

**FILED**

Aug 10, 2022

Office of Appeal Hearings  
Dept. of Children and Families

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

[REDACTED]  
[REDACTED]  
[REDACTED]

APPEAL NO. 22N-00038

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on June 21, 2022 at 1:10 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner: [REDACTED], Spouse

For Respondent: [REDACTED] Facility Business Office Manager

**STATEMENT OF ISSUE**

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

**SUMMARY OF PROCEEDINGS**

[REDACTED], Social Services Director for [REDACTED] appeared for Respondent but did not testify.

Petitioner did not submit any exhibits. Respondent submitted documentation which was accepted into evidence and marked as Respondent's Exhibits one ("1") through four ("4").

The record was held open through the close of business on June 27, 2022, at 5:00 p.m., for both parties to provide documentation. Petitioner's spouse was provided the fax number and email address for the Office of Appeal Hearings for document submission. Additionally, he was provided a telephone number for the Department of Children and Families ("DCF") to assist him in obtaining proof Petitioner has a pending Medicaid application.

Respondent provided additional documentation which was accepted into evidence and marked as Respondent's Exhibits five ("5") and six ("6"). Petitioner did not submit any documentation for consideration.

The record closed on June 27, 2022.

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

Petitioner took the position that the outstanding balance owed to the Facility is correct. Petitioner asserts she cannot afford to pay the bill and presently has just \$50.00 in a checking account. When she gains access to some money, she will make a payment to the Facility. Petitioner is trying to buy time in the hope of obtaining Medicaid.

#### **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], 2021 as a private pay. (Hr'g R.)
2. Until October 2021, Petitioner timely paid the Facility and then her payments tapered off. By January 2022, Petitioner ceased paying for her care at the Facility. (Hr'g R.)
3. On October 6, 2021, DCF mailed Petitioner written notice that her application for Medicaid, dated May 28, 2021, was denied. (Resp't Ex. 5 at 1.)
4. On November 30, 2021, DCF mailed Petitioner written notice that her application for Medicaid was denied. The date of application is illegible. (*Id.* at 2)
5. On April 4, 2022, [REDACTED] received a certified letter from Solaris Healthcare regarding Petitioner's outstanding balance. The letter informed [REDACTED] that calls to his daughter have gone unanswered and no paperwork has been received from DCF approving Petitioner for Medicaid. As of March 31, 2022, the outstanding balance was \$31480.00, as follows:  
(Resp't Ex. 3 at 2-3.)

October 2021	\$ 9380.00
January 2022	\$ 2925.00 <sup>2</sup>
February 2022	\$ 9100.00
March 2022	<u>\$10075.00</u>
Total	\$31480.00

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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.

<sup>2</sup> Petitioner had a period of care ending in January 2022 that was covered by Medicare.

6. On April 1, 2022, Petitioner received a bill from the facility for \$41230.00 which included the past balance of \$31480.00 and \$9750.00 in charges for April 2022. (Resp't Ex. 4 at 1.)

7. On May 1, 2022, Petitioner received a bill from the facility for \$51305.00 which included the past balance of \$41230.00 and \$10075.00 in charges for May 2022. It is noted on the bill that this amount is due to prevent discharge. (*Id.* at 2.)

8. On May 2, 2022, Respondent issued Petitioner a thirty (30) day discharge notice for nonpayment of services. (Resp't Ex. 1.)

9. During the period April 26, 2021 through May 19, 2022, Respondent spoke with Petitioner's spouse, daughter, and son about the need to secure Medicaid funding and Petitioner's outstanding balance. Often times, calls went unanswered, and no one responded to voice mail messages. Voice mail messages were left with Petitioner's daughter on December 31, 2021; January 24, 2022; March 17, 2022; March 29, 2022, April 4, 2022, and May 17, 2022, with no return call. On May 19, 2022, Respondent provided Petitioner's son with contact information for someone to assist the family with applying for Medicaid. (Resp't Ex. 2.)

10. To date, Petitioner has not reapplied for Medicaid benefits. No application is pending, no appointments are scheduled, and no verifications are needed. (Resp't Ex. 6 at 1-2.)

11. On June 7, 2022, Petitioner paid the Facility \$10000.00. (Hr'g R.)

12. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance is \$51356.03. This includes charges for services through June 2022. (Hr'g R.)

**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 (“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.

...

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 that as of the date of the hearing, Petitioner's balance owed to the Facility is \$51356.03. The findings also show Petitioner has not reapplied for Medicaid after being denied on October 6, 2021 and November 30, 2021.

19. 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.

20. 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.

21. 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 10 day of August, 2022,  
in Tallahassee, Florida.

*Shelly Goodfellow*

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Copies Furnished To: [REDACTED], Petitioner  
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[REDACTED]