

FILED

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

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

[REDACTED]

APPEAL NO. 21N-00048

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on September 8, 2021 at 1:08 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED] Son

For Respondent: [REDACTED] Business Office Manager

STATEMENT OF ISSUE

Petitioner appeals Respondent's action to discharge him from [REDACTED] [REDACTED] (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

The hearing was initially scheduled for August 17, 2021 but was rescheduled because Petitioner was not in receipt of Respondent's evidence packet.

Petitioner was not present for the hearing. Present as witnesses for Respondent were [REDACTED] Director of Social Services, and [REDACTED] Administrator.

Petitioner did not submit any exhibits. Respondent submitted documentation which was accepted into evidence and marked as Respondent's Exhibits one ("1") through four ("4").

Petitioner's Position

Petitioner took the position that he was told by someone that his income was too high to qualify for Medicaid; therefore, he did not apply. Additionally, he cannot leave the facility to comply with the application process for Medicaid, such as obtaining bank statements, and his son who acts as his power of attorney ("POA") is unavailable to act on his behalf. The other son is not authorized as POA to apply for Medicaid on Petitioner's behalf or to assist in obtaining bank statements or other such documentation.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance in which payment in full has not been received nor has Medicaid been secured, despite several communications between the Facility and Petitioner's son.

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 entered the Facility on [REDACTED] 2020 and remained in the care of the Facility at the date of the hearing. (Hr'g R.)

2. At admission, Petitioner was covered by Medicare and other private insurance. Benefits under these plans were exhausted and Petitioner then transitioned to private pay. He became responsible for the total amount of the facility's bill for services rendered. (Hr'g R.)

3. On April 27, 2021, Respondent called Petitioner's son regarding the unpaid outstanding balance. He is not the POA for his father; therefore, he does not have access to the checking or bank account. (Resp't Ex. 4 at 2.)

4. On May 21, 2021, the Facility spoke with Petitioner in his room regarding his outstanding balance. Petitioner refused to pay or apply for Medicaid. (*Id.*)

5. On May 24, 2021, the Facility spoke with Petitioner's son regarding the Medicaid process and gave him the name of a contact person to assist with applying. The son made a payment of \$1000.00. Two additional payments of \$1000.00 each, were made on June 1, 2021. (*Id.*)

6. On June 1, 2021, the Facility mailed a billing statement to Petitioner's son. The balance owed is \$35,351.54. (Resp't Ex. 3 at 1.)

7. Petitioner receives Social Security benefits and a pension. The amount of the pension is unknown. Effective June 1, 2021, the Facility started directly receiving Petitioner's Social Security benefit of \$1091.00. From this amount, \$961.00 is retained by the Facility as payment for services rendered. The remaining \$130.00 is retained by Petitioner for his personal needs. The payment is insufficient to pay the monthly charges and the accrued balance. (Hr'g R.)

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.

8. On June 17, 2021, the Facility again spoke with a family member regarding the outstanding balance. (Resp't Ex. 4 at 2.)
9. On June 18, 2021, the Facility issued a Discharge Notice to Petitioner's son informing him that Petitioner would be discharged from the Facility effective [REDACTED] 2021, due to non-payment of bill for services. (Resp't Ex. 1.)
10. On June 21, 2021, the Facility met with Petitioner's son regarding the discharge notice. Th son was again provided contact information for applying for Medicaid. (Resp't Ex. 4 at 1.)
11. On July 1, 2021, the Facility mailed a billing statement to Petitioner's son. The balance owed is \$42,101.54. (Resp't Ex. 3 at 2.)
12. On July 13, 2021, the Facility mailed written notice to Petitioner's son regarding an outstanding balance of \$42,101.54. It states in part: We have been sending you statements on a monthly basis; however, we have not received your payment. Charges are due and payable upon receipt of the statement and are considered to be past due if not paid by the tenth of the month. (Resp't Ex. 2.)
13. On July 22, 2021 and July 23, 2021, the Facility again spoke with Petitioner's son regarding assistance with applying for Medicaid. (*Id.*)
14. To date, Petitioner has not applied for Medicaid benefits. (Hr'g R.)
15. On August 1, 2021, the Facility mailed a billing statement to Petitioner's son. The balance owed is \$49, 851.54. (Resp't Ex. 3 at 3.)
16. Petitioner's outstanding balance and non-payment are undisputed. (Hr'g R.)

17. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance to the Facility, as of the date of the hearing, was \$48,890.54 and continues to accumulate. (Hr'g R.)

CONTROLLING LAW

18. Section 400.0255(15), Florida Statutes ("F.S."), 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.

19. Title 42 Code of Federal Regulations ("C.F.R.") 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;** (emphasis added)
 - (F) The facility ceases to operate.
- ...

20. Section 400.0255, F.S., 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, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge...

...

(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.... 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.

21. The Department of Health and Human Services, Centers for Medicaid and

Medicare Services, State Operations Manual, Appendix PP – Guidance to Surveyors for

Long Term Care Facilities states in part:

A resident cannot be transferred for non-payment if he or she has

submitted to a third-party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third-party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

CONCLUSIONS OF LAW

22. Based on the evidence presented, the Facility has established that Petitioner is being discharged due to non-payment. This is one of the six reasons provided in federal regulations for which a nursing Facility may involuntarily discharge a resident.

23. According to the above authority, the Facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the Facility. As of the date of the hearing, Petitioner's balance owed to the Facility was \$48,890.54 and he has not applied for Medicaid. This fact is not disputed.

24. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what he owes for his period of care. The hearing officer concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for his stay at the Facility, including recommendations to secure Medicaid, to pay for this period of care. This is one of the six (6) reasons provided in federal regulations (Title 42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

25. 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.

26. Any discharge by the 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.

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, 2415 North Monroe Street, Suite I, Room 129, 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 28 day of September, 2021,
in Tallahassee, Florida.

Shelly Goodfellow
Shelly Goodfellow
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
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Agency for Health Care Administration
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