

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]  
[REDACTED]

APPEAL NO. 22N-00105

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on January 25, 2023 at 8:51 a.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner: [REDACTED], pro se

For Respondent: Kevin Bryant, Executive Director

**STATEMENT OF ISSUE**

Petitioner timely appealed 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**

Brandi Williams, Hearing Officer, Office of Appeal Hearings (“OAH”) appeared as an observer without objection

Petitioner did not submit any exhibits. Respondent submitted documents prior to the hearing, which includes the Nursing Home Transfer and Discharge Notice. Post Hearing, the Nursing Home Transfer and Discharge Notice was entered into the record as Respondent’s Exhibit one (“1”). The record was left open through close of business on January 27, 2023 for the submission of additional evidence from Respondent.

On January 26, 2023, Respondent submitted the additional evidence which was marked as Respondent’s Exhibit two (“2”).

The record closed on January 27, 2023.

### **Petitioner’s Position**

Petitioner took the position that she fully intends to pay the Facility all monies owed, to include an immediate payment of \$330.00, and arrearages through a payment plan of \$40.00 monthly, in addition to her regular monthly bill. Petitioner asserts confusion on third party (Humana) paying her monthly patient responsibility (“PR”) is why she did not pay initially. Petitioner took the position that once she was aware Humana was not paying, and she was responsible to pay the monthly PR, she knowingly did not pay because she was saving money for her eventual move from the Facility. Petitioner claims she did not receive the regular monthly bills. She asserts the prior business manager would inform her of outstanding bills in manner that was offensive and abusive, and she claims Mr. Bryant would approach her in the halls of the Facility and ask her for money, in the presence of other residents, causing

embarrassment. Petitioner believes the Facility is the best place for her, and she wishes to stay. Petitioner requests Respondent accept her immediate payment of \$330.00, and ongoing, her regular monthly payments will be made timely and will include additional \$40.00 to credit arrearages, until her account is current.

### **Respondent's Position**

Respondent took the position that despite several communications between the Facility and Petitioner, she has an outstanding balance in which payment has not been received. Respondent asserts Petitioner has previously made the promise of payment plus additional money monthly to pay down arrearage, however, to date, Petitioner has failed to make any payment to the Facility. Respondent has requested Petitioner be discharged due to non-payment for services.

### **FINDINGS OF FACT<sup>1</sup>**

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]. She remains in the care of the Facility at the date of the hearing. (Hr'g R.)
2. On August 5, 2022, Respondent spoke with Petitioner regarding payment for services. Respondent informed Petitioner, beginning August 13, 2022, her monthly PR is \$285.38. (Hr'g R.)
3. On August 15, 2022 and September 13, 2022, Respondent visited Petitioner at her room to discuss past due charges and current balance due. On the same dates,

---

<sup>1</sup> 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.

letters were mailed to Petitioner at [REDACTED]. (Hr'g R; Resp't Ex. 2 at 10-12.)

4. Petitioner receives Social Security benefits in the amount of \$416.00 monthly in 2022, and \$497.00 beginning January 2023. (Hr'g. R.)

5. On November 11, 2022, Respondent met with Petitioner to discuss her financial obligation, and consequences if a payment agreement is not reached. Petitioner did not make payment to the Facility and Parties did not agree to a payment plan. (Hr'g R; Resp't Ex. 2 at 2.)

6. On November 15, 2022, Respondent issued to Petitioner a thirty (30) day discharge notice for nonpayment of services. (Resp't Ex. 1.)

7. On November 28, 2022, Petitioner verbally informed Respondent she wishes to remain in the Facility and requested a payment plan whereas she will begin to timely pay her monthly PR and pay an additional \$40.00 monthly to pay down arrearages balance. (Hr'g R.)

8. On December 15, 2022, Respondent visited Petitioner at her room to discuss past due charges and current balance due. At the time of the visit, Petitioner's total balance due is \$1601.89 of which \$1031.13 is past due. A letter was mailed to Petitioner at [REDACTED]. (Resp't Ex. 2 at 13.)

9. Respondent did not explain the address in [REDACTED] Petitioner does not dispute knowledge of her monthly PR and balance due to the Facility. (Hr'g R.)

9. On January 1, 2023, Petitioner's monthly PR is \$366.38. (Hr'g R.)

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

11. Petitioner remains in the Facility pending the hearing decision. Petitioner's outstanding balance to the Facility is \$2049.27, for services through February 28, 2023, and fees continue to accumulate. (Resp't Ex. 2 at 4 and 13.)

### CONTROLLING LAW

12. 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.

13. 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.

...

14. 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 \$2049.27. Petitioner has not made payment to the Facility.

21. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what she owes for her period of care. The hearing officer concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her stay at the Facility, including at least four (4) meetings held on August 15, 2022, September 13, 2022, November 11, 2022, and December 15, 2022 where Petitioner refused to pay her PR for services. 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.

22. 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.

23. 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 21 day of February, 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], Respondent  
Ms. Patricia Caufman  
Agency for Health Care Administration