

Mar 16 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-00100

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 February 17, 2022, at 9:16 a.m.

APPEARANCES

For the petitioner: [REDACTED] pro se

For the respondent: [REDACTED] Nursing Home Administrator ("NHA")

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

The petitioner did not submit any exhibits. The respondent submitted an evidence packet which was accepted into evidence and marked as Respondent's Exhibits one ("1") through five ("5"). The record was held open until February 18, 2022,

for the respondent to provide monthly billing statements issued to the petitioner. The respondent submitted an additional evidence packet which was accepted into evidence and marked as the Respondent's Exhibits six ("6") through thirteen ("13"). The record was closed on February 18, 2022.

The Office of Appeal Hearings received a letter from the Agency for Healthcare Administration ("AHCA") indicating that it had opened a complaint and an onsite inspection will be performed.

██████████ Business Office Manager and ██████████ Social Services Director were present as witnesses for the respondent.

Petitioner's Position

The petitioner was not clear as to the exact amount owed to the facility. He feels that the facility should provide him with more detailed billing with all the charges itemized and the amounts paid by Cigna, Medicaid and Medicare. The petitioner explained that he lost his home and personal belongings while he was sick in the hospital. He is saving up to purchase clothes to re-enter the workforce.

Respondent's Position

The respondent has no issues with the petitioner; only that he needs to pay his bills. As of the date of this hearing the petitioner has not made any payments towards the bills he incurred for services provided by 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. The petitioner was admitted to the respondent's Facility on [REDACTED] 2021. At the time of admittance, the petitioner's services at the Facility were paid by a commercial plan (Cigna) obtained through the market place until July 2021.
2. The petitioner was approved for Medicaid effective July 2021. The Florida Department of Children and Families determined that the petitioner was responsible to pay \$1,288.75 to the facility as part of his patient responsibility from his gross countable income of \$1,418.75. He is allowed to keep \$130.00 for his personal needs. (Resp't Ex. 4 and Resp't Test. February 17, 2022)
3. The facility began billing the petitioner for services from May 22, 2021. The facility provided the petitioner with monthly billing statements hand delivered to his room. In addition to monthly billing statements the facility sent emails regarding payments for room and board, physical therapy, evaluations, occupational therapy and patient liability. (Resp't Test. February 17, 2022 and Respondent's Ex. 10.)
4. The petitioner has not made any payments towards his outstanding balance. (Resp't Test. February 17, 2022 and Pet'r Test. February 17, 2022.)
5. On November 11, 2021, the respondent issued a Nursing Home Transfer and Discharge Notice, informing the petitioner that he was to be discharged from the facility

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.

effective [REDACTED] 2021. The reason cited was “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” (Resp’t Ex. 1.)

6. On November 26, 2021, the petitioner timely requested an appeal to challenge the respondent’s action. (Appeal R.)

7. During the hearing the petitioner testified that he was not aware of the actual amount owed to the Facility. He is aware that he owes the facility for services but is unsure of the amount. He is also aware that Cigna made payments to the facility on his behalf. (Pet’r Test. February 17, 2022 and Respondent’s Exs. 6 and 7.)

8. Per the respondent, the petitioner owes \$15,637.63 for services from May 22, 2021 through January 2022. (Resp’t Ex.10.)

CONTROLLING LAW

9. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties; this order is the final administrative decision of the Department of Children and Families pursuant to Section 409.285, Florida Statutes.

10. Florida Statutes Section 400.0255, 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.

...

11. Title 42 Code of Federal Regulations Section 483.15, Admission, transfer and discharge rights, states in relevant part:

...

(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

12. On November 11, 2021, the Facility issued the petitioner a Nursing Home Transfer and Discharge Notice. The Facility's reason for discharging the petitioner is, bills for services at this facility has 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.

13. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Director of Social Services [REDACTED] a designated employee of the facility on November 11, 2021. The effective date of discharge was [REDACTED] 2021, it should have been [REDACTED] 2021, at least thirty days from the date of the Notice. The Notice also indicated the reason and appeal rights. Even though the discharge date was less than thirty days there was no harm to the petitioner as the petitioner has not been discharged and it has been more than thirty since the Notice was issued. The inadequacy of the notice has been cured.

14. 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.

15. 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.

16. 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 \$15,637.63 for services through January 2022. The findings also established that the petitioner has not made any payments towards his outstanding balance.

17. After careful review of the evidence and testimony, the undersigned concludes that the respondent met its burden of proof. The undersigned concludes that the respondent's discharge of the petitioner for non-payment of a bill for services is proper.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action.

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 indigence 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 March, 2022,

in Tallahassee, Florida.



Christiana Gopaul Narine
Hearing Officer
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Copies Furnished to: [REDACTED] Petitioner
[REDACTED] Respondent
Ms. Arlene Mayo-Davis
Agency for Health Care Administration