

Apr 24, 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. 23N-00010

PETITIONER,
VS.

ADMINISTRATOR

[REDACTED]
[REDACTED]
[REDACTED] 3549

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on March 28, 2023 at 10:31 a.m.

APPEARANCES

For Petitioner: [REDACTED], Petitioner’s sister

For Respondent: [REDACTED], Administrator

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

On February 1, 2022, Petitioner timely requested a hearing.

[REDACTED] (Resp’t Wit. 1), Assistant Administrator; and [REDACTED] (Resp’t Wit. 2), Business Office Manager, appeared as Respondent’s witnesses.

Respondent submitted an evidence packet, which was marked and entered as Respondent's Exhibits one ("1") through nine ("9").

Petitioner's Position

Petitioner took the position that she became payee of her brother's Social Security Income ("SSI") in November 2022, and therefore had a hard time accessing the previous months of SSI payments in his [REDACTED] account. She agrees that a bill is due and wants the Facility to receive the money owed due to them now.

Respondent's Position

Respondent took the position that despite several different communications between the Facility and Petitioner's Power of Attorney ("POA"), there is an outstanding balance and payment in full has not been received. Respondent believes Petitioner's POA is not helpful in getting her brother approved for Medicaid as she has not turned in his account statements from Direct Express. Furthermore, Respondent also asserts Petitioner's POA had the option to have the SSI come to the Facility, however she chose to receive the check and not take care of her brother's financial responsibility to 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. Petitioner entered the Facility on June 15, 2022. He remains in the care of the Facility as of the date of the hearing. (Resp't Wit. 1 Test.)

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.

2. The Facility has been trying to obtain Medicaid for Petitioner since July 26, 2022. The Facility has not been successful due to Petitioner's family not providing the necessary paperwork from [REDACTED] for submission. (Hr'g R.)

3. On January 25, 2023, Petitioner's POA received and signed a Nursing Home Transfer and Discharge Notice ("Notice"), informing Petitioner that he will be discharged from the Facility with an effective date of February 25, 2023. The reason for the discharge is "Your bill for services at the facility has not been paid after reasonable and appropriate notice to pay." The Notice informed Petitioner of his rights to appeal this decision. (Resp't Ex. 1.)

4. Petitioner has a patient liability of \$610.30 due to the Facility each month. Petitioner receives \$990.00 a month in SSI. (Hr'g R.)

5. Petitioner's sister is his POA, she has the option to have Petitioner's SSI to come directly to the Facility to have Petitioner's payment applied automatically but opted to receive and handle his SSI it instead. Petitioner's POA was mailed statements regarding his outstanding balance to her confirmed address. (Hr'g R.)

6. On January 18, 2023, Respondent mailed Petitioner a letter regarding an outstanding balance of \$3,397.01 of patient liability. (Resp't Ex. 5.)

7. As of the last statement dated January 1, 2023, Petitioner currently owed \$4007.31, with \$3397.01 being overdue. (Resp't Ex. 9.)

8. Petitioner submitted a payment of \$2000.00 in February 2023. This left a remaining patient liability balance of \$2595.00. (Hr'g R.)

9. In August 2022, Petitioner's sister went down to the Social Security office. She did not know how difficult it would be to gain access to her brother's [REDACTED]

account. Petitioner did not have an identification card and other important items to submit to Social Security. Petitioner's sister was constantly going between Social Security and [REDACTED] trying to solve this issue. Petitioner had an old account from [REDACTED] that held his SSI payments from May 2022 through September 2022. Petitioner's sister did not have access to that money and records. Petitioner received a new card and account from [REDACTED] and was able to access that SSI. The money is used for transportation, socks, and anything Petitioner asks for. As of the date of the hearing, Petitioner is awaiting a new [REDACTED] card, that will have the SSI payments from May 2022 through September 2022 and was told it would take about ten days. (*Id.*)

10. The Facility argued that although they may have not had access to his SSI, since October 2022, Petitioner has received and had access to the SSI and failed to remit payment for patient liability. (*Id.*)

11. Petitioner remains in the Facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (*Id.*)

CONTROLLING LAW

12. 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.

13. 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—
- (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].

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.

15. 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

16. 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.

17. 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 \$2595.00 of patient liability as of the date of the hearing.

18. The findings show Petitioner's POA was aware of the balance owed to the Facility and the records needed to complete his application for Medicaid. Petitioner's sister has had access to Petitioner's SSI since October 2022 and has failed to pay his patient liability to the Facility.

19. Based on the evidence and testimony, the Facility has established Petitioner has refused to pay what is owed for his period of care. 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. The undersigned concludes Respondent has met its burden of proof.

20. 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.

21. 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

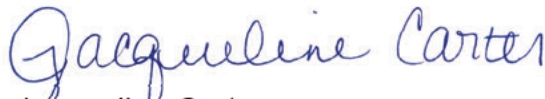
accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance with all applicable Agency for Health Care Administration requirements.

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 24 day of April , 2023,

in Tallahassee, Florida.



Jacqueline Carter
Hearing Officer
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Copies Furnished To: [REDACTED], Petitioner
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Agency for Health Care Administration
[REDACTED]