

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

FILED

Mar 16, 2023

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 22N-00104

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on February 1, 2023, at 1:33 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: Alex Hajaistron, Esq.

For Respondent: Amy Riley, Administrator

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

The hearing was initially scheduled for January 3, 2023 at which time the undersigned granted Petitioner's request to continue and reschedule. On February 1, 2023, Alex Hajaistron, Esq. appeared for Petitioner. Mr. [REDACTED] appeared to provide testimony, and Ms. [REDACTED], Petitioner's ex-wife appeared as Petitioner's Witness ("Pet'r Wit."). Respondent objects to Petitioner's witness on the basis that Petitioner did not provide to Respondent any evidence, documents, or list of witness prior to the hearing. The undersigned overruled Respondent's objection; in avoidance to reconvene and allow advance notification, parties have the right to bring witnesses to the proceeding. Jessie Humphries, Director of Social Services with the Facility appeared as Respondent's Witness ("Resp't Wit.") and [REDACTED], Therapy Director with the Facility appeared as Respondent's Witness, however, Mr. [REDACTED] was excused during introductions, he was not sworn in and he was not present for discussion of the merits of the case. Petitioner objects to Respondent's witness on the basis that witness was not identified in discovery prior to the proceeding. The undersigned overruled Petitioner's objection on the same grounds as Respondent as the parties have the right to bring witnesses to the proceeding. During Petitioner's opening statement, Petitioner put forth a general objection to any bill that exceeds the Medicaid allowable rate. Petitioner's objection overruled; the undersigned will allow Respondent's bill for service as evidence; the undersigned reiterate her jurisdiction is limited to the discharge notice; dispute of the daily rate Facility charges Petitioner will not be addressed.

Petitioner did not provide evidence. Respondent submitted documents prior to the hearing, which includes the Nursing Home Transfer and Discharge Notice.

Respondent's documents were marked and entered into the record as Respondent's Exhibit one ("1") and Respondent's Exhibit two ("2"). The record was left open through close of business on February 8, 2023 for the submission of additional evidence from Respondent.

On February 7, 2023, Respondent submitted the additional evidence which was marked as Respondent's Exhibit three ("3").

The record closed on February 8, 2023.

Petitioner's Position

Petitioner took the position that neglect on the part of the Facility to timely file an application for Medicaid Program Long Term Care ("MP LTC") on his behalf, with supporting verifications, is the cause of non-payment. Petitioner asserts he was not provided monthly bills or statements and was unaware of the unpaid balance. He claims that November 11, 2022, was the first and only time he was notified his account was in arrears, and that he must pay the balance due or be discharged. Petitioner claims Respondent declined his offer to provide a Letter of Protection¹ ("LOP") from the attorney representing him in a personal injury case related to an auto accident. Petitioner contends if the Facility acted timely on his MP LTC application, the MP LTC benefits would be open and paying his bill. Petitioner further argues that his health has

¹ Letter of Protection is a document issued by an attorney in favor of a doctor, hospital, or other medical provider to protect the medical provider's right to payment for the medical services it performs to treat the plaintiff in a personal injury case.

not improved, and discharge from the Facility would endanger him. Petitioner wishes to stay at the Facility.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance of \$73,948.00 as of the hearing date. Respondent asserts that the Facility timely applied for MP LTC benefits on behalf of Petitioner. Respondent contends they have made numerous attempts to work with Petitioner to assist him with the MP eligibility process. Respondent further asserts it delivered Petitioner's monthly bill for service to his room and discussed the accruing bill in meetings conducted on June 1, 2022, July 15, 2022, August 17, 2022, and November 9, 2022. Respondent believes Petitioner is responsible for paying for services provided by the Facility since May 2, 2022. Respondent has requested Petitioner be discharged due to non-payment for services.

FINDINGS OF FACT²

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. Petitioner entered the Facility on [REDACTED]. He was initially skilled and receiving therapy under private insurance. (Hr'g R.)
2. On April 27, 2022, anticipating Petitioner's transition to private pay, the Facility submitted an application for Medicaid Program benefits on behalf of Petitioner. (Hr'g R.)

² 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.

3. On May 2, 2022, Petitioner's insurance coverage ended and Petitioner became private pay. (Hr'g R.)
4. On June 1, 2022, July 15, 2022, and August 17, 2022 Respondent met with Petitioner to discuss his plan for long-term care. During each meeting Respondent discussed with Petitioner private finances, his private-pay current bill, and how the bill will accrue monthly as private pay. Also discussed with Petitioner was continuing to pursue MP LTC coverage. (Resp't Wit.) Petitioner disputes testimony. He does not recall meetings. Petitioner's testimony is that Respondent tried to "strong arm" him into paying his bill. (Hr'g R.) Ms. [REDACTED] attended the August 17, 2022 meeting during which Respondent informed Petitioner must deplete his bank accounts before Medicaid application can be submitted. (Pet'r Test.)
5. Respondent personally delivered to Petitioner's room copies of the monthly billing statement in October 2022 and November 2022. (Resp't Ex. 3 at 1.)
6. On November 9, 2022, Respondent met with Petitioner to discuss a payment plan; Petitioner refused to make payment. (Hr'g R.)
7. On November 11, 2022, Respondent's Interdisciplinary Team met with Petitioner and issued him a thirty (30) day discharge notice for nonpayment of services. Respondent presented Petitioner with his current statement for services in the amount

of \$56308.06. (Resp't Ex. 1.)

Date	Description	Period	Days/ Units	Rate	Charge	Credit	Balance
09/01/22	Balance Forward				30,828.06		30,828.06
10/31/22	Room & Board	09/01/22-09/30/22	30	280.00	8,400.00		39,228.06
10/01/22	Room & Board	10/01/22-10/31/22	31	280.00	8,680.00		47,908.06
11/01/22	Room & Board	11/01/22-11/30/22	30	280.00	8,400.00		56,308.06
Payment is due by 11/05/22						Total Due:	56,308.06

8. On December 22, 2022, Florida Department of Children and Families issued to Petitioner's a Notice of Case Action to inform Petitioner that his application for MP LTC benefits was denied. (Hr'g R.)

9. To date, Petitioner has not made any payments towards his account. (Hr'g R.)

10. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance to the Facility is \$73,948.00 as of the hearing date, and fees continue to accumulate. (Hr'g R.)

CONTROLLING LAW

11. 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.

12. 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; (emphasis added)

(F) The facility ceases to operate.

...

13. 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.

14. 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

15. 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.

16. 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. As of the date of the hearing,

Petitioner's balance owed to the Facility is in excess of \$73,948.00. The findings also show Petitioner has not reapplied for Medicaid after being denied on December 22, 2022.

17. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what he owes for his period of care. The hearing officer concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for his stay at the Facility, including recommendations to secure Medicaid, to pay for this period of care. 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.

18. 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.

19. 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, 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. 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 16 day of March, 2023,

in Tallahassee, Florida.



Michelle Yeckley
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] Petitioner
[REDACTED] Center, Respondent
Ms. Patricia Caufman
Agency for Health Care Administration

Alex Hajaistron, Esq.