

May 05 2022

Office of Appeal Hearings  
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 21N-00103

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter at 2:32 p.m. on April 12, 2022.

**APPEARANCES**

For the Petitioner: [REDACTED] Petitioner's son

For the Respondent: [REDACTED] Social Service Assistant

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging from [REDACTED] [REDACTED] (the "Facility"), due to non-payment. Respondent carries the burden of proof by clear and convincing evidence.

### **SUMMARY OF PROCEEDINGS**

The hearing was originally scheduled to convene on January 25, 2022, at 2:00 p.m. On January 25, 2022, Petitioner's son and the undersigned appeared and waited fifteen (15) minutes for Respondent. Respondent did not appear. On February 2, 2022, the undersigned issued an Order to Show Cause, requesting written good cause reason(s) for Respondent not attending the January 25, 2022, hearing. On February 14, 2022, the undersigned issued "Order Granting Good Cause for Not Attending Hearing". The hearing was rescheduled for March 17, 2022. On March 17, 2022, both parties appeared. However, Respondent's evidence was not received by the Hearing Officer or Petitioner. Therefore, the hearing was rescheduled for April 12, 2022.

Petitioner was not present at the hearing. Appearing as witnesses from the Facility were, [REDACTED] Administrator and [REDACTED] Medicaid Planner.

Respondent submitted five (5) exhibits, which were entered into evidence and marked as Respondent's Exhibits one ("1") through five ("5"). Petitioner did not submit exhibits.

#### **Petitioner's Position**

Petitioner took the position that Advent Health Hospital sent Petitioner to the Facility for rehabilitation. Petitioner's position is that there was never an agreement that Petitioner would pay the Facility.

#### **Respondent's Position**

Respondent took the position that Petitioner has not paid the Facility for her stay since November 23, 2021, when Medicare stopped paying. Respondent's position is it

attempted to apply for Medicaid on Petitioner's behalf; however, Petitioner's son did not provide the necessary document's required.

### **FINDINGS OF FACT<sup>1</sup>**

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 to the Facility on [REDACTED] 2021, from [REDACTED] Hospital, due to requiring rehabilitation. (Hr'g R.)
2. Medicare paid for Petitioner's stay at the Facility until November 23, 2021. (Resp't Ex. 5 at 1; Hr'g R.)
3. In December 2021, Respondent started sending Petitioner monthly billing statements, to her son's address. Petitioner's unpaid balance as of March 2022 is \$37,430.00. (Resp't Ex. 1.)
4. As of the date of the hearing Petitioner has not paid the Facility. (Hr'g R.)
5. Petitioner's son agreed that he has received monthly billing statements from the Facility; he also agreed that Petitioner has not paid the Facility. (Hr'g R.)
6. On December 9, 2021, the Facility issued Petitioner a Nursing Home Transfer Discharge Notice, listing the following reason for discharge or transfer, "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Ex. 2.)

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<sup>1</sup> Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rule of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

### CONTROLLING LAW

7. 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.

8. Title 42 of the Code of Federal Regulations § 483.15, Admission, transfer and discharge rights, in relevant part states:

...

(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

9. Respondent's reason for issuing Petitioner a Nursing Home Transfer and Discharge Notice is, "Your bill for services at this facility has not been paid after reasonable and

appropriate notice to pay.” This is one (1) of the reasons listed in the above authority as a valid reason for a transfer/discharge.

10. The evidence established that Medicare stopped paying for Petitioner’s stay at the Facility on November 23, 2021.

11. The evidence established that the Facility started sending Petitioner monthly billing statements, at her son’s address, in December 2021.

12. The findings established that Petitioner’s son agreed that he has received monthly billing statements from the Facility; he also agreed that Petitioner has not paid the Facility.

13. Establishing that the reason for a transfer/discharge is lawful is just one step in the discharge process. The Facility must also provide transfer/discharge planning, which includes identifying an appropriate transfer/discharge location and sufficiently preparing Petitioner for a safe and orderly transfer/discharge from its Facility. The undersigned cannot and has not considered either of these issues, as these issues are governed by the Agency for Health Care Administration (“AHCA”). The undersigned only considered whether the transfer/discharge is for a lawful reason.

14. After careful review of the evidence and cited authority, the undersigned concludes the Facility met its burden of proof by clear and convincing evidence that Petitioner’s discharge/transfer reason, due to non-payment, is within Federal Regulations.

15. Any discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and AHCA’s requirements. Should Petitioner have concerns about the appropriateness of the discharge/transfer location or the discharge/transfer planning

process, Petitioner may contact the AHCA's health care facility complaint line at (888) 419-3456.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusion of Law, the petitioner's appeal is DENIED. The Facility's action to transfer/discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with the transfer/discharge action, as described in the Conclusions of Law and in accordance with applicable AHCA 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 05 day of May, 2022,

in Tallahassee, Florida.

*Priscilla Peterson*

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Priscilla Peterson  
Hearing Officer  
Suite I, Room 129  
2415 North Monroe Street  
Tallahassee, FL 32303-4190  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner  
[REDACTED] Respondent  
[REDACTED]  
Agency for Health Care Administration  
[REDACTED]