

Jan 12, 2023

Office of Appeal Hearings
Dept. of Children and Families

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPEAL NO. 22N-00089

PETITIONER,

VS.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on December 21, 2022 at 1:05 p.m.

APPEARANCES

For Petitioner: [REDACTED] [REDACTED]

For Respondent: [REDACTED]

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

Appearing as a witness for Respondent was [REDACTED]
[REDACTED]

Respondent submitted two (2) evidence packets, which were marked and entered as Respondent's Exhibits one ("1") through two ("2").

The record was held open until December 22, 2022 to allow Respondent to submit additional evidence. Respondent submitted one (1) evidence packet, which was marked and entered as Respondent's Exhibit three ("3"). The record was closed on December 22, 2022.

Petitioner's Position

Petitioner took the position that she was not aware that she owed a balance until she received the notice to discharge her from the facility.

Respondent's Position

Respondent took the position that the Facility has made numerous attempts to receive payment from Petitioner, who made two payments to the facility a few days prior to the hearing. 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 7, 2022, Petitioner was admitted into the facility. Petitioner stated she receives [REDACTED]. (Hr'g R.)

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.

2. Based on Petitioner's Medicaid eligibility for the Institutional Care Program, Petitioner's monthly patient responsibility towards her care to Respondent is \$1460.00. (Resp't Ex. 2 at 1.)

3. On August 26, 2022, Respondent's "Activity Report" (Report) included a note which stated that a phone call was made to Petitioner. The Report included a note, which stated: "Informed resident that she owes patient responsibility each month she is LTC starting the month of August. Explained that the amount estimated is her income minus \$130.00 each month. Resident stated her storage unit bill is \$107 and she can't make it off of just \$23 a month leftover..." (*Id.* at 7.)

4. On September 14, 2022, the Report included a note which stated: "I went to the resident's room to ask her about payment for this month. She was sleeping...I stated that she needs to come visit me and left the statement." (*Id.* at 6.)

5. On September 20, 2022, the Report included a note which stated: "[C]urrent statement was provided to the resident showing amount due as \$2873.00 total for the last two months of non-payment ...Resident signed the education stating she understood but would not discuss a payment plan, stated she would be looking for an apartment instead." (*Id.*)

6. On October 4, 2022, the Report included a note which stated: "NHA reminded resident that payment was due by the 10th of October as she owes 3 months of patient liability. She was informed that should she refuse payment, the next step could be a 30 day Notice of Intent to Discharge. She stated 'that's fine, I plan to leave anyway.'" (*Id.*)

7. On October 13, 2022, the Report included a note which stated: "[W]ent in to talk to resident...she is not there. I left the bill on her eye pads, notified NHA." (*Id.*)

8. On October 21, 2022, a Nursing Home Transfer and Discharge Notice was issued with an effective date of November 21, 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.)

9. Respondent stated that the Facility's business office manager hand-delivered monthly billing statements to Petitioner. Respondent provided the billing statements, dated August 1, 2022 and October 1, 2022 through December 1, 2022. (Resp't Ex. 3 at 2-10; Hr'g R.)

10. On December 13, 2022, Petitioner made a payment in the amount of \$2500.00. On December 14, 2022, Petitioner made a payment in the amount of \$1100.00, which reduced the balance owed to \$3507.09 as of the date of the hearing. (*Id.* at 6; Hr'g R.)

11. Petitioner denied receiving the billing statements. Petitioner stated that she would need to have a physical copy of the billing statement to remember if she owed the Facility. Petitioner stated that she has issues with her memory due to brain damage and does not remember events that have occurred from one day to the next. Petitioner stated that she thought the Facility was being paid through her SSA income. Petitioner stated that she made the \$3600.00 payment in December 2022 once she discovered that the Facility was not being paid through her SSA income. (Hr'g R.)

CONTROLLING LAW

12. 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.

13. 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...

14. Florida Statutes Section 400.0255, 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...

(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...

(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. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. 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. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

CONCLUSIONS OF LAW

15. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date. The Notice also indicated the reason, effective date of the discharge, and appeal rights.

16. 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. The undersigned concludes that this is one of the reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

17. 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.

18. 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 12 day of January, 2023,

in Tallahassee, Florida.



Paula Cephus
Hearing Officer
Suite I, Room 129
2415 North Monroe Street
Tallahassee, FL 32303-4190
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]