

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

FILED

Dec 21, 2023

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 23N-00094

PETITIONER,
VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned scheduled a telephonic nursing home discharge hearing in the above-referenced matter to convene on August 31, 2023, at 3:00 p.m. and convened on October 9, 2023 at 1:00 p.m. Parties appeared in person in Orlando, Florida, on November 8, 2023 at 8:15 a.m. and on November 15, 2023, at 10:56 a.m.

APPEARANCES

For Petitioner: [REDACTED], Esquire

For Respondent: [REDACTED] Esquire

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

Petitioner timely requested a hearing to challenge Respondent's Notice to Discharge. The original hearing was scheduled for August 31, 2023; however, was continued as a joint request from both parties.

On October 9, 2023, a status conference convened. [REDACTED], Esquire appeared for Petitioner. Appearing for Respondent was [REDACTED]. [REDACTED] appeared to observe without objection from Petitioner. [REDACTED], Court Reporter, also appeared for Respondent. The undersigned addressed on record that the recording the undersigned recorded is the official recording. At the request of Petitioner, the rescheduled hearing would convene in Orlando Florida at an in-person location. Petitioner was advised during the status conference of the issue to be addressed at the in-person hearing. Petitioner was also advised the issue before the Circuit Court of Orange County Florida would not be addressed during the administrative hearing. Petitioner motion to the undersigned that the Office of Appeal Hearings ("OAH") does not have jurisdiction to hear this appeal. As Petitioner initiated the request for the hearing, Petitioner was advised that he could withdraw the appeal if he believed the undersigned had no jurisdiction. Petitioner chose to proceed, the undersigned denied the motion and the hearing was rescheduled for November 8, 2023.

Petitioner's legal counsel appeared and appearing as witness for Petitioner was [REDACTED], Petitioner's daughter. Respondent's legal counsel, appeared, [REDACTED], appeared as observers without objections. [REDACTED], court reporter, also appeared for Respondent. The parties were reminded, the recording the undersigned recorded is the official recording.

The hearing exceeded the scheduled time and was continued to November 15, 2023. All parties for the hearing on November 8, 2023, appeared at the reconvened hearing on November 15, 2023.

Petitioner filed several written motions and verbally renewed said motions throughout the hearing process that were addressed on record. Petitioner filed multiple motions after the initial hearing on November 8, 2023; therefore, the hearing on November 15, 2023, only addressed Petitioner's motion for the undersigned to recuse herself and the undersigned lacked jurisdiction over the issue. Petitioner argued that a hearing was set in the Circuit Court in Orange County Florida for November 28, 2023. On record, Petitioner's motions were denied; however, the hearing was abated until such time as the Circuit Court in Orange County Florida could rule on Petitioner's Motion to Preserve Status Quo. For Contempt. Sanctions And For Other Relief.

It was determined at the outset of the proceedings and on record, the hearing Petitioner referenced had already taken place and was awaiting a Final Order. Said Final Order was sent to the OAH by Respondent on November 16, 2023, and indicated from The Nineth Judicial Circuit Orange County Florida ordered and adjudged; Petitioner's motion was denied as he failed to cite any law or authority that would give the Court jurisdiction over the pending Florida Department of Children and Families appeal hearing.

Petitioner indicated in the hearing that Petitioner wanted to provide additional testimony and wanted the hearing to be rescheduled; however, after review of the record, the undersigned has determined the record was fully developed and included Petitioner's testimony concerning payment of patient responsibility. Petitioner was

allotted ample time to provide testimony; however, Petitioner repeatedly pursued a line of questioning that he had been advised was determined to be irrelevant to the issue at matter. Therefore, the undersigned has issued this order based on the established record and the party's testimony and evidence.

Petitioner submitted evidence that was marked and entered as Petitioner's Exhibits one ("1").

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." Petitioner provided multiple packets of evidence prior to the hearing; however, they were not marked and entered into the record evidence. The undersigned has marked and entered these packets as Petitioner's Exhibit two ("2").

Respondent provided evidence which was marked and entered as Respondent's Exhibit's one ("1") through eight ("8").

Petitioner's Position

Petitioner took the position that when she initially came to the Facility, she entered as a resident of the assisted living program with a residency agreement that provided a continuing care program. Petitioner believes that the entrance fee paid at the time of admittance into the Facility was the only fees to be paid for the duration of the time in which she was at the Facility. Petitioner contends there is no valid bill to be paid and believes she does not owe a balance, despite not having paid the patient liability since its determination with Department of Children and Families ("DCF"). Additionally, Petitioner contends the undersigned does not have jurisdiction over the issue.

Respondent's Position

Respondent took the position that Petitioner failed to pay her patient liability portion. DCF approved in July 2021, the Institutional Care Program ("ICP"), with a patient responsibility as her obligation. Respondent argued that Petitioner has not paid for the services received at the Facility after reasonable and appropriate notice. Respondent has requested that Petitioner be discharged. Respondent argued that Petitioner was approved with DCF for Medicaid Long Term Care under ICP and has a monthly patient responsibility of \$3289.75 which she has failed to timely pay since July 2021.

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 initially obtained residency to the Facility on February 2, 2014, as an assisted living resident. (Hr'g R.)
2. On May 9, 2014, Petitioner returned to the Facility after a short stay in the hospital. (Hr'g R.)
3. Petitioner's last payment was provided on April 30, 2019. (Hr'g R.)
4. On July 19, 2019, Petitioner's assisted living apartment was released, and Petitioner was admitted to the skilled nursing section of the Facility. (Hr'g R.)
5. On April 30, 2020, a collection letter was sent to Petitioner/Petitioner's daughter, [REDACTED]) from [REDACTED] Associates, PLLC. This letter

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.

stated in part: “This law firm has been retained by [REDACTED] in connection with the above -reference account. Demand is hereby made for payment in full of the amount due.” (Resp’t Ex. 4 at 4.)

6. On September 10, 2020, a collection letter was mailed to Petitioner. This letter stated in part: “This letter is to inform you that there is an outstanding balance at [REDACTED] for [REDACTED]. To date the balance due on the account is \$67,790.95. There has been several Statements of Account mailed and emailed to you as well as phone calls made to you in attempt to collect on the balance due”. (*Id.* at 1.)

7. In March 2021, a Medicaid application for ICP was filed on behalf of Petitioner. On July 14, 2021, a Notice of Case Action (“NOCA”) was issued to Petitioner indicating that: “Your application for Medicaid benefits dated July 13, 2021, is approved. You are eligible for the months listed below”: (Resp’t Ex. 1.)

	March 2021	April 2021	May 2021	June 2021	July 2021	August 2021
Status	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
Gross Countable Income	\$3748.01	\$3748.01	\$3748.01	\$3748.01	\$3748.01	\$3748.01
Amount you keep for personal needs	\$130.00	\$130.00	\$130.00	\$130.00	\$130.00	\$130.00
Amount you are expected to pay the nursing facility or provided	\$3289.75	\$3289.75	\$3289.75	\$3289.75	\$3289.75	\$3289.75

8. Petitioner’s amount expected to pay the nursing Facility is \$3289.75. (*Id.* at 1)

9. On March 31, 2021, a \$3290.25 payment was received; however, a stop payment was applied to the payment. (Resp’t Ex. 7 at 1.)

10. In May 2021, Respondent filed a lawsuit with the Circuit Court seeking mandatory recovery against Petitioner for her failure to pay the fees associated with her stay and care at the skilled nursing Facility. (Hr'g R.)
11. Petitioner has not made any payments since the determination of Petitioner's ICP approval with a patient responsibility liability in July 2021, nor has she made any payments since the lawsuit was filed with the Circuit Court of Orange County Florida for non-payment. (Pet'r Wit. Test. Nov. 8, 2023.)
12. On June 9, 2023, Petitioner was issued a Nursing Home Transfer and Discharge Notice ("NHTDN") 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." The brief explanation to support this action "You have failed to pay remit your Patient Liability which is due to the facility monthly." (Resp't Ex. 8 at 1 – 2; Hr'g R.)
13. Petitioner remains in the Facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Hr'g R.)

CONTROLLING LAW

14. 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.
15. 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.

16. 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

17. Based on the evidence presented, the nursing Facility has established that Petitioner's 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 (42 C.F.R. § 483.12) for which a Facility may involuntarily discharged a resident.

18. 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. The finding shows on June 7, 2023, the Facility issued a NHTDN to Petitioner. In accordance with the above Federal Regulations and State Statute, the NHTDN was signed by the Facility Administrator thirty days prior to the discharge date. The NHTDN also indicated the reason and effective date of the discharge, and informed Petitioner of her appeal rights. On August

9, 2023, Petitioner exercised her right to appeal with the OAH to challenge the issue.

In accordance with the above authority, the undersigned does have jurisdiction over the issue.

19. Respondent's reason for discharging Petitioner is that bill for services rendered has not been paid after reasonable and appropriate notice to pay. Petitioner's testimony is that after Respondent filed a lawsuit against her with the Circuit Court of Orange County Florida to seek monetary recovery, she chose to make no payments for services. The undersigned considered this testimony as acknowledgement to payment owed. Petitioner was approved for ICP and has a patient responsibility obligation of \$3289.75 monthly since its determination in July 2021. This fact is not disputed.

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, Respondent has established Petitioner has refused to pay what she owes to the Facility. DCF notice shows that Petitioner has a monthly patient responsibility amount was \$3289.75 for March 2021 and ongoing.

Petitioner argues that Respondent has provided multiple invoices and demanding letters with varying amounts due; however, Petitioner acknowledges that she has not made these 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.


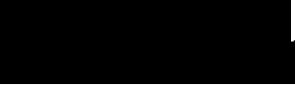
NOTICE OF RIGHT TO APPEAL

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 21 day of December , 2023,
in Tallahassee, Florida.



Hearing Officer
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