

Feb 21, 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-00096

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on January 12, 2023 at 2:05 p.m.

APPEARANCES

For Petitioner: [REDACTED], Petitioner’s father

For Respondent: [REDACTED] Nursing Home Administrator (NHA)

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

The above-referenced matter was previously assigned to Hearing Officer Latasha Danforth. Pursuant to notice, Hearing Officer Danforth scheduled an administrative hearing by phone in the above-styled matter to convene on January 12,

2023 at 2:00 p.m. On January 12, 2023, this appeal was transferred and reassigned to the undersigned for emergency coverage.

Petitioner appeared and verbally authorized his father and power of attorney (“POA”), [REDACTED], to speak on his behalf.

On October 19, 2022, the Facility issued a *Nursing Home Transfer and Discharge Notice* (“Notice”) informing Petitioner of its intent to discharge him from the Facility effective November 17, 2022 due to his “bill for services at the facility has not been paid after reasonable and appropriate notice to pay.” On the record, Respondent was allowed to verbally correct the effective discharge date to November 18, 2022. Additionally, Respondent declined to pursue discharge against Petitioner based on Petitioner’s needs cannot be met in this facility.

Petitioner did not submit any exhibits. Respondent submitted evidence, which was marked and entered into the record as Respondent’s Exhibits one (“1”) through five (“5”).

The record was left open through January 30, 2023 for Respondent to submit itemized bills for Petitioner to review and submit a written rebuttal. Respondent timely submitted the evidence, it was marked and entered into the record as Respondent’s Exhibit six (“6”). On January 22, 2023, the POA submitted a rebuttal statement which was accepted and marked as Petitioner’s Exhibit one (“1”). The record was closed on January 30, 2023.

Petitioner’s Position

Petitioner took the position that he disagrees with the outstanding balance owed to the Facility because the bill is confusing. Petitioner will not pay the Facility any money

because the Facility has not been providing him with the necessary physical and occupational therapies he needs to successfully transition to independent living. He should not have to pay the Facility for the substandard care Petitioner receives.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance of \$7192.59 as of this hearing date. Respondent has issued reasonable and appropriate notices to Petitioner to pay for the services he received at the Facility, but Petitioner has failed to pay. Respondent believes the POA is responsible for not allowing Petitioner to pay the Facility for its services even after acknowledging he has an obligation to pay.

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. The Facility admitted Petitioner on April 7, 2022 under Medicare Part A. Petitioner exhausted his coverage limit on April 30, 2022 and became a private pay resident effective May 1, 2022. (Hr'g R.)
2. Petitioner applied for Medicaid through the Department of Children and Families ("DCF") to cover his services at the Facility. (*Id.*)
3. On September 14, 2022, DCF issued a Notice of Case Action ("NOCA") to Petitioner at the Facility indicating his Medicaid application was approved and that he was expected to pay the nursing facility or provider \$795.99 effective April 2022 through August 2022 and \$796.00 effective September 2022 on going. (Resp't Ex. 6 at 10.)

¹ 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 December 14, 2022, DCF issued a NOCA to Petitioner at the Facility indicating due to a cost-of-living adjustment, he must pay \$876.00 each month to the nursing facility effective January 1, 2023. (*Id.* at 14-17.)
5. The Patient Responsibility (“PR”) amounts that Petitioner is required to pay are not in dispute. Petitioner acknowledged the PR amounts. (Hr’g R.)
6. On October 19, 2022, the Facility issued a *Nursing Home Transfer and Discharge Notice* (“Notice”) informing Petitioner of its intent to discharge him from the Facility effective November 17, 2022 due to his “bill for services at the facility has not been paid after reasonable and appropriate notice to pay”. On the record, Respondent verbally corrected the effective discharge date to November 18, 2022. Additionally, Respondent will not pursue discharge against Petitioner based on Petitioner’s needs cannot be met in this facility. (Resp’t Ex. 1; Hr’g R.)
7. The Notice informed Petitioner that he had “the right to request review of this notice by the Local Long-Term Care Ombudsman Program. They are available to assist you with any questions about this notice or the appeal process (see below). If you wish to request a review of this notice or request assistance from the Local Long-Term Care Ombudsman, call the Ombudsman Office tollfree at (888) 831-0404.” (*Id.* at 2.)
8. On November 4, 2022, Petitioner timely requested an appeal to challenge Respondent’s action. (Hr’g R.)
9. The POA contacted the Ombudsman Office to address the discharge. No one from the Ombudsman Office attended the hearing. (*Id.*)
10. Below is a summary of the balance owed to the Facility for room and board based on Petitioner’s PR:

May 2, 2022	\$795.96
June 1, 2022	\$795.96
July 1, 2022	\$795.96
August 1, 2022	\$795.99
September 1, 2022	\$795.99
October 1, 2022	\$796.00
November 1, 2022	\$796.00
December 2022	\$590.54 (1-23)+\$154.68 (26-31)+\$744.72
January 2023	\$876.00
Total as of January 31,2023	\$7192.59

(Resp't Ex. 6 at 8.)

11. Respondent issued regular statements to Petitioner requesting payment for its services since he became a private-pay resident but has not received any payments. Respondent notified Petitioner of his balance due via monthly statements that were read over the phone, hand delivered or mailed to his POA. (Resp't Ex. 2; Resp't Ex. 3; Resp't Ex. 4; Resp't Ex. 5; Hr'g R.)

12. Petitioner acknowledged receiving invoices and not making any payments to the Facility. The amount due the Facility for room and board is \$7192.52. (Hr'g R.)

13. No representative from the Agency for Health Care Administration ("AHCA") was present. At the request of the Office of Appeal Hearings ("OAH"), AHCA conducted an on-site inspection of the Facility a provide a written response. On December 20, 2022, AHCA sent a letter to OAH stating:

A Representative from the Agency for Health Care Administration (AHCA) completed an unannounced visit at [REDACTED] on December 8, 2022. While at the facility, our staff thoroughly reviewed your concerns. The representative observed care, interviewed residents and staff, as well as completed medical chart reviews. Although at the time of the inspection, the representative did not find the facility was violating any laws or rules, your complaint information is important in helping us ensure facility compliance. This correspondence will remain as a permanent part of our complaint system, and we will continue to monitor these concerns or issues during future visits.

(Hr'g Off. Ex. 1.)

14. The record was left open for Respondent to submit itemized bills for the POA to review and submit a written rebuttal. On January 22, 2023, the POA submitted a rebuttal statement questioning the billing practice of the Facility and the quality of care the Facility provides to its residents. The statement states in part:

“I went to visit Mike III at the facility. The greeting was that of entering a farm stall. The odor of urine was very prevalent, and the facility was unclean. I entered his room and was in shock as to how unorganized and dirty his room was and how badly he smelled. His clothes appeared to not have been changed in quite some time. The cries of patients seeking attention was almost unbearable.”

(Pet'r Ex. 1 at 2.)

15. Petitioner wants to remain at the Facility. As of the day of this hearing, Petitioner is still in the Facility pending a hearing decision. (Hr'g R.)

CONTROLLING LAW

16. 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.

17. 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]

18. Section 400.0255, F.S. addresses Resident transfer or discharge;

requirements and procedures; hearings and 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...

(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.

...

19. 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.

CONCLUSIONS OF LAW

20. The only issue before the undersigned is whether the discharge is in accordance with federal regulations. Any issues concerning allegations of improper protocol and lack of care provided to Petitioner, the cleanliness of the Facility and the uncaring attitude leveled by the POA against the Facility staff are not within the purview of this administrative proceeding or the jurisdiction of the undersigned. Therefore, these issues will not be addressed in the Final Order.

21. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator and includes the reason and effective date of the discharge, and appeal rights.

22. The findings show Respondent issued the Notice to Petitioner informing him that he was to be discharged from the Facility effective November 17, 2022 for not paying his bill for services he received at the Facility after reasonable and appropriate notice to pay. Because Petitioner still resides at the facility, Respondent was allowed to remedy the notice on the record by adding one additional day to arrive at 30 days as required.

23. In the instant case, Respondent provided monthly billing statements to inform Petitioner of the balance owed. The findings show Petitioner has a balance of \$7192.59 as of the date of the hearing. Petitioner acknowledge owing the facility but disputed the amount. The findings show Respondent submitted additional itemized bills for Petitioner to review and submit a rebuttal. The findings show Petitioner's rebuttal statement did not mention the bill amount or discuss the amount owed to the Facility.

24. Based on the evidence presented, the Facility has established that Petitioner has not been paying for his stay at the Facility. 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 regulations (Title 42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident.

25. After careful review of the evidence and testimony, the undersigned concludes that Respondent has met its burden of proof. Respondent's proposed action to discharge Petitioner for non-payment of a bill for services is proper.

26. 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 and that the requirements of the controlling authorities have been met.

27. 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. 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 21 day of February, 2023,
in Tallahassee, Florida.



Roosevelt Reveil
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
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