

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

[REDACTED]  
[REDACTED]  
[REDACTED]

APPEAL NO. 23N-00107

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on January 5, 2024 at 10:01 a.m.

**APPEARANCES**

For the petitioner: [REDACTED] ("FS"), *pro se*,  
[REDACTED] ("RS"), *pro se*

For the respondent: [REDACTED], Nursing Home Administrator ("NHA")

**STATEMENT OF ISSUE**

The petitioners appeal the respondent's action to discharge both FS and RS from [REDACTED] (the "Facility"). The respondent carries the burden of proof by clear and convincing evidence.

### **SUMMARY OF PROCEEDINGS**

The hearing was scheduled for December 4, 2023 at 1:00 p.m. Neither the petitioner nor the respondent appeared for this hearing. The respondent contacted the Office of Appeal Hearings on December 6, 2024 and requested that the appeal be rescheduled due to the petitioner missing the December 4, 2023 hearing due to a family emergency. The hearing was rescheduled to January 5, 2024 at 9:00 a.m.

██████████, Traveling Business Office Manager, ██████████, Director of Social Services, ██████████, Assistance Business Office Manager, and ██████████, Business Office Manager, all with ██████████ Healthcare Center, appeared as witnesses for the respondent.

The petitioner did not submit any exhibits.

The respondent submitted documents which were marked and entered into evidence as Respondent's Exhibits one ("1") through fourteen ("14").

### **The Petitioner's Position**

FS took the position that he and RS were at another facility, and they had a Qualified Income Trust ("QIT") account, the facility took advantage of it, and put him in a hole where he cannot renew it. His daughter, who has power of attorney, is presently trying to open up a QIT account with Wells Fargo. FS is willing to put his entire Social Security benefit amount in an account to help catch up the amount owed. FS took the position that he is willing to pay the Facility, he just needs more time. FS took the position that he is trying to get the Facility paid so they can remain in the Facility until they are strong enough to go home.

RS took the position that she thought that her insurance would cover her and her husband's expenses at the Facility. RS took the position that she was shocked to see how much she and her husband owed to the Facility. RS took the position that they have been looking for a facility that can take them in for long term care, but have been unable to find anything.

### **The Respondent's Position**

The respondent took the position that the petitioners are married to each other and are residents in the Facility. The respondent took the position that FS has an outstanding balance of \$16,729.23 as of the hearing date. The respondent took the position that RS has an outstanding balance of \$3,605.00 as of the hearing date. The respondent took the position that it issued reasonable and appropriate notices to both petitioners to pay for the services they have received at the Facility, but they both have failed to pay. The respondent has requested that both petitioners be discharged due to non-payment for services.

### **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. The Facility admitted FS on July 14, 2023, under Medicaid services with a patient's monthly portion of \$2,128.00. (Resp't Ex. 1.)
2. The Facility admitted RS on July 25, 2023, under Medicare Part A. (Resp't Ex. 7.)

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<sup>1</sup> 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.

3. On August 12, 2023, Medicaid Part A was no longer paying for room and board for RS. RS portion to pay for monthly room and board was \$721.00. (Resp't Ex. 7.)

4. On October 31, 2023, the Facility was initially known as Heritage Healthcare Center and changed their name to [REDACTED] at Tallahassee. (Resp't Test.)

5. Below is a summary of the balance owed from FS to the Facility for room and board: (Resp't Ex. 3.)

<u>Statement Date</u>	<u>Balance</u>
09/01/2023	\$4,960.00
10/01/2023	\$6,322.26
12/01/2023	\$6,898.97
01/01/2024	\$10,406.97

6. The Facility served two ("2") past due notices to FS, one was dated November 29, 2023 which stated that the total balance due of \$6,898.97 and past due amount of \$3,390.97. The second notice was dated December 15, 2023, which stated the total balance due is \$10,406.97 and past due amount of \$6,898.97. (Resp't Ex. 4.)

7. Below is a summary of the balance owed from RS to the Facility for room and board: (Resp't Ex. 9.)

<u>Statement Date</u>	<u>Balance</u>
09/01/2023	\$11,418.00
10/01/2023	\$18,497.16
11/01/2023	\$25,832.30
12/01/2023	\$14,178.00
01/01/2024	\$1,417.87

8. The Facility served two ("2") past due notices to RS, one was dated November 29, 2023 which stated that the total balance due of \$1,417.87 and past due

amount of \$696.87. The second notice was dated December 15, 2023, which stated the total balance due is \$1,417.87 and past due amount of \$1,417.87. (Resp't Ex. 12.)

9. The respondent delivered the requests for payments for its services directly to both petitioners. (Resp't Test.)

10. Both petitioners acknowledge receiving the request for payments and that they have not paid anything for there bills. (Pet'r Test.)

11. The petitioners remain in the Facility pending the hearing decision. The petitioner's outstanding balance for FS is \$16,729.23 and for RS is \$3,605.00. (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, FS's outstanding balance owed to the Facility is \$16,729.23 and RS's outstanding balance owed to the Facility is \$3,605.00. Neither petitioner has not made payment to the Facility.

18. Based on the evidence and testimony, the Facility has established the petitioners have refused to pay what they owe for the period of care. The hearing officer concludes that the Facility has given the petitioners reasonable and appropriate notice to pay for their 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 residents 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 residents 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**

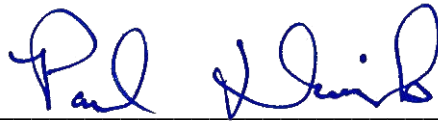
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the petitioners are in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and 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 09 day of February, 2024,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED], Petitioner  
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Ms. [REDACTED]  
Agency for Health Care Administration