

Jan 26, 2024

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[REDACTED]

APPEAL NO. 23N-00117

PETITIONER,
VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 22, 2023, at 1:37 p.m. Petitioner requested continuance to review evidence. The undersigned granted the continuance, and the hearing was convened on January 3, 2024, at 4:02 p.m.

APPEARANCESFor Petitioner: [REDACTED], *pro se*For Respondent: Russell Goodman, Executive Director,
Aspire at the Sea-Pasadena**STATEMENT OF ISSUE**

Petitioner timely appealed Respondent's action to discharge Petitioner from [REDACTED] Nursing Home facility ("facility"). Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

Pursuant to notice, the undersigned scheduled a telephonic administrative hearing for December 7, 2023, at 4:00 p.m. On December 7, 2023, Petitioner requested a continuance due to illness. The undersigned granted the continuance and scheduled the hearing for December 22, 2024.

On December 22, 2023, at 1:37 p.m., the undersigned convened a telephonic administrative hearing in the above-referenced matter. Petitioner was present. Russell Goodman, Executive Director, [REDACTED], Stacy Davis, Business Office Manager, [REDACTED], and Daniel Thorngren, Medical Director, were present for Respondent. [REDACTED], Petitioner's mother, observed with no objections. Petitioner stated [REDACTED] did not receive the evidence and requested a continuance to review the evidence. The undersigned granted the continuance, and the hearing was scheduled to convene on January 3, 2024, at 4:00 p.m.

On January 3, 2024, at 4:02 p.m., the undersigned reconvened the hearing in the above referenced matter. Petitioner was present. Russell Goodman, Executive Director, [REDACTED], Stacy Davis, Business Office Manager, [REDACTED], and Daniel Thorngren, Medical Director, were present for Respondent. [REDACTED], Petitioner's mother, observed with no objections.

Respondent submitted evidence marked and entered as exhibits one ("1") through seven ("7").

The record closed on January 3, 2024, at 4:50 p.m. However, Petitioner had indicated there might be some documents [REDACTED] could submit on [REDACTED] own behalf.

On January 10, 2024, the undersigned issued an “Order to Reopen Appeal” for Petitioner to provide any documents on [REDACTED] own behalf through January 19, 2024, and to allow Respondent to provide any rebuttal response to Petitioner’s documents no later than January 31, 2024.

Petitioner did not submit any evidence.

The record closed January 19, 2024.

Petitioner’s Position

Petitioner took the position that at the end of January 2024, [REDACTED] was planning on moving in with [REDACTED] mother once [REDACTED] sold [REDACTED] house. Petitioner wanted the facility to just keep billing Petitioner by leaving the bill in [REDACTED] room and Petitioner would deal with it when Petitioner leaves the facility.

Respondent’s Position

Respondent took the position that Petitioner had been saying [REDACTED] was going to move in with [REDACTED] mother since October 2023. Since September 1, 2023, Petitioner had not paid Petitioner’s monthly cost of \$1105.00 per month for [REDACTED] stay at [REDACTED] facility, a debt totaling \$4420.00 through the month of December 2023.

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. On June 11, 2023, Petitioner was readmitted to the care of [REDACTED] [REDACTED] due to new ownership. Petitioner’s original admission date was April 13,

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.

2022, and there was no break in Petitioner's residency at the facility. The following pertinent information was listed for Petitioner: disabled; the responsible party; had Medicaid until August 31, 2024, and has Medicare Part A and B. (Resp't Ex. 4; Hr'g R.)

2. Respondent stated Petitioner's Medicare stopped paying for services on August 22, 2023, due to Petitioner not participating in physical therapy. Petitioner continued to not participate on September 7, 2023; September 13, 2023; or September 19, 2023. Petitioner's last skill date was September 26, 2023. Petitioner went on long term coverage with Medicaid since Petitioner stayed at the facility beyond the skilled date. Respondent stated Petitioner was allowed to keep \$160.00 from [REDACTED] Social Security Administration ("SSA") benefits for [REDACTED] personal use but the rest Petitioner was obligated to pay for room and board in the amount of \$1105.00 per month. (Hr'g R.)

3. Respondent met with Petitioner once a week and hand delivered the bill. Each week Respondent would request Petitioner either pay or come up with a solution. The bill of \$1105.00 per month is due on the 10th of each month. Respondent was always told to leave the bill and leave the room. (Resp't Ex. 5; Hr'g R.)

4. On October 25, 2023, Respondent provided Petitioner with a "Long-Term Care Ombudsman Council Request for Review of Nursing Home Discharge or Transfer." Respondent noted that Petitioner refused to sign or answer and stated, "Bill Me." (Resp't Ex. 3.)

5. On October 25, 2023, Respondent provided Petitioner with a "Fair Hearing Request for Transfer or Discharge from a Nursing Home." The form included instructions to complete this form if the resident disagreed with the discharge or transfer

and wished to request a Fair Hearing of the decision. Respondent noted that Petitioner refused to sign. (Resp't Ex. 2.)

6. On November 9, 2023, Respondent provided Petitioner with a "Nursing Home Transfer and Discharge Notice" dated November 9, 2023, signed by the facility director, and with an effective date of December 9, 2023. The Reason for Discharge or Transfer was for the following:

- Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.
- Your needs cannot be met at this facility.
- The safety of other individuals in this facility is endangered.

7. To date, Respondent Petitioner has not made any payments towards [REDACTED] outstanding account since September 2023, and has been keeping [REDACTED] SSA check each month. Petitioner remains in the facility pending the hearing decision. Petitioner's outstanding balance to the facility was \$4420.00 through the month of December 2023. Petitioner remains at the facility pending the outcome of the hearing decision. Petitioner's fees continue to accumulate and were due to increase effective January 2024. (*Id.*)

8. Petitioner stated the equipment for physical therapy was outdated and too small for [REDACTED]. Petitioner stated [REDACTED] was never assessed for long term care, [REDACTED] trays were never picked up, and the floors were dirty. Petitioner stated the facility does not meet [REDACTED] needs. Petitioner did not disclose any unpaid medical expenses. (Hr'g R.)

9. Respondent stated dozens of referrals for other facilities were provided to Petitioner; whereas, either Petitioner declined or the facilities declined due to the outstanding balance owed to the facility. Respondent believed that it became necessary to give Petitioner a roommate. Petitioner resisted and wouldn't accept a

roommate making this transition hard. Per Respondent, this issue has since been resolved and the issue of “The safety of other individuals in this facility is endangered” was no longer a reason to be considered for the discharge request. (Hr’g R.)

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, pursuant to Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

11. 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; (emphasis added)

(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. (emphasis added) 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.

12. Title 29, Florida Statutes, Section 400.0255, Resident transfer or discharge; requirements and procedures hearings, states in relevant part:

(1) As used in this section, the term:

(a) "Discharge" means to move a resident to a noninstitutional setting when the releasing facility ceases to be responsible for the resident's care.

(b) "Transfer" means to move a resident from the facility to another legally responsible institutional setting.

(2) Each facility licensed under this part must comply with subsection (9) and s. 400.022(1)(p) when deciding to discharge or transfer a resident.

(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.

...

(5) A resident of any Medicaid or Medicare certified facility may challenge a decision by the facility to discharge or transfer the resident.

...

(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:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility, and the circumstances are documented in the resident's medical records by the resident's physician; or

(b) The health or safety of other residents or facility employees would be endangered, and the circumstances are documented in the resident's medical records by the resident's physician or the medical director if the resident's physician is not available.

(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.

(10)(a) A resident is entitled to a fair hearing to challenge a facility's proposed transfer or discharge. The resident, or the resident's legal representative or designee, may request a hearing at any time within 90 days after the resident's receipt of the facility's notice of the proposed discharge or transfer.

(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

...

(15)(a) The department's Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. The burden of proof must be clear and convincing evidence. A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility's first available bed.

(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

(16) The department may adopt rules necessary to administer this section.

(17) The provisions of this section apply to transfers or discharges that are initiated by the nursing home facility, and not by the resident or by the resident's physician or legal guardian or representative.

13. ACCESS FLORIDA Program Policy Manual CFOP 165-22, Section

2640.0117, Patient Responsibility Computation (MSSI) states in relevant part:

The following policy applies to ICP, Institutionalized MEDS...

...

2. Statewide Medicaid Managed Care Long-Term Care (SMMC LTC)

After the individual is determined eligible, the amount of monthly income to be applied to the cost of care (patient responsibility) is computed as follows:

Step 1 – Deduct the personal needs allowance

...

Step 4 – Deduct uncovered medical expenses

...The balance is the amount of the patient responsibility.

CONCLUSIONS OF LAW

14. The above controlling authorities state that Petitioner must be provided access to the [REDACTED], provided a copy of hearing rights, to be able to remain at the facility pending outcome of the hearing if a hearing is filed within 10 days of the notice to discharge, and be provided at least 30 days advance notice prior to any proposed transfer or discharge. The findings show on October 25, 2023, Respondent provided notice to Petitioner of access to the Long-Term Care Ombudsman Council and a copy of Petitioner's hearing rights. The findings show that Petitioner was allowed to remain at the facility pending the outcome of the hearing. The findings show on November 9, 2023, Petitioner was provided at least thirty (30) days advance notice of the proposed transfer or discharge. The undersigned concludes Respondent provided notice to Petitioner of the access to the Long-Term Care Ombudsman Council and a copy of Petitioner's hearing rights. The undersigned concludes on November 9, 2023, Petitioner was provided at least thirty (30) days advance notice of the proposed transfer or discharge to occur on December 9, 2023. The undersigned concludes Petitioner was allowed to remain at the facility pending the outcome of the hearing.

15. The above controlling authorities outline the reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident, such as "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." The findings show Respondent provided Petitioner notice and opportunities to pay Petitioner's bill at least once a week. The findings show Petitioner

declined to pay the bill stating [REDACTED] would take care of the bill when [REDACTED] left. The undersigned concludes Respondent has provided evidence that Petitioner has failed, after reasonable and appropriate notice, to pay [REDACTED] bill, or patient responsibility for [REDACTED] stay at the facility. The undersigned concludes this is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

16. The above controlling authorities outline the reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident, such as “Your needs cannot be met at this facility.” The findings show the record is void of any evidence Respondent could not meet Petitioner’s Medical needs. The findings show Petitioner stated multiple reasons the facility does not meet [REDACTED] needs, on such issues as equipment and the state of Petitioner’s room. Petitioner stated [REDACTED] was just waiting on [REDACTED] mother to sell [REDACTED] house before moving. The undersigned concludes Petitioner stated the facility does not meet [REDACTED] needs. The undersigned concludes this is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

17. The above controlling authorities outline the reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident. The findings show Respondent indicated one reason for Petitioner’s discharge from this facility was “The safety of other individuals in this facility is endangered.” The findings show Respondent now considers this reason to have been resolved and Respondent verbally removed this reason as one of the reasons for discharge or transfer.

18. 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.

19. 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 or by completing the Health Care Facility Complaint Form.

20. In careful review of the evidence, testimony, and cited authorities, the undersigned concludes Respondent met the burden of proof by clear and convincing evidence that Petitioner has declined to pay for services at this facility after a reasonable and appropriate notice to pay the transfer and that Petitioner's needs cannot be met at this facility. The undersigned concludes the discharge was for a lawful reason.

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. 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 26 day of January, 2024,

in Tallahassee, Florida.



June Jones
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