

Aug 07, 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-00068

PETITIONER,

VS.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing on July 11, 2023 at 1:14 p.m.

APPEARANCES

For Petitioner: [REDACTED] *pro se*

For Respondent: [REDACTED], Business Office Manager ("BOM")

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], girlfriend, appeared as a witness for Petitioner.

[REDACTED], Director of Social Services, appeared as a witness for

Respondent.

Petitioner and Respondent submitted one (1) evidence packet. Petitioner stated that he did not receive Respondent's evidence packet and wished to review prior to being entered into the record.

The record was held open until July 21, 2023 to allow Respondent to submit additional evidence and to allow time for Petitioner to review Respondent's evidence packets.

Petitioner's evidence was marked and entered as Petitioner's Exhibit one ("1"). Respondent's evidence was marked and entered as Respondent's Exhibits one ("1") and two ("2"). The deadline was extended to July 31, 2023 due to technical issues. No objections to Respondent's evidence packets were received from Petitioner.

The record was closed on July 31, 2023.

Petitioner's Position

Petitioner took the position that he was not aware of the amount owed to the Facility.

Respondent's Position

Respondent took the position that Petitioner was aware that he owes the Facility but has not made any efforts to pay. Respondent is seeking to discharge him from 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 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.

1. Petitioner was discharged to the Facility from [REDACTED] Petitioner became a private pay resident after the contract from [REDACTED] was terminated on November 30, 2022. (Hr'g R.)

2. Respondent stated that [REDACTED] applied for Medicaid on Petitioner's behalf and that he was approved for Home and Community Based Services and the Medically Needy programs. Respondent stated that Petitioner had not provided the bank statements necessary for the Department of Children and Families to approve him for Institutional Care Program ("ICP") to help pay for his stay at the Facility. Respondent stated that Petitioner does not have a pending application for Medicaid. (Hr'g R.)

3. On April 11, 2023, Respondent's BOM stated that she advised Petitioner of his bill and was told that he did not have any funds. Respondent's Activity Report includes an entry that states that the director would issue a Notice. (Resp't Ex. 2 at 3; Hr'g R.)

4. Respondent could not attest as to when the Facility hand-delivered billing statements to Petitioner by the previous administration. Respondent stated that billing statements are hand-delivered by the activity director to residents on the 15th of each month. Respondent provided statements dated May 1, 2023, which included balances forwarded from December 2022 through May 2023 in the total amount of \$81,172.00; June 1, 2023, for a total amount due of \$94,552.20; July 1, 2023, for a total amount due of \$108,378.00; and August 1, 2023, for a total amount due of \$122,204.00. Respondent's evidence did not include any statements prior to May 1, 2023. (Id. at 7-13; Hr'g R.)

5. On April 18, 2023, a Nursing Home Transfer and Discharge Notice (“the Notice”) was issued with an effective date of May 19, 2023. The location to which Petitioner was to be discharged includes the name of [REDACTED] and phone number [REDACTED] but does not include an address. Respondent is seeking to discharge Petitioner due to: “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” The Notice was signed by the Facility’s administrator. Petitioner refused to sign the Notice. (Resp’t Ex. 1; Hr’g R.)

6. Petitioner stated that he did not sign or get a copy of the Notice. Petitioner stated that he would like to leave the Facility but does not have anywhere to go. Petitioner recalled receiving a billing statement two and one-half months prior to the hearing and stated that it was not itemized to show him in detail what were the charges owed to the facility. (Hr’g R.)

CONTROLLING LAW

7. 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.

8. 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—
 - (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...

(2) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(5) Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged...(emphasis added.)

9. Florida Statutes Section 400.0255, 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...

(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...

(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. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. 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. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

(15)(a) The department's Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for another Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. **The burden of proof must be clear and convincing evidence.** A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) **If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility's first available bed.**

(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure. **(Emphasis added.)**

CONCLUSIONS OF LAW

10. Respondent's reasons for issuing Petitioner the Notice is: "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.

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. The above controlling authorities explain that the Facility must ensure that the transfer discharge is documented in the resident's medical record. The above controlling authorities explain that the Facility must include on the Notice the location to which the resident is to be discharged. The findings show that Respondent provided a billing statement dated May 1, 2023, which is after the date shown on the Notice. The findings show that Petitioner stated he did not recall receiving a billing statement until two and one-half months prior to the hearing. The findings also show that Respondent did not include on the discharge notice the address for the location where Petitioner is to reside after his discharge from the Facility. Based on the evidence provided by the Facility, the undersigned cannot conclude that Respondent provided Petitioner with reasonable and appropriate notice to pay. The undersigned also concludes that Respondent did not follow the proper procedures outlined in federal regulations and provided an inadequate notice to Petitioner due to its failure to list the discharge location. Therefore, the undersigned concludes that Respondent did not meet its burden of proof by clear and convincing evidence that Petitioner did not pay for his services at the Facility after reasonable and appropriate notice to pay. Therefore, the undersigned concludes that Respondent may NOT discharge Petitioner from Facility.

DECISION

Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Facility is ORDERED to immediately readmit Petitioner to the Facility. If a bed is not currently open to readmit Petitioner, the Facility must readmit Petitioner as soon as a bed becomes available.

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. Respondent has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 07 day of August, 2023,

in Tallahassee, Florida.

[Redacted Signature]

Hearing Officer
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Copies Furnished To: [Redacted], Petitioner
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