

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

**FILED**

Jan 22, 2024

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 23N-00126

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter at 3:38 p.m. on January 16, 2024.

**APPEARANCES**

For the Petitioner: [REDACTED], *pro se*

For the Respondent: [REDACTED], Executive Director

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging from [REDACTED] [REDACTED] (the "Facility"), due to non-payment. Respondent carries the burden of proof by clear and convincing evidence.

### **SUMMARY OF PROCEEDINGS**

Due to unforeseen circumstance, the appeal was assigned to the undersigned.

On November 13, 2023, Petitioner timely requested a hearing. [REDACTED] (Pet Wit.1), Petitioner's son; and [REDACTED] (Pet Wit.2), Regional Ombudsman Manager, appeared as Petitioner's witness.

Appearing as witnesses from the Facility were, [REDACTED] (Resp't Wit.1), Assistant Business Office Manager; [REDACTED] (Resp't Wit.2), Director of Nursing; [REDACTED] (Resp't Wit.3), Business Office Manager; and [REDACTED] (Resp't Wit.4), Unit Manager of [REDACTED].

Respondent submitted three (3) exhibits, which were entered into evidence and marked as Respondent's Exhibits one ("1") through three ("3"). Petitioner did not submit exhibits.

### **Petitioner's Position**

Petitioner took the position that the bills from the Facility was being paid by Medicare. He agrees that a bill is due and wants the Facility to receive the money owed which he believes will be covered by Medicaid. Petitioner took the position that once he was aware Medicare was not paying, and he was responsible to pay the monthly patient responsibility ("PR"), he began making immediate monthly payments. Petitioner claims he did not receive the regular monthly bills until March 2023. He asserts he has a pending application with Medicaid and believes the issue with his Medicaid determination can be resolved with the assistance of his attorney and thus the Facility being fully paid.

### **Respondent's Position**

Respondent took the position that Petitioner has not paid the Facility for his stay from September 28, 2022, thru May 10, 2023, when Medicare stopped paying, despite several communications between the Facility and Petitioner. Respondent's position is it attempted to apply for Medicaid on Petitioner's behalf; however, Petitioner's and Petitioner's son did not provide the necessary documents required. Respondent believes they have exhausted all avenues in trying to get the bill paid.

### **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. Petitioner, was admitted to the Facility on September 28, 2022. (Hr'g R.)
2. Medicare paid for Petitioner's stay at the Facility until November 18, 2022. (Hr'g R.)
3. In November 2022, Respondent started sending Petitioner monthly billing statements, to his son's address. Petitioner's unpaid balance as of November 2023 is \$71,899.84. (Resp't Ex. 2; Hr'g R.)
4. Respondent provided Petitioner with assistance from [REDACTED] to submit an application for Medicaid eligibility several times and received notice of Medicaid eligibility denials on November 11, 2022, March 16, 2023, July 31, 2023, September 29, 2023, and January 1, 2024. (Hr'g R.)

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<sup>1</sup> 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.

5. Respondent in good faith provided Petitioner an attorney for legal representation from [REDACTED] to further assist Petitioner with the Medicaid eligibility determination process. (Hr'g R.)
6. As of the date of the hearing the balance has increased to \$91, 239.77 and Petitioner has not paid the Facility. (Hr'g R.)
7. Petitioner agreed that he has received monthly billing statements from the Facility starting March 2023; he also agreed he has not paid the balance in full but has paid the PR of \$1537.00 per month to the Facility. (Hr'g R.)
8. On November 6, 2023, the Facility issued Petitioner a Nursing Home Transfer Discharge Notice, listing the following reason for discharge or transfer, "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Ex. 2.)

### **CONTROLLING LAW**

9. 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.
10. Title 42 of the Code of Federal Regulations § 483.15, Admission, transfer and discharge rights, in relevant part states:

...

(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.]

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. Respondent's reason for issuing Petitioner a Nursing Home Transfer and Discharge Notice is, "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." This is one (1) of the reasons listed in the above authority as a valid reason for a transfer/discharge.

14. The evidence established that Medicare stopped paying for Petitioner's stay at the Facility on November 18, 2022.

15. The evidence established that the Facility started sending Petitioner monthly billing statements, at his son's address, in November 2022.

16. The findings established that Petitioner agreed that he has received monthly billing statements from the Facility starting in March 2023; he also agreed that he has only

paid the Facility the PR of \$1537.00 per month since May 2023, and has a remaining balance of \$91,239.77 owed to the Facility.

17. Establishing that the reason for a transfer/discharge is lawful is just one step in the discharge process. The Facility must also provide transfer/discharge planning, which includes identifying an appropriate transfer/discharge location and sufficiently preparing Petitioner for a safe and orderly transfer/discharge from its Facility. The undersigned cannot and has not considered either of these issues, as these issues are governed by the Agency for Health Care Administration (“AHCA”). The undersigned only considered whether the transfer/discharge is for a lawful reason.

18. After careful review of the evidence and cited authority, the undersigned concludes the Facility met its burden of proof by clear and convincing evidence that Petitioner’s discharge/transfer reason, due to non-payment, is within Federal Regulations.

19. Any discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and AHCA’s requirements. Should Petitioner have concerns about the appropriateness of the discharge/transfer location or the discharge/transfer planning process, Petitioner may contact the AHCA’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 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, [REDACTED]. 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 22 day of January, 2024,

in Tallahassee, Florida.

[REDACTED]

Hearing Officer

[REDACTED]

Office: 850-488-1429

Fax: 850-487-0662

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Copies Furnished To: [REDACTED], Petitioner

[REDACTED], Respondent

Agency for Health Care Administration

[REDACTED]