

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

[REDACTED]

APPEAL NO. 21N-00066

PETITIONER,
VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened a nursing home discharge hearing in the above-referenced matter on October 28, 2021 at 10:52 a.m.

APPEARANCES

For Petitioner: [REDACTED] *pro se.*

For Respondent: [REDACTED] Administrator.

STATEMENT OF ISSUE

Petitioner is appealing Respondent’s action on August 18, 2021 to discharge her from [REDACTED].

Respondent has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

SUMMARY OF PROCEEDINGS

Respondent submitted one (1) exhibit, which was marked and entered as Respondent’s Exhibit “1”.

The record was held open until October 29, 2021 to allow Respondent to submit additional evidence. Respondent submitted six (6) exhibits, which were marked and entered as Respondent's Exhibits two ("2") through seven ("7").

The record was closed on October 29, 2021.

Petitioner's Position

Petitioner believes she never applied for Institutional Care Program ("ICP") Medicaid due to not having the documents needed to apply for the benefits. Petitioner believes she now has the documents needed to begin the application process and set up the qualifying income trust account to qualify for ICP Medicaid.

Respondent's Position

Respondent believes that the facility sends monthly billing statements to Petitioner. Respondent believes facility has made numerous attempts to receive the patient liability from Petitioner, who has not made any payments to the facility. Respondent is seeking to discharge her from 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 was admitted into the facility on [REDACTED] 2021 as a private pay resident. (Hr'g R.)
2. Petitioner receives a gross monthly Social Security Administration income in the amount of \$2100.00. Petitioner was to work with Medicaid Done Right to start the

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.

application process for ICP Medicaid, but this has not been done yet. (Resp't 7 at 4-11; Hr'g R.)

3. Respondent began contacting Petitioner's son and power-of-attorney ("POA") on May 18, 2021. Respondent mailed Petitioner's monthly billing statements to Petitioner's husband and Petitioner's other son, who live in [REDACTED] Florida. The billing statements, dated June 1, 2021 through October 1, 2021, show the amounts owed to the facility. At the time of the hearing, Petitioner owed \$48,950.00. (Resp't Ex. 4 at 1-6; Hr'g R.)

4. On August 18, 2021, a Nursing Home Transfer and Discharge Notice was issued with an effective date of [REDACTED] 2021. Respondent is seeking to discharge Petitioner due to non-payment for services to the facility after giving her reasonable notice to pay. (Resp't Ex. 1.)

5. Petitioner's son does not deny that Petitioner owes the facility. Petitioner's son explained that his brother was misappropriating Petitioner's funds until he took over as Petitioner's POA, closed out the old bank accounts, and opened a new bank account to which his brother does not have access. Petitioner's son was not receiving the billing statements at his address in [REDACTED] but acknowledges that his brother in [REDACTED] informed him of Petitioner's monthly billing statements. (Hr'g R.)

CONTROLLING LAW

6. 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.

7. 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...

(F) The facility ceases to operate.

(Emphasis added)

CONCLUSIONS OF LAW

8. The findings show that Petitioner, as of the date of the hearing, has an outstanding balance owed to Respondent of \$48,950.00. The findings show Respondent provided monthly billing statements to inform Petitioner of the balance owed. The findings show Petitioner's son does not deny balance owed, nor does he deny receipt of the monthly billing statements. Based on the evidence presented, the undersigned concludes that Respondent has established that Petitioner has failed, after reasonable and appropriate notice, to pay for her 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. Based on the findings and controlling authorities, the undersigned concludes that Respondent's action to discharge Petitioner is in accordance with the federal guidelines and may proceed with its discharge action.

9. 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.

10. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and the Agency for Healthcare 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

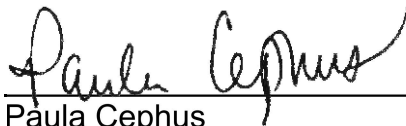
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. Respondent’s action to discharge Petitioner is in accordance with Federal Regulations. Respondent may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance 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 03 day of December , 2021,

in Tallahassee, Florida.



Paula Cephus
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
[REDACTED] Respondent
[REDACTED]
Agency for Health Care Administration
[REDACTED]