

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

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APPEAL NO. 22N-00078

PETITIONER,
VS.

ADMINISTRATOR
██
██
██

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned reconvened a telephonic nursing home discharge hearing in the above-referenced matter on November 15, 2022 at 9:36 a.m.

APPEARANCES

For Petitioner: ██████████, *pro se*

For Respondent: ██████████, Assistant Administrator

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

On November 8, 2022, the undersigned previously convened a telephonic nursing home discharge hearing.

██████████, Director, represented Respondent. ██████████, Assistant Administrator, appeared as a witness for Respondent.

██████████ Hearing Officer, appeared as an observer for the Office of Appeal Hearings (“OAH”).

Petitioner requested to reschedule, as she did not receive an evidence packet from Respondent at least seven (7) days in advance of the scheduled hearing. Petitioner’s request was granted. The hearing was scheduled to reconvene on November 15, 2022 at 9:30 a.m.

On November 15, 2022, the hearing reconvened.

Appearing as an observer for Respondent was ██████████, Social Services Director.

██████████, Hearing Officer, appeared as an observer for the OAH.

Respondent submitted two (2) exhibits, which were marked and entered as Respondent’s Exhibits one (“1”) through two (“2”). Petitioner objected to Respondent’s Exhibit 2 being marked and entered into the record, as she does not agree with the amount owed due to previous discussions with the former director to adjust the balance owed. Petitioner’s objection was overruled, as prior payment arrangements with Respondent were not considered in this Final Order and may be discussed with Respondent outside of the hearing process.

The record was held open until November 29, 2022 to allow Petitioner time to submit evidence to support her position. As of the writing of this Final Order, Petitioner did not submit any exhibits to be considered. The record was closed on November 29, 2022.

Petitioner’s Position

Petitioner took the position that Respondent is responsible for the loss of an earring that she believes is worth \$11,500.00 and does not owe the amount Respondent is alleging is owed to the Facility.

Respondent's Position

Respondent took the position that the Facility has made numerous attempts to receive payment from Petitioner, who has not made any payments to the facility since June 2022. Respondent is seeking to discharge her from the facility.

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. On July 31, 2021, Petitioner was admitted into the facility. (Hr'g R.)
2. Based on Petitioner's Medicaid eligibility for the Institutional Care Program, Petitioner's monthly patient responsibility towards her care to Respondent is \$1192.00. (Resp't Ex. 2 at 7; Hr'g R.)
3. Respondent issued to Petitioner monthly billing statements, dated March 1, 2022 through November 1, 2022. As of November 1, 2022, Petitioner owed \$11,536.20. (*Id.* at 17-23; Hr'g R.)
4. On September 1, 2022, a Nursing Home Transfer and Discharge Notice was issued with an effective date of October 2, 2022. Respondent is seeking to discharge Petitioner due to non-payment for services to the facility after giving her reasonable notice to pay. (Resp't Ex. 1.)
5. Petitioner acknowledged that she was hand-delivered the billing statements beginning June 2022 but does not recall receiving billing statements prior to that date. Petitioner disputed the alleged amount owed to the Facility and stated that she and the former director had an agreement that amounts would be deducted from the balance

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.

owed to the facility. Petitioner stated that she had a pair of earrings she believed was worth \$23,000.00 but she lost one of the earrings. Petitioner stated that she always wore the other earring but put it in a specimen bottle when she was being transported to the hospital emergency room due to an illness. Petitioner stated that the earring fell out of the specimen bottle during transport and that staff at the Facility did not pick up the earring as requested. Petitioner stated that the earring was worth \$11,500.00 and should be deducted from the balance Respondent is stating is owed to the facility. Petitioner stated that she believes the Facility was still charging her for care at the Facility during the time she was in the hospital. Petitioner stated that the current director informed her that she was not responsible for paying the Facility while the appeal was pending. (Hr'g R.)

CONTROLLING LAW

6. 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.

7. 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—

...

(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; or

...

CONCLUSIONS OF LAW

8. Based on the evidence presented, the nursing facility has established that the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

9. 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.

10. 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

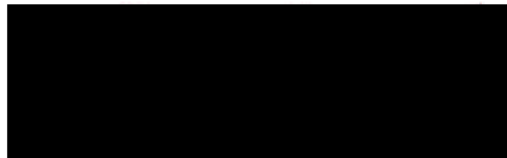
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance 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. Petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. Respondent 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.



Hearing Officer
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Tallahassee, FL 32303-4190
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Copies Furnished To: 
 Respondent

Agency for Health Care Administration