

Jun 02, 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-00044

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a convened a telephonic nursing home discharge hearing in the above-referenced matter on April 25, 2023 at 3:33 p.m.

**APPEARANCES**

For Petitioner: [REDACTED], *pro se*

For Respondent: [REDACTED], Facility Administrator

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging Petitioner from [REDACTED]  
[REDACTED] (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.



2. On March 1, 2023, Respondent provided Petitioner a letter regarding his past due bill. At the time of the letter, Petitioner owed facility \$2578.00. Attached to the letter was a statement dated March 1, 2023. The statement showed the past due balance of \$2578.00 and current charges for the month of March 2023 of \$1289.00. (Resp't Ex. 1.)

3. On March 9, 2023, the Facility provided Petitioner a Nursing Home Transfer and Discharge Notice ("Notice"). The reason(s) selected for discharge were "[y]our bill for services at this facility has not been paid after reasonable and appropriate notice to pay" and "[y]our health has improved sufficiently so that you no longer need the services provided by this facility. The Notice was signed by the previous facility administrator. The Notice was not signed by the physician or designee. (Admin. Ex. 1.)

4. Petitioner does have Institutional Care Program Medicaid with a patient responsibility. Facility identified Petitioner's patient responsibility amount as \$1289.00 monthly. (Hr'g R.)

5. Respondent confirmed as of the hearing date, Petitioner's outstanding balance owed to the facility was \$5156.00. (*Id.*)

#### **CONTROLLING LAW**

6. 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.

7. 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; or

(F) The facility ceases to operate.

8. Section 400.0255, Resident transfer or discharge; requirements and procedures; hearings, states in relevant 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:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility, and the circumstances are documented in the resident's medical records by the resident's physician; or

(b) The health or safety of other residents or facility employees would be endangered, and the circumstances are documented in the resident's medical records by the resident's physician or the medical director if the resident's physician is not available.

(Emphasis added.)

### **CONCLUSIONS OF LAW**

9. The above controlling authorities outline the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident. The findings show Respondent indicated two reasons for Petitioner's discharge from this facility. The findings show Petitioner has failed, after reasonable and appropriate notice, to pay his bill, or patient responsibility for his stay at the facility. The undersigned concludes this is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident. The undersigned further concludes Respondent has met their burden of proof to show Petitioner can be discharged for non-payment of his bill.

10. The findings additionally show Respondent indicated Petitioner's health has improved sufficiently so that he no longer needs the services provided by this facility. The findings show Petitioner's physician or the medical director the facility did not sign the Nursing Home Transfer and Discharge Notice. The undersigned concludes the Notice was insufficient to review this reason for discharge.

11. 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.

12. 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. 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 02 day of June, 2023,

in Tallahassee, Florida.



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Hearing Officer  
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Copies Furnished To: [REDACTED], Petitioner

[REDACTED]

[REDACTED], Respondent

[REDACTED], Agency for Health Care Administration