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

FILED
Dec 01, 2023
Office of Appeal Hearings
Dept. of Children and Families

[redacted]

APPEAL NO. 23N-00091

PETITIONER,

Vs.

ADMINISTRATOR
[redacted]

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on October 30, 2023 at 1:14 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner: [redacted] KM"), the petitioner's daughter

For the respondent: Stephanie Markoski, Administrator
[redacted]

STATEMENT OF ISSUE

The petitioner timely appealed the respondent's action to discharge her from [redacted]"). The respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

The hearing was originally scheduled for September 18, 2023 at 11:00 a.m. On September 18, 2023, KM requested a continuance to have more time to gather evidence. The hearing was rescheduled for October 16, 2023 at 1:00 pm. On the record the KM requested a continuance to have a new doctor evaluate the petitioner. The respondent objected to the continuance due to the issue was nonpayment of nursing home bills. The request for a continuance was denied. A continuance was granted after an hour into the hearing to give the KM an opportunity to review the documents provided by the respondent. The hearing was rescheduled for October 30, 2023 at 1:00 p.m. On the record the petitioner requested a continuance to have a new doctor evaluate the petitioner and to get an attorney to assist her. The respondent objected. The request for continuance was denied.

[redacted], Associate Executive Director with [redacted], appeared at both October 16, 2023 and the October 30, 2023 hearing as a witness for the respondent.[redacted] Esq., attorney for[redacted], appeared as witness for the respondent for the October 30, 2023 hearing.

The petitioner did not submit any documents. The respondent submitted documents which were marked and entered into evidence as Respondent's Exhibit one ("1") through sixteen ("16").

The Petitioner's Position

KM took the position that the facility is trying to discharge the petitioner by any means necessary. KM took the position that the petitioner has excellent insurance and should not be private pay. KM took the position that the petitioner was made private

pay due to the Facility's doctor not diagnosing her correctly. KM took the position that the petitioner should be diagnosed by an outside doctor. KM took the position that the nursing home bill are too high and would like itemized bills for all services provided.

The Respondent's Position

The respondent took the position that the petitioner has an outstanding balance of $84,547.34 as of the hearing date. The respondent took the position that it issued reasonable and appropriate notices to the petitioner to pay for the services she has received at the Facility, but the petitioner has failed to pay. The respondent has requested that the petitioner be discharged due to non-payment for services.

FINDINGS OF FACT[1]

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. The Facility admitted the petitioner on [redacted] under medical insurance, [redacted] for short term rehabilitation of about three ("3") weeks. (Resp't Test.)

2. On April 1, 2023, the payer was changed from WellCare to Medicare. (Resp't Ex. 14.)

3. On April 7, 2023, a Notice of Medicare Non-Coverage ("NOMIC") was issued from the facility to the petitioner. It informed the petitioner that her Medicare provider and/or her health plan have determined that Medicare will not pay for her current skilled

[1] Citations within the Findings of Fact, Controlling Law, and Conclusions of Law in this order follow Florida Rules of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

services after April 7, 2023. The petitioner refused to sign the NOMIC. (Resp't Ex. 2 and Resp't Ex. 14.)

4. On April 7, 2023, the petitioner switched from Medicare coverage to private coverage. (Resp't Ex. 14.)

5. On April 10, 2023, a Skilled Nursing Facility Advance Beneficiary Notice of Non-Coverage ("ABN") was issued from the facility to the petitioner. The ABN explained that starting on April 7, 2023 that the petitioner would pay a maximum of $410.00 daily for room and board at the facility. The petitioner chose option two ("2") on the form, which states "I want the care listed above, but don't bill Medicare. I understand that I may be billed now because I am responsible for payment of the care." The petitioner refused to sign it. (Resp't Ex. 6 and Resp't Ex. 14.)

6. On [redacted], the Facility issued a Nursing Home Transfer and Discharge ("Notice") informing the petitioner of its intent to discharge her from the facility effective June 7, 2023 due to her "bill of services at the facility has not been paid after reasonable and appropriate notice of pay." (Resp't Ex. 5.)

7. Below is a summary of the balance owed to the Facility for room and board: (Resp't Ex. 7; Resp't Ex. 8; Resp't Ex. 9; Resp't 10; Resp't 11; Resp't Ex. 12)

Statement Date	**Charges**	**Balance**
4/21/2023	$4,100.00	$4,100.00
5/24/2023	$23,780.00	$27,880.00
6/23/2023	$12,712.52	$40,502.52
7/21/2023	$12,710.00	$53,302.52
8/23/2023	$9,047.85	$62,350.37

8. The respondent issued regular statements to the petitioner requesting payments for its services since she is a private-pay resident but has not received

payments. The respondent notified the petitioner of her balance due via monthly statements. (Resp't Ex. 7; Resp't Ex. 8; Resp't Ex. 9; Resp't 10; Resp't 11; Resp't Ex. 12.)

9. The respondent emailed the requests for payments for its services to KM and were hand delivered to the petitioner. (Resp't Test.)

10. KM acknowledged receiving invoices and not making payments. (Pet'r Test.)

11. The petitioner remains in the Facility pending the hearing decision. The petitioner's outstanding balance to the Facility is $84,547.34, for services through October 30, 2023, and fees continue to accumulate. (Resp't Test.)

CONTROLLING LAW

12. Section 400.0255(15), Florida Statutes (F.S.), 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.

13. Title 42 Code of Federal Regulations ("C.F.R.") 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.
…
[Emphasis added]

14. 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.

15. The Department of Health and Human Services, Centers for Medicaid and Medicare Services, State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities states in part:

> A resident cannot be transferred for non-payment if he or she has submitted to a third-party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third-party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

CONCLUSIONS OF LAW

16. Based on the evidence presented, the Facility has established that the petitioner is being discharged due to non-payment. This is one of the six reasons provided in federal regulations for which a nursing Facility may involuntarily discharge a resident.

17. According to the above authority, the 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. As of the date of the hearing, the petitioner's balance owed to the Facility $84,547.34. The petitioner has not made payment to the Facility.

18. Based on the evidence and testimony, the Facility has established the petitioner has refused to pay what she owes for her period of care. The hearing officer concludes that the Facility has given the petitioner reasonable and appropriate notice to pay for her stay at the Facility. This is one of the six (6) reasons provided in federal regulations (Title 42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident. The respondent has met its burden of proof.

19. 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.

20. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration'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 the 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. The 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 __01__ day of __December_____, 2023,

in Tallahassee, Florida.

Paul Daniocek
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
Mr. Robert Dickson
Agency for Health Care Administration
Katina Mickens