

May 26, 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-00033

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 April 19, 2023 at 2:32 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED], pro se

For Respondent: [REDACTED], Administrator, [REDACTED]

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

Petitioner appeared and represented herself, [REDACTED] (“[REDACTED]”), Administrator, the Facility, appeared and represented Respondent. Present as a witness for

Respondent was [REDACTED] (“[REDACTED]”) (“Resp’t Wit.”), Director of Social Services for the Facility. Present as a witness for Petitioner was [REDACTED] (“[REDACTED]”) (“Pet’r Wit. 1”), District Ombudsman and [REDACTED] (“[REDACTED]”) (“Pet’r Wit. 2”), Volunteer Ombudsman.

Petitioner did not submit any exhibits. Respondent presented eleven (11) pages of evidence. Respondent’s evidence was admitted into evidence and marked as Respondent’s Exhibit one (“1”) through two (“2”).

The record closed on April 19, 2023.

Petitioner’s Position

Petitioner took the position that the Facility is improperly discharging her before her wounds are healed. Petitioner argued she is not satisfied with the care and service received from the Facility. Petitioner argued that the Facility fees are not equivalent to the services provided so she should not be charged. Petitioner argued that her Medicaid benefits should cover the cost of her stay at the Facility.

Respondent’s Position

Respondent took the position that Petitioner has not been paying the total amount of her bill since March 4, 2023. Respondent argued that Petitioner has not fully paid for the services received at the Facility after reasonable and appropriate notice, and Respondent has requested that Petitioner be discharged. Respondent argued that Petitioner’s Medicare coverage ended March 3, 2023 and her Medicaid benefits does not cover treatment in a skilled nursing facility (“SNF”) as she does not have Nursing Home Medicaid Coverage (“NHMC”).

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 was admitted to the Facility on [REDACTED]. (Hr'g R.)
2. On March 1, 2023, Petitioner received and signed the Notice of Non-Coverage from Wellcare Health Plan ("Wellcare") informing her that her Medicare coverage would end effective March 3, 2023 and her personal liability would begin on March 4, 2023. Petitioner appealed the decision by Wellcare. (Resp't Ex. 2 at 2 – 3; Hr'g R.)
3. On March 2, 2023, Petitioner received notice that her appeal of the termination of her Medicare benefits was denied by Kepro, the Beneficiary and Family Centered Care Quality Improvement Organization ("BFCC-QIO"), that oversees Wellcare Medicare benefit administration. Kepro determined that Petitioner's current condition no longer required treatment in a SNF. [REDACTED] provided Petitioner a copy of the notice. Petitioner filed a second appeal of Kepro's decision. (*Id.* at 4 - 6; Hr'g R.)
4. On March 1, 2023 and March 2, 2023, [REDACTED] informed Petitioner that she would begin being charged \$280.00 daily for her room on March 4, 2023 due to not having Medicare and/or NHMC. Petitioner provided no documentation that she had alternate Medicare coverage for SNF and/or NHMC. (Hr'g R.)
5. Petitioner had Medicare coverage from February 9, 2023 to March 3, 2023. (*Id.* at 2 – 3; Hr'g R.)
6. On March 4, 2023, Petitioner began being charged \$280.00 daily for her room. Petitioner is responsible to pay her full bill/balance by the 10th of each month. (Hr'g R.)

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.

7. On March 7, 2023, Petitioner received notice that her second appeal of the termination of her Medicare benefits was denied by Kepro for the same reasons as documented in the March 2, 2023 notice. ■ provided Petitioner a copy of the notice.

(*Id.* at 7 - 9; Hr'g R.)

8. On March 8, 2023, Petitioner was issued a Nursing Home Transfer and Discharge Notice ("NHTDN") informing her that she was being discharged due to "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." Petitioner refused to sign the NHTDN. (Resp't Ex. 1; Hr'g R.)

9. On March 7, 2023, and March 8, 2023, ■ informed Petitioner of her accumulating outstanding room charges. (Hr'g R.)

10. On March 24, 2023, Respondent issued Petitioner a bill for services for March 4, 2023 through April 30, 2023. Petitioner's bill for services totaled \$16,240.00 and was due on April 10, 2023. ■ provided Petitioner a copy of the bill. (Resp't Ex. 2 at 10; Hr'g R.)

11. As of April 19, 2023, Petitioner's outstanding balance to the Facility is \$13,160.00. Petitioner remains in the facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Hr'g R.)

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.

CONCLUSIONS OF LAW

15. Based on the evidence presented, the nursing facility has established that Petitioner is being discharged due to non-payment. This is one of the six (6) reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

16. According to the above authority, a 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 April 19, 2023, Petitioner's balance owed to the facility was \$13,160.00. As of the date of the hearing, Petitioner is responsible for paying her full patient responsibility by the 10th of each month.

17. Based on the evidence and testimony, Petitioner is aware that her Medicare coverage ended on March 3, 2023 and of the outstanding balance/bills at the Facility, and has not made any payments. 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 regulation 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 (“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

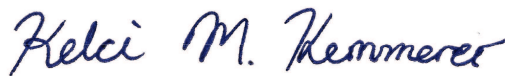
discharge action, as described in the Conclusions of Law and in accordance with all applicable AHCA requirements.

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 26 day of May, 2023,

in Tallahassee, Florida.



Kelci Kemmerer
Hearing Officer
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Copies Furnished To: , Petitioner
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Agency for Health Care Administration
