

Aug 18 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-00080

PETITIONER,  
VS.

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on August 10, 2023 at 8:36 a.m.

**APPEARANCES**

For Petitioner: [REDACTED], husband

For Respondent: [REDACTED], 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.

**SUMMARY OF PROCEEDINGS**

Appearing as witnesses for Respondent were [REDACTED], Business of Manager ("BOM"), and [REDACTED], Director of Nursing.

Respondent submitted two (2) evidence packets which were marked and entered as Respondent's Composite Exhibit. The record was closed at the conclusion of the hearing.

### **Petitioner's Position**

Petitioner took the position that he was seeking to establish a payment arrangement with the Facility to resolve the issue.

### **Respondent's Position**

Respondent took the position that the Facility has made numerous attempts to receive payment from Petitioner's spouse, who has not made any payments, nor did he adhere to the payment arrangement that was set up. Respondent is seeking to discharge Petitioner from the facility.

### **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. On September 7, 2022, Petitioner was admitted into the Facility. The Facility began working on Petitioner's application for Institutional Care Program ("ICP"). (Hr'g R.)

2. On February 5, 2023, Respondent stated a phone call was made to Petitioner's spouse, but he did not return the call. (Hr'g R.)

3. On February 20, 2023, Petitioner's application for ICP was approved. Based on Petitioner's Medicaid eligibility for ICP, her monthly patient responsibility towards her

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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.

care to Respondent was \$1453.00 until June 2023. In July 2023, Petitioner's patient responsibility was decreased to \$1423.00. (Resp't Comp. Ex. at 34; Hr'g R.)

4. Respondent stated that from February 2023 through July 2023, the Facility sent billing statements to Petitioner's spouse, but no payments have been made. Respondent stated that Petitioner's spouse and the Facility agreed that he would make additional payments of \$125.00 each month to cover the past due amount owed to the facility, along with the current monthly patient responsibility but did not pay the Facility anything. (*Id.* at 14-22; Hr'g R.)

5. On May 26, 2023, a Nursing Home Transfer and Discharge Notice ("Notice") was issued with an effective date of June 26, 2023. Respondent is seeking to discharge Petitioner due to non-payment for services to the facility after giving her reasonable notice to pay. (*Id.* at 3; Hr'g R.)

6. Petitioner's spouse does not dispute any of Respondent's testimony but stated that he did not receive the Notice until he received the Facility's evidence packet for the hearing. Petitioner's spouse stated that he did not pay the Facility according to the agreed upon payment arrangement because he wanted Respondent to agree to rescind the Notice before making a payment. (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...

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.

### **CONCLUSIONS OF LAW**

10. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date. The Notice also indicated the reason, effective date of the discharge, and appeal rights.

11. Based on the evidence presented, the nursing facility has established that the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

12. 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.

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

DONE and ORDERED this \_\_\_18\_\_\_ day of \_\_\_August\_\_\_\_\_, 2023,

in Tallahassee, Florida.

[Redacted Signature]

Hearing Officer  
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Copies Furnished To:

[Redacted Name], Petitioner

[Redacted Name] DeCanio  
Agency for Health Care Administration

[Redacted]