

FILED

Aug 18, 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-00040

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 July 1, 2021, at 1:38 p.m.

APPEARANCES

For the petitioner: [REDACTED] pro se

For the respondent: [REDACTED]
Executive Direct [REDACTED] ("ED")

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.

[REDACTED] Regional Vice President of Operations, [REDACTED] Social Services Director, [REDACTED] Regional Director of Business Office, [REDACTED] Medicaid Specialist, [REDACTED] Director of Nursing, and [REDACTED] Business Office Manager, all appeared as witnesses for the respondent.

The petitioner did not submit any exhibits at the hearing. The respondent submitted an evidence packet that was marked and entered as Respondent's Exhibits one ("1") through three ("3"). The record was held open through July 2, 2021 for the respondent to submit proof of the petitioner's current Medicaid, forms signed by the petitioner upon admission, Medicaid and Disability denial letters, and correspondence showing when the bills were given to the petitioner. No information was submitted and the record was closed on July 2, 2021.

THE PETITIONER'S POSITION

The petitioner arrived on [REDACTED] 2021, through Humana Medicaid to have rehabilitation on his legs completed at the Facility. He was told he was given Long Term Care Medicaid and was not told the differences in Medicaid types. He did not receive a bill until he received a discharge notice from the respondent on May 19, 2021.

THE RESPONDENT'S POSITION

The petitioner has community Medicaid coverage that does not cover the petitioner in skilled nursing. The petitioner came in as Medicaid pending and was later denied Medicaid as he is not sixty-five or older and Social Security Administration claims he is not disabled. The petitioner was advised when he was admitted that if the Medicaid application was denied, he would be a private payer. The respondent provided monthly bills to the petitioner and he did not pay. Through June 2021, the petitioner owes the Facility \$21718.86. The petitioner has not paid after the Facility has given reasonable and appropriate notice to the petitioner for the services he receives 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. On [REDACTED] 2021, the petitioner entered the Facility to complete rehabilitation on his legs. The petitioner arrived with his Medicaid application pending with the Department of Children and Families. ([REDACTED] Test.)

2. Upon admission, the petitioner signed and acknowledged two forms that stated if his Medicaid application was denied, he would be considered a private payer and would be liable for those expenses. (*Id.*)

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.

3. When the petitioner was reviewing these forms, he asked an employee at the Facility a question as to what it meant. He was told that it was just a formality. The petitioner did not dispute that he signed and acknowledged the forms. (Pet'r Test.)

4. On May 13, 2021, the petitioner's Medicaid application was denied. He was verbally informed by the Facility that he was denied. (█████ Test.)

5. On May 19, 2021, the respondent issued a Nursing Home Transfer and Discharge notice ("Notice") to the petitioner informing him that he was to be discharged from the facility effective ██████ 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."

6. On May 27, 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 \$21718.86. (Resp. Ex. 3 at 2.) The respondent is hand delivering the petitioner monthly bills between the third and fifth of each month. His first bill was given to him in April 2021. (S.B. Test.)

8. The petitioner was advised prior to the Notice being issued, that he only had Community Medicaid and the Facility's Medicaid Specialist spoke with the petitioner regarding this. (█████ Test.)

9. The petitioner disputed the respondent's testimony, claiming that he was not aware of the Medicaid coverage he had and he only received a bill when he received the Notice. (Pet'r Test.)

10. Due to the petitioner being younger than sixty-five years old, the Facility also applied for Disability with the Social Security Administration. The petitioner was determined not disabled. (█████ Test.)

11. The petitioner wants to stay at the Facility until he has time to find another option. (Pet'r Test.)

12. The petitioner agrees that he owes money for the services he has received, however he just came to this Facility for rehabilitation, not to be a resident. (*Id.*)

13. The record was held open for the respondent to provide verification of the petitioner's Medicaid coverage, the forms signed by the petitioner upon admission, Medicaid and Disability denial letters, and correspondence showing when bills were given to the petitioner or conversations between the two parties regarding the amount owed. (Hr'g R.) The respondent did not provide any of the requested information. (Appeal R.)

CONTROLLING LAW

14. 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.

15. Section 400.0255(15), Florida Statutes, addresses hearings related to nursing homes and related health care facilities and the burden of proof to be met by stating:

(15)(a) The department's Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for

fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for another Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. **The burden of proof must be clear and convincing evidence.** A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility's first available bed.

(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

[Emphasis added]

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.

. . .
(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 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. On May 19, 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 Administrator 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 \$21718.86 for services from March 16, 2021 through June 30, 2021.

23. The petitioner disputed the respondent's testimony that he was aware of what his Medicaid didn't cover regarding his stay at the Facility and that he was notified of the amount owed prior to the Notice. The undersigned left the record open for the respondent to submit verification documenting conversations between the Facility and the petitioner regarding Medicaid coverage and the money he owes, however the requested information was not provided.

24. The controlling authorities require a higher standard of proof in nursing home discharge hearings; there must be substantial and credible evidence at the level of clear and convincing.

25. After careful review of the evidence and testimony, the undersigned concludes that the respondent has not met its burden of proof.

DECISION

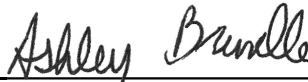
Based upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Facility is ORDERED to not discharge the petitioner if he has not yet been discharged. If the petitioner has already been discharged, the respondent is ordered to readmit him to the Facility to the first available bed.

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 18 day of August, 2021,

in Tallahassee, Florida.



Ashley Brunelle
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