

FILED

Jan 23, 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]

APPEAL NO. 22N-00093

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 28, 2022 at 9:47 a.m.

APPEARANCES

For Petitioner: [REDACTED], Petitioner's spouse

For Respondent: [REDACTED], Business Office Manager

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

Petitioner was not present. [REDACTED] ("Pet'r Wit. 1"), Petitioner's son; and [REDACTED] (Pet'r Wit. 2"), Petitioner's sister-in-law appeared as Petitioner's witnesses.

██████████, Executive Director (“Resp’t Wit. 1”); ██████████, Director of Nursing (“Resp’t Wit. 2”); ██████████, Physical Therapist (“Resp’t Wit. 3”); and ██████████, Occupational Therapist (“Resp’t Wit. 4”) appeared as Respondent’s witnesses

On November 3, 2022, Petitioner filed an appeal with the Office of Appeal Hearings (“OAH”). Petitioner disagrees with the discharge.

On November 3, 2022, the undersigned issued an Order requesting the written Discharge Notice from the Facility.

On November 18, 2022, the undersigned issued a Preliminary Order to Dismiss the appeal as the OAH had not received the written Discharge Notice from the Facility. .

On November 28, 2022, Respondent faxed a copy of the Discharge Notice dated November 7, 2022.

Petitioner submitted one exhibit, which was marked and entered as Petitioner’s Exhibit one (“1”).

Respondent discussed twenty-four (24) pages of documents which they had faxed to the OAH on December 27, 2022. The undersigned overlooked marking and entering the items while on the record.

On December 29, 2022, the undersigned issued an order to reopen the record and admit Respondent’s evidence into the record as Respondent’s Exhibits one (“1”) and two (“2”). The record was closed on December 29, 2022.

Petitioner’s Position

Petitioner took the position that no balance is owed to the Facility. Petitioner expected to be a short-term patient at the Facility. Petitioner believes the Facility did not provide proper medical care, which resulted in an unnecessarily lengthened stay at

the Facility. Petitioner believes Respondent is responsible for her currently being a resident at the Facility and should not hold her accountable for the balance owed. In addition, Petitioner took the position that the Facility's billing methods are confusing, and Petitioner does not understand the different amounts charged by the Facility. Petitioner believes there should be no out-of-pocket expense; the bill should be covered in full by Petitioner's insurance, Medicare and/or Medicaid. Petitioner does not feel she is healthy enough to leave the Facility and live at home.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance of over \$40,000.00 as of the hearing date. Respondent believes they have mailed monthly statements to Petitioner and have received no payments from Petitioner. Respondent has made multiple attempts to discuss payment arrangements, but have been unsuccessful. Respondent believes they have assisted Petitioner with Medicaid applications, but Petitioner was uncooperative in providing requested documents in a timely manner. Respondent believes Petitioner is responsible to pay for services provided by the Facility since July 2021. Respondent has requested Petitioner be discharged due to non-payment for services.

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 Citations within the Findings of Fact, Controlling Law, 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.

1. Petitioner entered the Facility in July 2021 and remains a patient of the Facility as of the date of this hearing. (Hr'g R.)
2. Since being admitted into the Facility, Petitioner has only briefly left the Facility to be admitted to the hospital, but returned to the Facility. (*Id.*)
3. In portions of August 2021 through January 2022, Petitioner was billed \$150.00 per day as her coinsurance for her Humana plan. (Resp't Ex. 2 at 1-3; Hr'g R.)
4. In portions of February 2022 and September 2022, Petitioner was no longer being billed through the Humana plan. Petitioner was billed \$194.50 per day as her copayment for straight Medicare. (Resp't Ex. 2 at 4-8 Hr'g R.)
5. In portions of October 2022 through December 2022, Petitioner is in a pending status with Medicaid. (Hr'g R.)
6. As of October 17, 2022, Respondent is billing Petitioner at a daily rate of \$346.00, which may change pending the outcome of the October Medicaid application. (Resp't Ex. 2 at 14-15.)
7. Respondent has received no payments from Petitioner. (Hr'g R.)
8. Respondent has sent nineteen (19) billing statements to Petitioner. (*Id.*)
9. Respondent has reached out to Petitioner's spouse and sister in-law on multiple occasions to establish payment arrangements. (Resp't Ex. 1; Hr'g R.)
10. Petitioner's outstanding balance is \$43,0073.19 as of the date of the hearing. (Hr'g R.)
11. Respondent worked with Petitioner by assisting with two separate Medicaid applications. The first Medicaid application in March 2022 was denied due to lack of Petitioner's documentation requested by Medicaid to determine eligibility. The second

application is in pending status since October 2022. Respondent believes Medicaid will not pay any bills prior to October 2022 if Petitioner is approved. (*Id.*)

12. Petitioner believes all documents were provided for Medicaid eligibility as requested by Respondent. Petitioner's spouse believes he may have returned some items a little late, but he provided everything requested of him. (*Id.*)

13. Petitioner was initially admitted into the Facility as a temporary stay, however, Petitioner's health declined after being admitted into the Facility. Petitioner believes her health declined due to medical neglect by the Facility, thereby making her stay at the Facility unreasonably lengthened. (Pet'r Wit 2; Hr'g R.)

14. Petitioner believes Respondent should not be paid due to medical neglect and substandard care of Petitioner. (Hr'g R.)

15. Petitioner believes Respondent is now billing her in retaliation of Petitioner's complaint regarding her medical care. (*Id.*)

16. Petitioner does not fully understand the different daily amounts being charged by the Facility. (*Id.*)

17. Petitioner's spouse believes he should not be liable to pay his wife's bill with the Facility. He believes his wife (Petitioner) is responsible for her medical bills. (*Id.*)

18. Respondent notified Petitioner of balance due via monthly statements. (Resp't Ex. 2; Hr'g R.)

19. Petitioner received a billing statement approximately one month prior to filing the appeal which advised Petitioner of a \$60,000 balance owed. Petitioner believes Respondent advised Petitioner would be discharged from the Facility by "the tenth" if payment was not made. (Hr'g R.)

20. Respondent's last verbal contact with Petitioner's spouse was November 2, 2022 at which time he advised Respondent the visit should be fully covered, and Petitioner should not receive a bill. (Resp't Ex. 1; Hr'g R.)

21. On November 3, 2022, Petitioner filed an appeal with the OAH disputing the verbal discharge. (Hr'g R.)

22. On November 7, 2022, Respondent issued a Nursing Home Transfer and Discharge Notice ("Discharge Notice") to Petitioner informing her that she would be discharged from the Facility effective December 7, 2022, due to non-payment of bill for services. (Pet'r Ex. 1.)

CONTROLLING LAW

23. 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.

24. 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;
(F) The facility ceases to operate.

...

[Emphasis added].

25. 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.

26. 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.**

[Emphasis added].

CONCLUSIONS OF LAW

27. 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.

28. 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 in excess of \$40,000.00.

29. The findings show Petitioner is aware of the balance owed to the Facility. Petitioner does not believe she is liable for any bills from the Facility for a number of reasons: 1) Petitioner believed the bills were fully covered by Humana and Medicare; 2) Petitioner believes she does not owe because of medical negligence by the Facility; 3) Petitioner's spouse believes he provided all information necessary for Petitioner to

be eligible for Medicaid; and 4) Petitioner's spouse believes he should not be held responsible for his wife's bill.

30. The findings show Respondent provided monthly billing statements to inform Petitioner of the balance owed. The findings also show Medicaid has denied Petitioner's eligibility prior to October 2022. The findings show it is *possible* Medicaid will pay a portion of Petitioner's bill effective October 2022, however, Petitioner is minimally liable for the balance owed from July 2021 through September 2022.

31. Based on the evidence and testimony, the Facility has established Petitioner has not paid what she owes for her care. The undersigned concludes Petitioner was aware of her responsibility to pay co-pays and coinsurance while at the Facility, as evidenced by Petitioner's subsequent applications for Medicaid assistance. If Petitioner disputes a Medicaid denial, Petitioner may investigate her appeal rights regarding that denial. Any disputes Petitioner has with her Humana or Medicare insurance coverage should be addressed with her insurance providers. The undersigned has no jurisdictional authority to determine medical negligence on the part of the Facility. The undersigned finds Petitioner's spouses position that he is not liable to pay his wife's medical bill irrelevant. The undersigned concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her 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. Respondent has met its burden of proof.

32. 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.

33. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration'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, 2415 North Monroe Street, Suite I, Room 129, 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. 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 23 day of January, 2023,
in Tallahassee, Florida.

D. J. ...
[Redacted]
[Redacted]
[Redacted]
[Redacted] Street
Tallahassee, FL 32303-4190
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myffamilies.com

Copies Furnished To: [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]