

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

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APPEAL NO. 22N-00056

PETITIONER,

VS.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on July 19, 2022 at 11:10 a.m.

APPEARANCES

For Petitioner: ██████████, *pro se*

For Respondent: Thomas Kaufman, Esq.

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

On June 12, 2022, Petitioner timely requested a hearing.
██████████ (Resp't Wit. 1), Administrator; ██████████ (Resp't Wit. 2),
Business Office Manager; ██████████ (Resp't Wit. 3), Registered Nurse Unit

Manager; [REDACTED], Social Worker (Resp't Wit. 4), appeared as Respondent's witnesses.

The parties went off the record and agreed to reconvene at 1:00 p.m. to complete the hearing. All parties reappeared and the hearing reconvened at 1:01 p.m.

Respondent submitted an evidence packet, which was marked and entered as Respondent's Composite Exhibit one ("1").

Petitioner's Position

Petitioner took the position that the bills from the Facility was being paid by United Healthcare. He agrees that a bill is due and wants the Facility to receive the money owed which he believes will be covered by Medicaid.

Respondent's Position

Respondent took the position that despite several different communications between the Facility and Petitioner, he has an outstanding balance and payment in full has not been received. Respondent believes they have discussed with Petitioner the need to pay his outstanding balance and exhausted all avenues in trying to get the bill paid. Petitioner has not paid anything towards the balance of his bill.

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 July 21, 2021 for skilled nursing under United Healthcare until August 5, 2021. After August 5, 2021, Petitioner was responsible for

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.

the room and board expenses he occurred. He remains in the care of the Facility as of the date of the hearing. (Resp't Wit. 1 Test.)

2. On May 25, 2022, Petitioner received and signed a Nursing Home Transfer and Discharge Notice ("Notice"), informing Petitioner that he will be discharged from the Facility with an effective date of June 24, 2022. The reason for the discharge is "Your bill for services at the facility has not been paid after reasonable and appropriate notice to pay." Petitioner owes the Facility \$8854.06 as of the date of the Notice. The Notice informed Petitioner of his rights to appeal this decision. (Resp't Comp. Ex. 1 at 1-2.)

3. Respondent owes \$8854.06 from the periods of August 2021 through June 2022. (Resp't Wit. 1 Test.)

4. On December 7, 2022, Petitioner was mailed a Notice of Case Action ("NOCA") from the Department of Children and Families ("DCF") informing Petitioner that his Medically Needy Share of Cost will increase from \$572.00 to \$626.00 as of January 01, 2022 due to the cost-of-living adjustment from Social Security Income ("SSI")/ Social Security Administration ("SSA"). (Resp't Comp. Ex. 1 at 14.)

5. On December 22, 2021, Petitioner was mailed a NOCA from DCF informing Petitioner that his application for Medicaid dated December 13, 2021 was approved. Respondent was expected to pay the nursing facility or provider \$787.00 from August 2021 through December 2021; and \$841.00 from January 2022 and ongoing. (Resp't Comp. Ex. 1 at 8.)

6. On January 20, 2022, Petitioner was mailed a NOCA from DCF informing him that he "must pay the new nursing facility or your new provider \$841.00 each month. This amount is based on the full month and may be adjusted according to the number of

days you are in the new facility, or you received services from your new provider”.

(Resp’t Comp. Ex. 1 at 26.)

7. Petitioner’s statement balances were delivered to him along with his regular mail. In response to these collection attempts, Petitioner informed the Facilities’ staff to mail the statements to his attorney and provided the address as he was waiting on a settlement. (Resp’t Comp. Ex. 1 at 30-31.)

8. Petitioner’s outstanding balance, as of the date of this hearing and due on July 31, 2022 is \$9695.06. Petitioner remains in the Facility pending the hearing decision. Petitioner’s bill has not been brought current and continues to accumulate. (Resp’t Wit. 1 Test.)

9. Petitioner believes his bills were being covered by United Healthcare. Petitioner stated he spoke with someone at United Healthcare who informed him he was covered, although he did not receive any correspondent regarding this coverage. Petitioner is aware of the bill and has exhausted all avenues and sources to get the bill paid as he wants the Facility to receive their money. (Hr’g R.)

CONTROLLING LAW

10. 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.

11. 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].

12. 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.

13. 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

14. 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.

15. 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 \$9695.06 as of July 31, 2022.

16. The findings show Petitioner was aware of the balance owed to the Facility. He made statements that he believed the balance to be covered by United Healthcare and instructed the Facilities' staff to contact his attorney to recoup payment.

17. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what he owes for his period of care. The undersigned concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for his 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. The undersigned concludes Respondent has met its burden of proof.

18. 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.

19. 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 08 day of September, 2022,

in Tallahassee, Florida.



Hearing Officer
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