

Apr 19 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-00005

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 March 8, 2022, at 2:04 p.m.

**APPEARANCES**

For the petitioner: [REDACTED] the petitioner's daughter (" [REDACTED] ")

For the respondent: [REDACTED] Administrator (" [REDACTED] ")

**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**

[REDACTED] Social Service Director and [REDACTED] Business Office appeared as witnesses for the respondent.

The petitioner did not submit any exhibits at the hearing. The respondent submitted an evidence packet that was marked and entered as Respondent's Exhibit one ("1"). The record was held open thru March 10, 2022, for the respondent to submit proof of the correspondence showing when the monthly bills for service were sent to the petitioner. No information was submitted, and the record was closed on March 10, 2022.

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

█ believed that the petitioner's Medicare was covering the Facility's bills. █ stated that she was never told that there were outstanding medical bills, nor did she receive any of the monthly statements from the Facility about bills of service.

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

The petitioner was admitted into the Facility to be treated for his diagnosis and for the skills for rehabilitation. The respondent tried to assist the petitioner in completing multiple applications for Medicaid, but the petitioner failed to provide necessary documentation and the applications were denied. █ was told initially by phone the amount of outstanding bills that the petitioner was accruing. The Facility was also sending out monthly statements to the petitioner and to █, the first one in October 2021, outlining the outstanding bills for services by mail. The petitioner's outstanding bills for services as of March 8, 2022, is \$ 42,531.90.

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

Based on the oral and documentary evidence at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. On ██████████ 2021, the petitioner entered the Facility to be treated for his diagnosis and for his skills for rehabilitation. (██████ Test.)
2. On September 27, 2021, a verbal communication was made with ██████ to explain the Medicaid application process by ██████, Social Services Director. (██████ Test.)
3. On October 12, 2021, a second verbal communication was made with ██████ to explain the Medicaid application process by ██████. (██████ Test.)
4. On November 2, 2021, a Medicaid application was completed and submitted to the Department of Children's and Families for the petitioner with the assistance of the Facility. The application was denied on December 16, 2021, because financial documents were not provided by the petitioner. (██████ Test.)
5. The petitioner was informed that if he were not approved for Medicaid then he would be a private payer. (██████ Test.)
6. On December 16, 2021, a second Medicaid application was completed and submitted to the Department of Children and Families for the petitioner with the assistance of the Facility. The application was denied on January 19, 2022, because financial documents were not provided by the petitioner and that the petitioner was over the asset limit. (██████ Test. And ██████ Test.)

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<sup>1</sup> 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. The petitioner is receiving Social Security benefits and owns a number of assets. (█████ Test.)

8. On January 13, 2022, a Nursing Home Transfer and Discharge Notice was issued by the respondent to the petitioner due to bill for services that were unpaid. The effective date of the discharge was ██████████ 2022. (Resp't Exhibit 1.)

9. On January 19, 2022, the petitioner timely requested an appeal to challenge the respondent's action to discharge him from the facility for non-pay of bills for services.

### CONTROLLING LAW

10. Section 400.0255(15), Florida Statutes, provided 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.

11. Section 400.0255(15), Florida Statutes, addresses hearings related to nursing homes and related health care facilities and the burden of proof to be met by stating:

(15)(a) The department's Office of Appeals Hearings shall conduct hearings under this section. The Office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearing requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for another Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. **The burden of proof must be clear and convincing evidence.** A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) **If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility's first available bed.**

(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate

district when the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

[Emphasis added]

12. Section 400.0255, Florida Statutes addressed Resident transfer or discharge; requirements and procedures; hearings and 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 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 application to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for the 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 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 clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council with 5 business days after signature by the resident or resident designee.

...

13. 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]

### **CONCLUSIONS OF LAW**

14. On January 13, 2022, the Facility issued the petitioner the Discharge Notice. The Facility's reason for discharging the petitioner is that bills for services rendered had 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.

15. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date. The Notice also indicated the reason and effective date of the discharge, and appeal rights.

16. 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.

17. 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 of Health Care Administration's health care facility complaint line at (888) 419-3456.

18. 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 facility has not submitted evidence that the petitioner was properly billed by the Facility of the outstanding balance owed. The undersigned left the record open for the respondent to submit verification documenting the bills for services sent to the respondent; however, the requested information was not provided.

19. After careful review of the evidence and testimony, the undersigned concludes that the respondent has not met its burden of proof by clear and convincing evidence that the respondent's action to discharge the petitioner from the facility was in accordance with the regulations.

### **DECISION**

Based upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Facility is ORDERED to not discharge the petitioner if he has not yet been discharged. If the petitioner has already been discharged, the respondent is ordered to readmit him to the Facility to the first available bed.

### **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 19 day of April, 2022,  
in Tallahassee, Florida.



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Paul Daniocek  
Hearing Officer  
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Copies Furnished To: [REDACTED] Petitioner  
[REDACTED] Respondent  
Ms. Arlene Mayo-Davis  
Agency for Health Care Administration  
[REDACTED]