

Jan 30, 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-00122

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on December 22, 2023 at 9:00 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner: [REDACTED] ("LF"), Counsel for the petitioner

For the respondent: [REDACTED], Executive Director
Palm Garden of Tampa

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to discharge him from [REDACTED] [REDACTED] ("Facility"). The respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

Since the petitioner had legal representation for the hearing, the undersigned offered the respondent the opportunity to continue the appeal to obtain legal representation. The respondent declined the offer for a continuance and indicated that it wanted to go forward with the hearing.

██████████, Business Office Manager with the Facility, appeared as a witness for the respondent.

The petitioner appeared.

The petitioner submitted a document which was marked and entered into evidence as Petitioner's Exhibit one ("1"). The respondent submitted documents which were marked and entered into evidence as Respondent's Exhibit one ("1") through three ("3").

The Petitioner's Position

LF took the position that the petitioner does not dispute any of the information from the respondent. LF took the position that the petitioner is presently working with the Department of Children and Families to get approved for Medicaid.

The Respondent's Position

The respondent took the position that the petitioner has an outstanding balance of \$188,145.66 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 he has received at the Facility, but the petitioner has failed to pay. The respondent wants the petitioner to be discharged from the facility due to non-payment for services.

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. The Facility admitted the petitioner on January 9, 2021 as a Medicare A Skilled patient. (Resp't Ex. 3.)
2. The petitioner has been payment status within the facility has fluctuate during his stay at the facility. The petitioner has been a Medicare Part-A Skilled resident, a private pay resident, and Medicaid pending resident. (Resp't Ex. 3.)
3. During his stay in the facility, the petitioner has applied and been denied seven ("7") times for Medicaid. On November 5, 2023, the petitioner appealed the latest denial of Medicaid. (Resp't Test. and Pet'r Test.)
4. The petitioner has made partial payments on his balance owed. (Resp't Ex. 2 and Resp't Test.)
5. Below is a summary of the effective date, balance owed, and overall balance owed to the facility for room and board. (Resp't Ex. 2)

<u>Effective Date</u>	<u>Balance Owed</u>	<u>Balance</u>
04/19/2021	\$3,120.00	\$3,120.00
05/01/2021	\$8,060.00	\$11,180.00
06/01/2021	\$3,500.00	\$14,680.00
07/01/2021	\$1,518.00	\$16,198.00
08/01/2021	\$4,101.90	\$20,299.90
09/01/2021	\$6,080.20	\$26,380.10
10/01/2021	\$8,060.00	\$34,440.10
11/01/2021	\$7,800.00	\$42,240.10
12/01/2021	\$5,230.90	\$47,471.00
01/01/2022	\$7,540.00	\$55,011.00

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.

<u>Effective Date</u>	<u>Balance Owed</u>	<u>Balance</u>
02/01/2022	\$7,700.00	\$62,711.00
03/01/2022	\$8,536.12	\$71,247.12
04/01/2022	\$8,250.00	\$79,497.12
05/01/2022	\$6,525.00	\$86,022.12
06/01/2022	\$8,250.00	\$94,272.12
09/01/2022	\$5,768.00	\$87,555.12
11/01/2022	\$3,266.76	\$85,023.02
12/01/2022	\$3,500.00	\$88,523.02
02/01/2023	\$4,642.82	\$80,762.54
03/01/2023	\$2,454.86	\$83,217.40
04/01/2023	\$5,776.34	\$88,993.74
05/01/2023	\$4,403.66	\$93,397.40
06/01/2023	\$5,958.22	\$99,355.62
07/01/2023	\$2,645.36	\$102,000.98
08/01/2023	\$5,779.84	\$107,780.82
09/01/2023	\$3,946.76	\$111,727.58
10/01/2023	\$3,999.38	\$115,726.96
11/01/2023	\$1,833.40	\$117,560.36
10/01/2022	\$5,025.00	\$122,585.36
11/01/2022	\$4,433.24	\$127,018.60
12/01/2022	\$5,025.00	\$132,043.60
01/01/2023	\$3,728.30	\$135,771.90
02/03/2023	\$4,457.18	\$140,229.08
03/01/2023	\$5,850.00	\$146,079.08
04/01/2023	\$5,500.00	\$151,579.08
05/01/2023	\$5,850.00	\$157,429.08
06/01/2023	\$5,500.00	\$162,929.08
07/01/2023	\$5,850.00	\$168,779.08
08/01/2023	\$5,850.00	\$174,629.08
09/01/2023	\$5,500.00	\$180,129.08
10/01/2023	\$5,850.00	\$185,979.08
11/01/2023	\$3,666.60	\$189,645.68

6. On November 24, 2023, the petitioner made a partial payment of \$1,500.00, which made the balance owed to \$188,145.68. (Resp't Ex. 2.)

7. The respondent provides a statement to the petitioner and his spouse on a monthly basis to inform him of how much he owes. (Resp't Test.)

8. The petitioner remains in the Facility pending the hearing decision. The petitioner's outstanding balance to the Facility is \$1,88,145.68, for services through November 2023 and fees continue to accumulate. (Resp't Test.)

CONTROLLING LAW

9. 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.

10. 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]

11. 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.

12. 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

13. Based on the evidence presented, the Facility has established that the petitioner is being discharged due to non-payment. As of the date of the hearing, the petitioner's balance owed to the Facility is \$188,145.68.

14. Based on the evidence and testimony, the Facility has established the petitioner has failed to fully pay what he owes for his period of care. The hearing officer concludes that the Facility has given the petitioner reasonable and appropriate notice to pay for his 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.

15. 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.

16. 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.

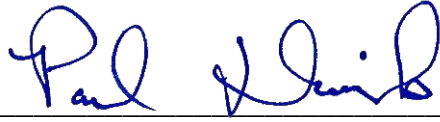
DECISION

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 30 day of January, 2024,
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
Ms. [REDACTED]
Agency for Health Care Administration
[REDACTED]