

FILED

Jul 07, 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. 22N-00003

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 June 14, 2022 at 11:06 a.m.

APPEARANCES

For Petitioner: [REDACTED] *pro se*

For Respondent: [REDACTED]

STATEMENT OF ISSUE

Petitioner appeals Respondent's action to discharge her from [REDACTED] [REDACTED] [REDACTED] (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

The hearing was originally scheduled three prior times on March 15, 2022, April 19, 2022 and May 20, 2022. Prior to each hearing, Petitioner requested a continuance due to going to the hospital.

██████████ Ombudsman, appeared as Petitioner's witness.

██████████ Administrator (Resp't Wit. 1); ██████████ Business Office Manager (Resp't Wit. 2); ██████████ Discharge Planner (Resp't Wit. 3); ██████████ Social Services Director (Resp't Wit. 4) appeared as Respondent's witnesses.

Petitioner submitted two evidence packets, which were marked and entered as Petitioner's Exhibit one ("1")

Respondent submitted an evidence packet, which was marked and entered as Respondent's Exhibits one ("1") through seventeen ("17").

The record was held open through the close of business on June 14, 2022 for Respondent to submit additional evidence into the record. The additional evidence was received, it was marked and entered into the record as Respondent's Exhibits eighteen ("18"). The record was closed on June 14, 2022.

Petitioner's Position

Petitioner took the position that the Facility caused her to lose her Medicare due to falsely reporting the level of care needed and feels she does not owe the money. Respondent believes Medicare agreed to retroactively cover the bills accrued, as she does not have the money to pay the bill.

Respondent's Position

Respondent took the position that despite several different communications between the Facility and Petitioner, she has an outstanding balance and payment in full has not been received. Respondent believes that they have discussed with Petitioner the need to pay her outstanding balance. Petitioner made a one-time \$700.00 payment and has refused to pay the remaining balance.

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 on October 31, 2021 and remains in the care of the Facility as of the date of the hearing. (Resp't Ex. 3; Resp't Wit. 4 Test.)
2. On November 10, 2021, Petitioner refused to sign a Notice of Medicare Non-Coverage, informing Petitioner that her skilled nursing services will end effective November 15, 2021. The notice informed Petitioner of her rights to appeal this decision. (Resp't Ex. 4; Resp't Wit. 4 Test.)
3. On December 3, 2021, the Facility received a decision regarding the expedited appeal requested on November 10, 2021 by Petitioner. It stated in relevant part:
 - On November 10, 2021, the matter was appealed to the state Quality Improvement Organization (QIO), █████ KEPRO, Inc, Region 4. █████ Health and Rehabilitation submitted copies of all notices provided to Respondent, as well as medical documentation, to █████ KEPRO, Inc. Region 4 for determination.
 - On November 12, 2021, █████ KEPRO, Inc, Region 4 upheld the Notice of Medicare Non-Coverage and issued a verbal notice to █████, advising her of the continued non-coverage of skilled nursing facility services after November 15, 2021, and of additional appeal rights.
 - On November 12, 2021, at 4:58 PM Eastern Time, C2C Innovative Solutions ("C2C") received a request for an expedited reconsideration by telephone for █████.
 - On November 13, 2021, at 10:25 AM, C2C spoke to █████ █████ to acknowledge the expedited request and also called █████ Health and Rehabilitation and █████ KEPRO, Inc. Region 4 requesting the case file and copies of all notices provided to the beneficiary. C2C advised that the deadline to submit documentation was the close of business of the day of the call.

(Resp't Ex. 6; Resp't Wit. 4 Test.)

¹ 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.

4. After a review based on the termination of skilled nursing services, it was determined that the decision to terminate the services is appropriate. Respondent is responsible for the cost of the skilled nursing services after November 15, 2021. (*Id.*)

5. On December 23, 2021, a letter was hand delivered to Petitioner to collect on an outstanding of \$1283.95. (Resp't Ex. 8; Resp't Wit. 2 Test.)

6. On January 2, 2022, an invoice was hand delivered to Petitioner. The invoice provided the following breakdown of Petitioner's balance owed to the Facility as follows:

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
November 2021	11/16/21-11/30/21 **prorated 15 days	\$771.00	\$385.50
December 2021	Full Month in Facility with Medicaid	\$856.00	856.00
January 2022	Full Month Due	\$914.00	\$914.00

Total: \$2155.50

(Resp't Ex. 9; Resp't Wit. 2 Test.)

7. On January 3, 2022, a letter was hand delivered a letter explaining that it has been thirty days since the Facility mailed their last statement for patient responsibility that was due on December 10, 2021. Petitioner currently has a balance of \$2155.50 on her account and it is now due. (Resp't Ex. 10; Resp't Wit. 2 Test.)

8. Petitioner made a payment of \$700.00 towards the balance on her account. Petitioner was informed her payment was received and provided with other options that could assist in getting her account current. (Resp't Ex. 11; Resp't Wit. 2 Test.)

9. On January 13, 2022, a letter was hand delivered to Petitioner from the Facility. Petitioner was informed of her outstanding balance of \$1455.00, after her \$700.00 payment, for private room and board. She was also hand delivered a Nursing Home Transfer and Discharge Notice ("Notice") dated January 13, 2022 with an effective date of February 14, 2022. Petitioner refused to sign the Notice. The Facility spoke with

Petitioner regarding her non-payment of her patient liability. (Resp't Ex. 13; Resp't Ex. 14; Resp't Wit. 1 Test.)

10. The following statements were hand delivered to Petitioner:

Date of Statement	Balance Owed	Date of Statement	Balance Owed
December 1, 2021	\$1,283.95	March 1, 2022	\$5,652.35
January 1, 2022	\$2,197.95	April 1, 2022	\$12,071.35
January 1, 2022	\$3,100.00	May 1, 2022	\$11,939.35
February 1, 2022	\$3,777.35		

(Resp't Ex. 17; Resp't Wit. 2 Test.)

11. Petitioner's current outstanding balance is \$17,640.88. (Resp't Ex. 16.)

11. Petitioner remains in the Facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Hr'g R.)

12. Petitioner believes her medical conditions were not properly notated by the Facility; therefore, her Medicare was lost. She does not remember receiving hand delivered letters or having meetings about her bill. She believed she received six letters by mail, but also had issues with the mail. Petitioner did make a payment of \$700.00 but she did not make any further payments because she did not have the money and believes Medicare would pay all of her past bills. (*Id.*)

CONTROLLING LAW

13. 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.

14. 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;

(F) The facility ceases to operate.

[Emphasis added].

15. 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.

16. 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

17. 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.

18. 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 more than \$17,640.88.

19. The findings show Respondent provided monthly billed statements and collection letters to inform Petitioner of the balance owed. The findings show Petitioner was aware of the balance owed to the Facility and paid \$700.00 towards it. She denies receiving hand delivered invoices and then admitted to receiving at least six notices by mail. The findings show that Petitioner is aware of her bill as she stated Medicare will pay the back pay when her Medicare is reinstated.

20. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay 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 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.

21. 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.

22. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and 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. 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 07 day of July, 2022,

in Tallahassee, Florida.

[REDACTED]

[REDACTED]

Hearing Officer
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Agency for Health Care Administration

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