

**FILED**

Jun 15, 2022

Office of Appeal Hearings  
Dept. of Children and Families

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

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APPEAL NO. 22N-00018

PETITIONER,

VS.

ADMINISTRATOR

██  
██  
██

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on May 2, 2022 at 9:06 a.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner: ██████████ pro se

For Respondent: ██████████ Facility Administrator

**STATEMENT OF ISSUE**

Petitioner timely appealed Respondent's action to discharge her from ██████████  
████████████████████ (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

**SUMMARY OF PROCEEDINGS**

The hearing was initially scheduled for April 13, 2022 but was rescheduled because Petitioner was not in receipt of Respondent's evidence packet.

Petitioner did not submit any exhibits. Respondent submitted documentation which was accepted into evidence and marked as Respondent's Exhibits one ("1") through nine ("9").

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

Petitioner took the position that she fully intends to pay the facility all monies owed by Friday, May 6, 2022. Petitioner asserts she has been a victim of fraud on her bank accounts and has not had access to her funds to make timely payment.

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

Respondent took the position that despite several communications between the Facility and Petitioner, she has an outstanding balance in which payment in full has not been received nor has Medicaid been secured.

#### **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 entered the Facility on [REDACTED] 2022. She was scheduled to be discharged on [REDACTED] 2022 but remained in the care of the Facility at the date of the hearing. (Resp't Ex. 6.)
2. On January 25, 2022 and January 27, 2022, Respondent spoke with Petitioner regarding payment for services. (Resp't Ex. 1 at 2.)

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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.

3. On January 28, 2022, Respondent met with Petitioner to discuss payment, since she was denied for Medicaid. Petitioner agreed to make payment of what was owed on January 31, 2022. (Resp't Ex. 6.)
4. Petitioner receives Social Security benefits in the amount of \$1817.00, monthly, on a Direct Express pay card. (Resp't Ex. 1 at 1; Resp't Ex. 3.)
5. On February 2, 2022, Respondent spoke with Petitioner regarding payment for services. Respondent presented Petitioner with a bill. (Resp't Ex. 1 at 2.)
6. On February 8, 2022, Respondent spoke with Petitioner about discharge planning due to non-payment. Respondent presented Petitioner with another bill. (*Id.*)
7. On February 11, 2022, Respondent spoke with Petitioner about payment. Petitioner questioned why her Medicaid application was denied. (*Id.* at 1.)
8. On February 16, 2022, Respondent issued Petitioner a thirty (30) day discharge notice for nonpayment of services. (Resp't Ex. 8 at 3.)
9. On February 19, 2022, Respondent visited Petitioner in her room to discuss Medicaid. Petitioner did not want a Medicaid application. (Resp't Ex. 1 at 1.)
10. On February 21, 2022, Petitioner received a statement for services in the amount of \$16500.00 to be paid by March 10, 2022. (Resp't Ex. 4.)

02/01/2022	Balance forward	\$ 1750.00
02/01/2022	Room and Board	\$ 7000.00
03/01/2022	Room and Board	<u>\$ 7750.00</u>
	Total	\$16500.00

11. On March 21, 2022, Respondent visited Petitioner regarding non-payment for services, applying for Medicaid, approving an electronic payment, and authorization for Respondent to handle her funds. Petitioner did not want to apply for Medicaid or

complete the requested authorizations. Respondent presented Petitioner with a statement of her account. (Resp't Ex. 1 a 1; Resp't Ex. 2; Resp't Ex. 3; Resp't Ex. 5.)

12. To date, Petitioner has not reapplied for Medicaid benefits. (Hr'g R.)
13. To date, Petitioner has not made any payments towards her account. (Hr'g R.)
14. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance to the Facility is \$16500.00 for services through March 31, 2022. Petitioner owes room and board fees for April 2022 and fees continue to accumulate. Petitioner understands that if she remains in the facility until May 3, 2022, she will owe \$24750.00 due on May 10, 2022. (Resp't Ex. 9 at 2.)

#### **CONTROLLING LAW**

15. 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.

16. Title 42 Code of Federal Regulations ("C.F.R.") 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;** (emphasis added)

(F) The facility ceases to operate.

...

17. 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.

18. 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**

19. 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.

20. 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. As of the date of the hearing, Petitioner's balance owed to the Facility is in excess of \$16500.00. Petitioner she has not reapplied for Medicaid after being denied and refused to allow Respondent to complete an electronic payment or manage her funds.

21. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what she owes for her period of care. The hearing officer concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her stay at the facility, including recommendations to secure Medicaid, to pay for this period of care. 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.

22. 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.

23. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care 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 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, 2415 North Monroe Street, Suite I, Room 129, 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. 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 15 day of June, 2022,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
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Ms. Patricia Kaufman  
Agency for Health Care Administration