

FILED

May 31, 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-00019

PETITIONER,

VS.

ADMINISTRATOR

████████████████████
████████████████████
██████████

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on April 27, 2022 at 10:05 a.m.

APPEARANCES

For Petitioner: ██████████ pro se

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

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

██████████ Business Office Manager, appeared as Respondent's witness.

Petitioner submitted one exhibit, which was marked and entered as Petitioner's Exhibit one ("1").

Respondent's submitted evidence was marked and entered as Respondent's Exhibits one ("1") through five ("5").

The record was closed on April 27, 2022.

Petitioner's Position

Petitioner took the position that she agrees with the outstanding balance owed to the facility and she accepts the Facility's action to discharge her for non-payment.

Petitioner does not feel she healthy enough to live outside the Facility.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance of \$91,472.94 as of this hearing date. Petitioner's bill was paid by a hospital contract through April 17, 2021, but no payment has been received since the contract ended on that date. Respondent has attempted to assist Petitioner with the Medicaid and Social Security application process, but those benefits have not been approved. Petitioner was given reasonable and appropriate notice to pay for the services she receives at the facility. Respondent has requested Petitioner be discharged.

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 in [REDACTED] 2020 from the hospital. The hospital had a contract with the Facility to pay for Petitioner's rehabilitation. (Hr'g R.)

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.

2. The hospitals contract to pay Respondent for services provided to Petitioner ended on April 17, 2021. Petitioner remains in the care of the Facility as of the date of the hearing. (Hr'g R.)
3. Respondent has received no payment for services provided to Petitioner since the hospital contract ended. As of April 27, 2022, Petitioner's outstanding balance is \$91,472.94. Petitioner's bill has not been brought current and continues to accumulate. (Hr'g R.)
4. Respondent worked with Petitioner by assisting her with applying for Medicaid and Social Security Disability. All applications have been denied. (Resp't Ex. 3.)
5. Respondent has worked with Petitioner to advise her of the resources available to her, and help Petitioner get back into the workforce. (Resp't Wit. Test.)
6. Respondent cannot continue to care for Petitioner without payment. (Hr'g R.)
7. Respondent notified Petitioner of her balance due via monthly statements. (Resp't Ex. 4.)
8. On March 10, 2022, the Facility issued a Nursing Home Transfer and Discharge Notice ("Discharge Notice") to Petitioner informing her that she would be discharged from the Facility effective [REDACTED] 2022, due to non-payment of bill for services. (Resp't Ex. 2 at 1-2)
9. Petitioner does not dispute the balance owed to Respondent. (*Id.*)
10. Petitioner understands the facility needs to be paid and she must leave, but she needs more time to find a safe place to live. Petitioner does not feel she is healthy enough to live on her own. (Pet'r Ex. 1; Hr'g R.) The Office of Appeal Hearing verbally received Petitioner's Fair Hearing request on March 15, 2022. (Hr'g R.)

CONTROLLING LAW

11. 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.

12. 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.

...

13. 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.

14. 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

15. 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.

16. 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 in excess of \$91,000.00. This fact is not disputed.

17. In the instant case, Respondent provided monthly billing statements to inform Petitioner of the balance owed. The findings also show Petitioner does not deny the balance owed.

18. Based on the evidence and testimony, the Facility has established Petitioner has not paid what she owes for her 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.

19. 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.

20. 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 31 day of May, 2022,
in Tallahassee, Florida.

Judith L. Schneider

Judith Schneider
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
[REDACTED] Respondent
Mr. Robert Dickson, Agency For Health Care Administration