

Feb 01, 2022

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[REDACTED]

APPEAL NO. 21N-00097

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on December 28, 2021 at 1:06 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED] pro se

For Respondent: [REDACTED] Facility Administrator

STATEMENT OF ISSUE

Petitioner appeals 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

Petitioner was present for the hearing. Appearing on her behalf was [REDACTED], Ombudsman.

The following appeared as witnesses for Respondent but only the first witness provided direct testimony:

[REDACTED] Business Office Manager (Pet'r Wit. Test.)
[REDACTED] Director of Social Services
[REDACTED] Social Worker
[REDACTED] Director of Therapy, and
[REDACTED] Director of Nurses

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 the close of business on January 3, 2022 for Respondent to supplement the record. Respondent's additional documentation was marked and entered into evidence as Respondent's Exhibit six ("6").

The record was closed on January 3, 2022.

Petitioner's Position

Petitioner took the position that she agrees with the outstanding balance owed to the facility and she accepts the Facility's action to discharge her for non-payment.

Respondent's Position

Respondent took the position that despite several communications between the Facility and Petitioner, she has an outstanding balance in which payment in full has not been received.

Respondent asserts that they have discussed with Petitioner the need to pay her monthly 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 Respondent has requested 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 entered the Facility in █████ 2021 and remained in the care of the Facility at the date of the hearing. (Resp't Ex. 5; Hr'g R.)
2. Petitioner was billed \$1140.00 for room and board for January 28, 2021 through January 31, 2021. (Resp't Ex. 5.) On March 1, 2021, payment was received for \$1140.00. (Resp't Ex. 3 at 3; Resp't Ex. 5.)
3. On March 31, 2021, the Facility contacted Petitioner's son ("████") by email and informed him of Petitioner's estimated patient liability in the amount of \$3015.33, monthly. (*Id.* at 2.)
4. On April 26, 2021, the Facility spoke with █████ and was informed he would be sending payment for the balance through April 2021 totaling \$9045.99. (*Id.*)
5. On May 3, 2021, the Facility received payment of \$2500.00. (*Id.* at 3; Resp't Ex. 4 at 1; Resp't Ex. 5.)
6. On May 20, 2021, Petitioner was billed for her patient liability for June 2021 in the amount of \$3015.33. The outstanding balance, as of this billing cycle, was \$12,576.65. (Resp't Ex. 4 at 1.)

¹ Citations within the Findings of Fact, Controlling Law, 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.

7. On June 17, 2021, the Facility hand delivered Petitioner a collection letter seeking payment in full of \$12,576.65. (Resp't Ex. 4 at 2; Pet'r Wit. Test.)
8. On July 7, 2021, the 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 \$3014.83, starting February 2021 and continuing on a monthly basis. (Resp't Ex. 2 at 1.)
9. On July 19, 2021, Petitioner's balance was adjusted by \$3.00 from \$15,591.98 to \$15,588.98². (Resp't Ex. 3 at 2.)
10. On July 19, 2021, the Facility received payment of \$6000.00. (*Id.*)
11. On August 25, 2021, the Facility spoke with Petitioner regarding her outstanding balance and her portion that is owed monthly. (*Id.*)
12. On September 24, 2021, the Facility hand delivered Petitioner a collection letter as a final attempt to seek payment of the outstanding balance. The letter does not state the balance owed but that payment must be made within ten (10) days to avoid legal action, including possible discharge and legal fees. (Resp't Ex. 6.)
13. On October 26, 2021, Petitioner's balance owed to the Facility was \$18,633.47. (Resp't Ex. 3 at 1.)
14. On October 27, 2021, the Facility spoke with Petitioner in regard to her non-payment of her monthly patient liability. This same day, a voicemail message was left for Petitioner's son. (*Id.*)

² The difference between the estimated patient liability and the determined patient liability is fifty cents (\$3015.33 - \$3014.83 = \$0.50). Fifty cents multiplied by six months (Feb – July) is \$3.00 (\$0.50 x 6 = \$3.00).

15. On October 29, 2021, the Facility issued a Discharge Notice to Petitioner informing her that she would be discharged from the Facility effective [REDACTED] 2021, due to non-payment of bill for services. (Resp't Ex. 1 at 1.)

16. On November 23, 2021, Petitioner was billed for her patient liability for December 2021. The outstanding balance, as of this billing cycle, was \$24,663.13. (Resp't Ex. 4 at 3.)

17. For the period January 2021 through December 2021, Petitioner was billed \$34,303.13, paid \$9,640.00, and has an outstanding balance of \$24,663.13, as follows: (Resp't Ex. 3 at 1-3.)

January 2021- partial month	\$ 1,140.00
February 2021 – December 2021	<u>\$33,163.13</u> (\$3014.83 x 11)
Total	\$34,303.13
Less payments received	\$ 1,140.00
	\$ 2,500.00
	<u>\$ 6,000.00</u>
Balance Owed	\$24,663.13

18. Petitioner remains in the facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Pet'r Wit. Test.)

19. Petitioner does not deny that she has not paid her balance in full or that she owes the Facility money for services rendered. Petitioner acknowledges receiving monthly billing statements and collection letters. (Hr'g R.)

CONTROLLING LAW

20. 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.

21. 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.
- ...

22. 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.

23. 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

24. 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.

25. 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. The findings show Petitioner owes the Facility in excess of \$24,000.00. This fact is not disputed.

26. In the instant case, Respondent provided monthly billing statements and collection letters to inform Petitioner of the balance owed. The findings show the amount billed to Petitioner each month is \$3014.83 which is the patient responsibility as assigned by the Department of Children and Families Medicaid determination. The findings also show Petitioner does not deny the balance owed, nor does she deny receipt of the monthly billing statements and collection letters given to her.

27. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what she owes for her period of care. The hearing officer concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her stay at the facility. 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.

28. 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.

29. 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 01 day of February, 2022,

in Tallahassee, Florida.



Shelly Goodfellow

Hearing Officer

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Copies Furnished To: [REDACTED] Petitioner
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