

**FILED**

Dec 14, 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-00068

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on October 31, 2022 at 2:31 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner: [REDACTED], pro se

For Respondent: [REDACTED], Administrator, [REDACTED]  
[REDACTED]

**STATEMENT OF ISSUE**

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

**SUMMARY OF PROCEEDINGS**

Present as a witness for Respondent was [REDACTED] (“Resp’t Wit.”), Business Office Manager for the Facility. [REDACTED], Hearing Officer, Office of Appeal Hearings (“OAH”) appeared as an observer without objection

Petitioner did not submit any exhibits. Respondent presented four (4) pages of evidence. Post hearing, Respondent’s evidence was admitted into evidence and marked as Respondent’s Exhibit one (“1”).

The record was left open through close of business on November 2, 2022 for the submission of additional evidence from Respondent.

On October 31, 2022 and November 1, 2022, Respondent submitted the additional evidence which was marked as Respondent’s Exhibits two (“2”) through three (“3”).

The record closed on November 2, 2022 after Respondent submitted the additional evidence.

**Petitioner’s Position**

Petitioner took the position that he did not handle his bills and all his bills were handled and paid by his Power of Attorney (“POA”), [REDACTED] (“MO”). Petitioner argued that he only became aware on August 25, 2022 that he owed \$34,663.00 to the Facility when they presented him the Nursing Home Transfer and Discharge Notice (“NHTDN”) for non-payment. Petitioner does not believe that the Facility has properly billed him due to several instances where he was hospitalized and not residing in the Facility. Petitioner argued that MO passed away at the beginning of October 2022, and he has been trying to get his finances in order and pay his balance.

### **Respondent's Position**

Respondent took the position that Petitioner has not been paying the total amount of his bill since his admission on January 1, 2022. Petitioner argued that MO was responsible for paying the bills on Petitioner's behalf but would not pay the amount due in full. Respondent argued that Petitioner was made aware he had an outstanding balance by hand-delivered bills but always referred the Facility to MO for payment. Respondent argued that Petitioner has not fully paid for the services received at the facility after reasonable and appropriate notice, and Respondent has requested that Petitioner be discharged.

### **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 was admitted to the Facility on [REDACTED] 2022. (Hr'g R.)
2. Petitioner's POA, MO was in charge of managing his finances and paying his bills until she passed away in early October 2022. MO was aware of Petitioner's bills for the Facility. When presented with a hand-delivered bill Petitioner would refer the Facility to MO for payment. Petitioner was current in his monthly payments from January 2022 through April 2022. (Hr'g R.)
3. Petitioner's room charge for the Facility is \$260.00 daily. Petitioner is also responsible for any additional charges related to his care at the Facility such as equipment rental. Petitioner is responsible to pay his full bill/balance each month. (Resp't Ex. 1; Hr'g R.)

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<sup>1</sup> Citations within the Findings of Fact 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.

4. On August 25, 2022, Petitioner was issued a NHTDN informing him that he was being discharged due to “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” The NHTDN included an invoice showing Petitioner owed \$34,663.00 as of August 24, 2022. Petitioner refused to sign the NHTDN. (*Id.*)

5. As of October 6, 2022, Petitioner’s outstanding balance owed to the Facility was \$45,775.40. (Resp’t Ex. 2; Hr’g R.)

6. In October 2022, Petitioner has made the following payments towards his balance:

October 11, 2022	\$15,000.00
<u>October 12, 2022</u>	<u>\$14,000.00</u>
Total	\$29,000.00

(Hr’g R.)

7. As of October 31, 2022, Petitioner’s outstanding balance to the Facility is \$16,325.95. Petitioner remains in the facility pending the hearing decision. Petitioner’s bill has not been brought current and continues to accumulate. (Resp’t Ex. 3; Hr’g R.)

#### **CONTROLLING LAW**

8. Section 400.0255(15), Florida Statutes (“F.S.”), 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.

9. 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.

10. 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.

### **CONCLUSIONS OF LAW**

11. Based on the evidence presented, the nursing facility has established that Petitioner is being discharged due to non-payment. This is one of the six (6) reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

12. According to the above authority, a 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 October 31, 2022, Petitioner's balance owed to the facility was \$16,325.90. As of the date of the hearing, Petitioner is responsible for paying his full patient responsibility each month.

13. Based on the evidence and testimony, Petitioner's POA, MO was aware of the outstanding balance/bills at the Facility prior to her passing in October 2022 and Petitioner received hand-delivered bills but referred the Facility to his POA, MO for

payment. Additionally, Respondent has established Petitioner has paid \$29,000 towards his patient liability at the Facility in October 2022 but continues to owe \$16,325.90. 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 regulation 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

14. 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.

15. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration (“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 AHCA 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 14 day of December, 2022,

in Tallahassee, Florida.

*Kelci M. Kemmerer*

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Hearing Officer  
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Agency for Health Care Administration