

Jul 28, 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-00058

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 June 12, 2023 at 9:15 a.m.

APPEARANCES

For Petitioner: [REDACTED], appeared pro se.

For Respondent: [REDACTED], Business 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 daughter appeared and represented Petitioner at his request. [REDACTED], Business Office Manager, represented Respondent. Present as a witness for Respondent was [REDACTED], Nursing Home Administrator.

Petitioner did not submit any exhibits.

Florida Administrative Code Rule 65.2.057(12) states “the hearing officer shall request, receive and make part of the record information determined necessary to decide the issues being raised.” Respondent provided seven (7) pages of evidence that were discussed; however, they were not marked and entered into the record. The undersigned concludes the seven (7) pages are necessary to decide on the issue at matter. Therefore, after the hearing, the evidence was marked as Respondent’s Composite Exhibit one (“1”).

The record was held open for seven (7) business days to allow Respondent to provide additional documentation and for Petitioner to receive. Respondent timely provided the additional evidence which was marked and entered as Respondent’s Composite Exhibit two (“2”).

The record closed on June 20, 2023.

Petitioner’s Position

Petitioner took the position that when he initially admitted to the Facility, he was prepared to pay any cost associated with his stay; however, he was advised by multiple people at the Facility that no payment was required at the time. Petitioner argues he was explained that his insurance was covering his stay in the Facility. Petitioner contends that it wasn’t until three months later that he was informed that he owed a bill for the previous three months. Petitioner argues he has personal needs to provide for including buying food, clothing, and other personal hygiene items. Petitioner doesn’t understand why Respondent waited so long to request payment instead of asking for

payment upon intake. Petitioner contends there is no way to pay the requested back pay and maintain current payments for ongoing services.

Respondent's Position

Respondent took the position that Petitioner has failed to pay the total amount of his bill since admittance into the Facility in November 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 Care Plus coverage ended October 5, 2022, during his first stay in the Facility. Petitioner was readmitted into the Facility on November 16, 2022, as a private pay under the Long-Term Care ("LTC"). Respondent argued, Petitioner was approved for Medicaid under the Institutional Care Program ("ICP") and has a monthly patient responsibility of \$1164.00 which he has failed to timely pay.

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 initially admitted to the Facility on September 23, 2022, under Care Plus through Medicare. (Hr'g R.)
2. Petitioner's Medicare benefits covered the skilled nursing Facility services. On September 30, 2022, the Facility was notified by Care Plus under Medicare, Petitioner's coverage benefits would exhaust on October 5, 2022. (Resp't Ex. 2 at 4.)

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.

3. Respondent issued billing statement to Petitioner and Petitioner's daughter. Petitioner was provided the option to remain in the Facility under LTC or to discharge home. (Hr'g.R.)
4. Petitioner's daughter met with the Facility's LTC Medicaid Specialist, [REDACTED] and requested to be discharged home due to his coverage benefit being exhausted. (Resp't Ex. 2 at 21)
5. On January 31, 2023, the Facility issued an email to Petitioner's daughter stating the following:

"My apologies, I misspoke. Your father hasn't been approved for Medicaid as of yet. However, for your knowledge have attached an information form that we use to calculate his monthly payment to the facility based off of the information that has been provided to us. As per our conversation last week this payment is due to the facility monthly by the 5th. Failure to do so will result in termination of benefits and/or a call to DCF regarding misappropriation of funds/senior exploitation. I have also attached directions to the payment portal..." (*Id.* at 20)
6. On February 3, 2023, Petitioner's daughter sent an email to the Facility requesting information concerning billing. The Facility responded and provided the most recent account information and instruction on how to submit payment through the billing portal. (*Id.* at 18)
7. On February 16, 2023, a Notice of Case Action was issued to Petitioner advising:

"Your application for Medicaid benefits dated January 31, 2023, is approved for November 2022 and December 2022 with a patient responsibility of \$1060.00. Beginning January 2023 and ongoing, Petitioner's patient responsibility increased to \$1164.00. (Resp't Ex. 1 at 3)

8. The Facility met with Petitioner and informed him of the patient responsibility and current outstanding balance. (Hr'g R.)

9. On March 3, 2023, Petitioner's daughter sent an email to the Facility requesting information regarding the payment due date. The Facility responded and indicated that account payments were due on the 5th of each month. (Resp't Ex. 2 at 11.)

10. On March 6, 2023, a \$300.00 payment was received and applied to the outstanding balance of \$4448.00. (*Id.* at 10.)

11. Petitioner made a \$300.00 payment. (Hr'g R.)

12. On March 10, 2023, Petitioner met with the Facility and the LTC Medicaid Case Manager to discuss payment of the remaining balance on the account. (Resp't Ex. 2 at 2; Hr'g R.)

13. On April 19, 2023, Petitioner was issued a Nursing Home Transfer and Discharge Notice ("NHTDN") informing him that he 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.)

14. As of June 1, 2023, Petitioner's outstanding balance to the Facility is \$8,195.46. Petitioner remains in the facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Resp't Ex. 2 at 30; Hr'g R.)

CONTROLLING LAW

15. 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.

16. 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.

17. 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

18. 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.

19. 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 19, 2023, the Facility issued a NHTDN to Petitioner. 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. The findings shows that Petitioner's Medicare service ended on October 5, 2022. Respondent sent billing statements on the balanced owed to the Facility to Petitioner and Petitioner's daughter. The findings show, Petitioner was approved to ICP beginning November 2022 with a patient responsibility. The findings also show, Respondent reached out and discussed multiple times Petitioner's overdue balance in which Petitioner made a payment of \$300.00. As of June 1, 2023, Petitioner's balance owed to the facility was \$8195.46. Based on testimony and evidence, Respondent has established Petitioner has refused to pay what he owes to the Facility.

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.

22. Based on the evidence and testimony, Petitioner is aware that his Care Plus coverage ended on October 5, 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

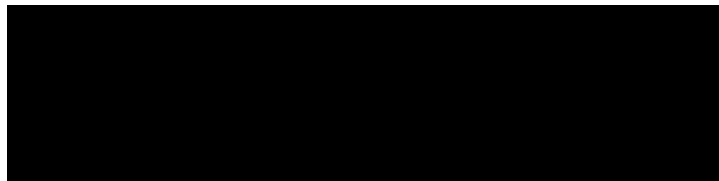
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance 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 28 day of July, 2023,

in Tallahassee, Florida.



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
[REDACTED] Administration