

FILED

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-00090

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 2:16 p.m.

APPEARANCES

For Petitioner: [REDACTED] [REDACTED]

[REDACTED] 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. However, Petitioner requested additional time to January 3, 2023 to further review Respondent's second evidence packet, as he did not receive prior to the date of the hearing. Therefore, one of Respondent's evidence packets was marked and entered as Respondent's Exhibits one ("1").

The record was held open until January 3, 2023 to allow Respondent to submit additional evidence and to allow Petitioner time to review Respondent's evidence packets. Respondent submitted one (1) additional evidence packet. As of the writing of this Final Order, Petitioner has not proffered any objections to Respondent's two (2) evidence packets. Therefore, Respondent's evidence packets were marked and entered as Respondent's Exhibit two ("2") and three ("3"). The record was closed on January 3, 2023.

Petitioner's Position

Petitioner took the position that he was not provided with any paperwork to show him what was owed to the Facility. Petitioner believed his Social Security Administration ("SSA") income was being intercepted to pay the facility.

Respondent's Position

Respondent took the position that the Facility has made numerous attempts to receive payment from Petitioner, who made one payment in the amount of \$500.00 to the facility on the date of the hearing. Respondent is seeking to discharge him 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 September 28, 2020, Petitioner was admitted into the facility. Petitioner stated he receives \$1485.00 each month in Social Security Administration (“SSA”) income. (Hr’g R.)

2. Based on Petitioner’s Medicaid eligibility for the Institutional Care Program, Petitioner’s monthly patient responsibility towards his care to Respondent is \$1363.00. (Hr’g R.)

3. On August 26, 2022, Respondent’s “Activity Report” (“Report”) included a note, which stated: “[W]ent back to room pt not in building. Left another invoice...” (Resp’t Ex. 2 at 4.)

4. On August 30, 2022, the Report included a note which stated: “Spoke to resident regarding this months payment. He stated he would pay \$500 today and another \$1000 on Friday.” (*Id.*)

5. On September 14, 2022, the Report included a note, which stated: “[W]ent to PT room and he was not there, left him an envelope with a statement [sic] he came by my office and said he will come tomorrow with \$500 but he just doesn’t have it. I asked him to pay something or we will have to issue a 30 day.” (*Id.* at 4.)

6. On September 23, 2022, the Report included a note which stated: “[C]aught PT going outside [sic] asked him where the payment was? He states he had no idea

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.

[sic] he hasn't gotten any bill. I informed him I need a payment by EOM or I will have to issue a 30 day. Will follow up MON." (*Id.*)

7. On October 4, 2022, the Report included a note which stated: "NHA spoke with resident and reminded him that payment is due to the facility by the 10th of the month. Reminded resident that he is 3 months in arrears in addition to balances already owed from months in the past. He stated he was 'surprised.'" (*Id.*)

8. On October 5, 2022, the Report included a note which stated: "PT came to my office early this morning asking what his bill is...I asked him to pay this month \$1363. He said he doesn't have that..." (*Id.*)

9. On October 13, 2022, the Report included a note which stated: "[D]uring our A/R review advised to give a 30 day. NHA asked me to speak with him again before giving a 30 day. Went to talk to PT, he was out of the building left a note with an invoice on his bed. Emailed NHA." (*Id.*)

10. 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 him reasonable notice to pay. (Resp't Ex. 1.)

11. Respondent stated that the Facility's business office manager hand-delivered monthly billing statements to Petitioner. Respondent provided billing statements dated November 1, 2020 and December 1, 2020, February 1, 2021 through May 1, 2021, August 1, 2021 through June 1, 2022, August 1, 2022, and October 1, 2022 through December 1, 2022. (Resp't Ex. 3 at 2-22; Hr'g R.)

12. As of the date of the hearing, Petitioner has a balance owed to the facility in the amount of \$10,173.61. (Hr'g R.)

13. Petitioner denied receiving the billing statements. Petitioner stated he did not receive any pamphlets or documents to inform him that he was responsible for paying the facility. Petitioner stated that he thought the government was paying the facility for him and did not know he owed the facility until he received the discharge notice. Petitioner stated that he made a \$500.00 payment the date of the hearing. (Hr'g R.)

CONTROLLING LAW

14. 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.

15. 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...

16. 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

17. 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.

18. 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.

19. 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.

20. 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
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