

Jul 19, 2023

Office of Appeal Hearings  
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 23N-00054

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on May 24, 2023 at 4:00 p.m.

**APPEARANCES**

For Petitioner: [REDACTED], Petitioner's son

For Respondent: [REDACTED] Office Manager

**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.

**SUMMARY OF PROCEEDINGS**

[REDACTED], Petitioner's son appeared and represented Petitioner. [REDACTED] ("CF"), Business Office Manager, appeared and represented Respondent. Present as a witness for Respondent was [REDACTED] ("MR") Nursing Home

Administrator, (“Resp’t Wit.”). Present as a witness for Petitioner was [REDACTED],  
Petitioner’s daughter (“Pet’r Wit. 1”).

Petitioner did not submit any exhibits.

Respondent presented thirty-two (32) pages of evidence. Respondent’s evidence was admitted into evidence and marked as Respondent’s Exhibit one (“1”) through five (“5”).

### **Petitioner’s Position**

Petitioner took the position that she is not disputing the charges or the need for the charges to be paid, but rather, the issue under appeal has to do with the insufficient support from the Facility. Petitioner requires further assistance, and an action plan should be in place to be included in the discharge plan and location. Petitioner argued the Facility wants to discharge her to a non-medical facility that would not be feasible due to immobility, the need for assistance with daily living activities and medication management is needed.

### **Respondent’s Position**

Respondent took the position that Petitioner has failed to pay the total amount of her bill since September 2022. 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 August 26, 2022, and she became private pay on August 27, 2022. Respondent argued, Petitioner has not completed a Medicaid application.

### **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 was admitted to the Facility on June 10, 2022, under Medicare part A (Skilled Services) for one hundred (100) days of coverage. (Hr'g R.)
2. On August 26, 2022, Petitioner's Medicare part A coverage ended, and Petitioner became a private pay resident at a rate of \$315.00 daily. (Resp't Ex. 2; Hr'g R.)
3. A monthly statement was mailed to Petitioner's daughter for the month of September 1, 2022. Multiple attempts were made to receive payment; however, after failure to receive payment, a collections letter was sent on September 21, 2022. (Resp't Ex. 2 at 1.)
4. A monthly statement was mailed to Petitioner's daughter for the month of October 1, 2022. Petitioner's daughter advised that her brother would be handling payments for services. (*Id.*; Hr'g R.)
5. Monthly statements for November 1, 2022, December 1, 2022, and January 1, 2023 were provided to Petitioner's son and daughter. Multiple attempts were made to receive payment via telephone and collection letters. Petitioner was advised that discharge proceeding would begin if no payment was received. Monthly communications regarding the payment for services occurred between the Facility and Petitioner's daughter and son. (*Id.*)

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<sup>1</sup> 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.

6. On February 1, 2023 a \$2,000.00 payment was received on the outstanding balance of \$54,405.00. (Resp't Ex. 3 at 2.)
7. Two payments were made in March 2023. A \$10,500.00 payment was received on March 1, 2023 and \$4,000.00 payment was received on March 8, 2023. (*Id.* at 1.)
8. In March 2023, the Facility attempt to set up a meeting to discuss the discharge for Petitioner. Respondent was informed that neither Petitioner's son, nor daughter would appear at the meeting due to work schedule. (Resp't Ex. 2 at 2; Hr'g R.)
9. On April 13, 2023, Petitioner was issued a Nursing Home Transfer and Discharge Notice ("NHTDN") via email and certified mail 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." (Resp't Ex. 1; Hr'g R.)
10. As of May 16, 2023, Petitioner's outstanding balance to the Facility is \$68,885.00. Petitioner remains in the facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Resp't Ex. 5; 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 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.

### **CONCLUSIONS OF LAW**

14. Based on the evidence presented, the nursing facility has established that your bill for services at this facility has not been paid after reasonable and appropriate notice to pay. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

15. 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. The finding shows on April 13, 2023, the Facility issued a NHTDN to Petitioner's son and daughter. Respondent's reason for discharging Petitioner is that bill for services rendered has not been paid after reasonable and appropriate notice to pay. This fact was not disputed. As of May 1, 2023, Petitioner's balance owed to the facility was \$68,885.00.

16. 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.

17. 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.

18. Based on the evidence and testimony, Petitioner is aware that her Medicare coverage ended on August 26, 2022 and of the outstanding balance/bills at the Facility, and has failed to make the required monthly payments to continue residing at the Facility. 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 Title 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

### **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. 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 19 day of July, 2023,

in Tallahassee, Florida.



Hearing Officer  
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