

Feb 28, 2024

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-00110

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on January 9, 2024, at 3:23 p.m.

**APPEARANCES**

For the petitioner: [REDACTED], pro se

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

**STATEMENT OF ISSUE**

The petitioner appeals the respondent's action to discharge her from [REDACTED] [REDACTED] (the "Nursing Home Facility") due to nonpayment of her bills for services. The respondent carries the burden of proof by clear and convincing evidence.

### **SUMMARY OF PROCEEDINGS**

██████████, District Ombudsman, was present as a witness for the petitioner. ██████████, Social Service Director, ██████████, Business Office Manager, and ██████████ Director of Nursing were present as witnesses for the respondent.

The petitioner did not submit any evidence. The respondent submitted four (4) exhibits which were entered into evidence and marked as Respondent's Exhibits one ("1") through four ("4").

A continuance was granted to the petitioner for the hearing scheduled on November 30, 2023.

The record was held open until January 19, 2024, for the respondent to provide monthly billing statements for July 2023 through December 2023 and Patient responsibility letters from the Department of Children and Families. The respondent submitted monthly billing statements, a history of payments, eligibility verification request and a Notice of Case Action from the Department of Children and Families ("DCF") which was accepted into evidence and marked as Respondent's Exhibits five ("5") through eight ("8"). The record was closed on January 19, 2024.

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

The petitioner's position is that she was not getting the care and medical treatment her doctor prescribed. She wants to leave the nursing facility as she wants to be independent. She does not want long term care. Additionally, she never said that she would not pay the bills.

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

The respondent's position is that the petitioner has not made any payments for services she received at the facility. She was given monthly billing statements which she refuses to pay. These statements were issued in person and by mail by the address she provided. The petitioner currently owes \$9,579.26.

### **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 May 9, 2023, the petitioner was admitted to the respondent's Facility as a Medicare patient. She received skilled services. All services provided to her by the Facility were fully paid by Medicare until July 30, 2023. (Resp't Test.)
2. On July 31, 2023, the petitioner became a private pay resident. The facility applied for Medicaid on behalf of the petitioner. The petitioner was approved for Medicaid on September 1, 2023, with a patient responsibility of \$419.00. (Resp't Test.)
3. The respondent charges a room and board rate of \$235.00 per day. The petitioner owes the respondent the room and board for July 31, 2023 (one day), as her Medicare coverage stopped on July 30, 2023. Additionally, the petitioner owes the respondent for room and board for August 2023 as her Medicaid coverage began on September 01, 2023. Effective September the petitioner was responsible to pay her patient responsibility of \$419.00 which was determined by the Department of Children and Families. (Resp't Test.)

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<sup>1</sup> Citations within the Findings of Fact 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.

4. On December 7, 2023, the Department of Children and Families determined that effective January 1, 2024, the petitioner's patient responsibility was \$437.00 based on the Federal/State Cost of Living Adjustment. (Resp't Test; Resp't Ex. 7.)

5. The Nursing facility provided copies of the monthly billing statements it provided to the petitioner from September 2023 through January 2024. The petitioner currently has an outstanding balance of \$9,579.2 for July 2023 through January 2024. (Resp't Ex. 8.)

6. On September 20, 2023, the respondent issued a Nursing Home Transfer and Discharge Notice ("Notice") in person, informing the petitioner that she was to be discharged from the facility effective October 19, 2023. This notice did not have a discharge location and it allowed twenty-nine days instead of thirty days from the date it was given. The reason cited was "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Test; Pet'r Wit. Test.)

7. On September 29, 2023, the petitioner timely requested an appeal to challenge the respondent's action. (Appeal R.)

8. On November 14, 2023, the respondent issued a second Notice to cure the inadequacy of the September 20, 2023, Notice, informing the petitioner that she was to be discharged from the facility effective December 14, 2023. It listed the discharged location as [REDACTED].

The reason cited was "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Ex. 2; Resp't Test.)

9. The petitioner admitted that she has not made any payments to the Nursing Facility towards her outstanding balance. (Pet'r Test.)

**CONTROLLING LAW**

10. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties; this order is the final administrative decision of the Department of Children and Families pursuant to Section 409.285, Florida Statutes.

11. 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. 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...

(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.

12. Title 42 Code of Federal Regulations Section 483.15, Admission, transfer and discharge rights, states in relevant part:

(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; or**

(F) The facility ceases to operate.

[Emphasis added]

### **CONCLUSIONS OF LAW**

13. On September 20, 2023, and November 14, 2023, the Facility issued to the petitioner the Nursing Home Transfer and Discharge Notices. However, the discharge notice issued on September 20, 2023, only gave the petitioner 29 days to October 19, 2023, and not the required 30 days. Therefore, that notice is defective, and the undersigned will not consider that notice as adequate. The second discharge notice issued on November 14, 2023, gave 30 days to the petitioner. This notice is adequate

and is in accordance with the required regulations. The Facility's reason for discharging the petitioner was that bills for services have not been paid after reasonable and appropriate notice to pay. This is one reason permitted for discharge from the Facility in accordance with the above Federal Regulation.

14. In accordance with the above Federal Regulation and State Statute, the Notices were signed by the Facility Administrator twenty-nine and thirty days prior to the discharge date. The Notice also indicated the reason, effective date of the discharge, and appeal rights.

15. Establishing that the reason(s) for a discharge is lawful is just one step in the discharge process. The Facility must also identify an appropriate transfer or discharge location and a safe and orderly transfer or discharge from the facility. The undersigned cannot and has not considered either of these issues. The undersigned only considered whether the discharge was for a lawful reason(s) and that the requirements of the controlling authorities have been met.

16. Discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the petitioner have concerns about the appropriateness of the discharge location or the discharge process, she may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

17. In accordance with the above authorities, the Facility seeks to involuntarily discharge the petitioner because payment for services remains unpaid after reasonable and appropriate notice to pay. The evidence submitted establishes that the petitioner has an outstanding balance of \$9,579.26 for services through January 2024. The

evidence shows that the petitioner is aware she has an outstanding balance for services she received at the Facility and has not made any payments towards her outstanding balance.

18. After careful review of the evidence and testimony, the undersigned concludes that the respondent met its burden of proof. The undersigned concludes that the respondent's discharge of the petitioner for non-payment of bill for services is proper.

### **DECISION**

Based on the foregoing Findings of Fact 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.

### **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 28 day of February, 2024,  
in Tallahassee, Florida.

*Christiana Gopaul Narine*

Christiana Gopaul-Narine  
Hearing Officer  
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Copies Furnished To: [REDACTED], Petitioner  
[REDACTED], Respondent  
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[REDACTED]