

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

[Redacted]

APPEAL NO. 21N-00101

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 January 27, 2022 at 10:54 a.m. The undersigned reconvened the hearing on February 28, 2022 at 1:03 p.m.

APPEARANCES

For Petitioner:

[Redacted] Petitioner's son
[Redacted] Petitioner's son

For Respondent:

[Redacted] Chief Administrative Officer
with [Redacted]

STATEMENT OF ISSUE

Petitioner appeals Respondent's action discharging Petitioner from [Redacted] [Redacted] (the "Facility"), due to non-payment of bill for services based on Title 42 Code of Federal Regulations Section 483.15. Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

By Nursing Home Transfer and Discharge Notice dated December 1, 2021, Respondent notified Petitioner she was to be discharged from the Facility effective [REDACTED] 2022, due to non-payment of bill for services.

[REDACTED] Admissions Director, [REDACTED] Chief Financial Officer, and [REDACTED] Controller Senior Accountant, all with the Facility, appeared as witnesses for Respondent.

Petitioner submitted no exhibits. Respondent's Exhibits one ("1") through ten ("10") were marked and entered into the record.

Petitioner's Position

Petitioner's net monthly income of approximately \$1,100.00 to \$1,200.00, is beneath the patient responsibility assigned by Department of Children and Families ("DCF"). Petitioner is not receiving the gross amount of the annuity payments. Deductions of approximately \$755.00 are being withheld by the annuity company; therefore, Petitioner is receiving \$1,100.00 to \$1,200.00 per month deposited into her checking. Petitioner's sons are paying whatever is deposited into her checking account. Additionally, the Internal Revenue Service ("IRS") is now taking approximately \$178.00 from Petitioner's checking account to repay an old tax debt. There is no dispute that there has been a monthly shortfall throughout Petitioner's stay at the Facility.

Respondent's Position

Several attempts have been made to bring Petitioner's account balance current with Petitioner's family. Petitioner's patient responsibility is calculated by DCF, and Petitioner has not paid the full monthly amount since being placed at 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 (DOB █████ 1935) was admitted to the Facility on █████ 2020 and has remained in the care of the Facility as of the date of hearing. (Resp't Wit. Test.)
2. At admission, Petitioner's care was covered by Medicare benefits. (Resp't Wit. Test.)
3. Respondent applied for Medicaid with Department of Children and Families ("DCF") on behalf of Petitioner on September 6, 2020. Petitioner's patient responsibility was determined as \$2,002.00 per month, effective September 2020, with a personal needs allowance of \$130.00 per month. The patient responsibility is the amount owed to the Facility monthly from the resident. The monthly patient responsibility is determined using the gross monthly income received by an applicant. (Resp't Ex. 10 and Resp't Wit. Test.)
4. Petitioner does not dispute the gross monthly income determined by DCF of \$2,132.00 per month, including Petitioner's Social Security Retirement ("SSRE") Income and pension annuity payments. Petitioner's annuity is reduced monthly due to over \$700.00 in deductions. Petitioner has not contacted DCF to dispute the patient responsibility. (Pet'r. Wit. Test.)

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.

5. Petitioner's monthly SSRE income has been diverted to direct deposit to the Facility. Petitioner's pension payments are still being direct deposited into Petitioner's regular checking account. (Resp't Wit. Test.)
6. On January 19, 2021, Respondent contacted ██████ requesting the pension award letter in order to submit it to DCF to possibly adjust the patient responsibility. (Resp't Ex. 9 at 3.)
7. On January 20, 2021, DCF issued a new *Notice of Case Action* ("NOCA") informing Petitioner her updated patient responsibility is \$2,004.00 per month effective January 2021. (Resp't Ex. 10 at 2.)
8. On February 24, 2021, Respondent spoke with both sons related to payments not received. They agreed to make monthly payments based on payments received in Petitioner's bank account until all pension payments were diverted to the Facility. (Resp't Ex. 9 at 3.)
9. On November 30, 2021, DCF issued a NOCA informing Petitioner her patient responsibility increased to \$2,013.00 per month, effective January 2022, due to an increase in her SSRE income. (Resp't Ex. 10 at 3.)
10. For the period of September 6, 2020 through January 31, 2022, Petitioner was billed \$23,735.23, and with an outstanding balance of \$19,538.23. (Resp't Ex. 2.)
11. Petitioner does not dispute the outstanding balance. (Pet'r Wit. Test.)
12. Respondent has mailed issued monthly bills, including the current NOCA, to Petitioner's sons monthly. (Resp't Wit. Test.)
13. As of the date of hearing, Petitioner's owes a balance of \$21,393.00 to the Facility. (*Id.*)

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. This proceeding is a *de novo* proceeding pursuant to Florida Administrative Code Rule 65-2.056.

16. 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]

17. Section 400.0255, Florida Statutes, Resident transfer or discharge; requirements and procedures; hearings in part states:

...

(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. 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.

...

(10) (a) A resident is entitled to a fair hearing to challenge a facility's proposed transfer or discharge. The resident, or the resident's legal representative or designee, may request a hearing at any time within 90 days after the resident's receipt of the facility's notice of the proposed discharge or transfer.

(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

...

(12) After receipt of any notice required under this section, the State Long-Term Care Ombudsman Program or local ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident's legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with this section. If requested, the State Long-Term Care Ombudsman Program or the local ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

...

(15) (a) The department's Office of Appeals Hearings shall conduct hearings under this section...

(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 other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. The burden of proof must be clear and convincing evidence...

CONCLUSIONS OF LAW

18. 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.

19. 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

an excess of \$21,393.00. This fact is not disputed. Respondent provided Petitioner's billing statements and DCF NOCAs to Petitioner's sons monthly. Petitioner was billed the patient responsibility each month, as determined by DCF. Petitioner does not dispute the balance owed.

20. Petitioner asserts payments were based on the direct deposit amounts made to her bank account. There is no money being retained by the family. Additionally, Petitioner contests the patient liability as determined by DCF, claiming deductions of approximately \$755.00 per month by the annuity company and a new IRS recoupment of \$178.00 per month to address an old tax debt.

21. Based on the evidence and testimony, the Facility has established Petitioner has not paid what she owes for her period of care. The undersigned concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her stay at the Facility. This is one (1) of the six (6) reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

22. Establishing that the reason for a discharge is lawful is just one (1) 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.

23. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Healthcare 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 upon 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, 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 29 day of March, 2022,

in Tallahassee, Florida.



Pamela Vance
Hearing Officer
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Copies Furnished To: [Redacted] Petitioner
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Ms. Arlene Mayo-Davis
Agency for Health Care Administration
[Redacted]