to DCF. (Pet'r Ex. 1.)

10. Petitioner remains in the Facility pending the hearing decision. Petitioner's outstanding balance owed to Facility was \$51,211.00. (Hr'g R. & Resp't Wit. Test)

11. The outstanding amount owed to the Facility may be reduced by the balanced owed to the Facility if Medicaid application is approved effective May 2021. There will still be a balance due to the Facility for the period of January 2021 through April 2021. (Hr'g R.)

CONTROLLING LAW

12. 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.

13. 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
(emphasis added)

(F) The facility ceases to operate.

14. Section 400.0255, Florida Statutes, 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

15. Based on the evidence presented, the nursing facility has established that the resident has failed, after reasonable and appropriate notice to pay for the 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.

16. The findings show that on April 9, 2021, the Facility issued a *Nursing Home Transfer and Discharge Notice* to Petitioner and Petitioner's representative.

Respondent's reason for discharging Petitioner is that a bill for services rendered has not been paid after reasonable and appropriate notice to pay.

17. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date. The Notice also indicated the reason and effective date of the discharge, and informed Petitioner of his appeal rights.

18. The findings show that Petitioner's Medicare service ended on December 20, 2021. Respondent sent monthly billing statements on the balance owed to the Facility to Petitioner and Petitioner's representative beginning on January 2021. The findings also show that Respondent and their contractor, Consultant Healthcare, reached out multiple times to Petitioner's spouse to advise her to apply for Medicaid benefits and discuss Petitioner's overdue balance. As of the date of the hearing, Petitioner's balance owed to the Facility was \$51,211.00 and no payments made. Based on the evidence and testimony, Respondent has established Petitioner has refused to pay what she owes to the facility. On May 27, 2021, Petitioner applied for Medicaid benefits. The application remains pending to determine for coverages beginning May 2021. Although some of the balance owed to the Facility maybe covered from May 2021 and forward, there is still a balance owed to the facility for the period of January 2021 through April 2021.

19. 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.

20. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and 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 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. 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 16 day of July , 2021,
in Tallahassee, Florida.



Cassandra Perez
Hearing Officer
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Copies Furnished To:

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