

Feb 26, 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-00132

PETITIONER,

VS.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on January 24, 2024 at 2:24 p.m.

APPEARANCES

For Petitioner: [REDACTED], *pro se*

For Respondent: [REDACTED], Executive Administrator

STATEMENT OF ISSUE

Petitioner appeals Respondent’s action discharging Petitioner from [REDACTED] [REDACTED] (“Facility”). Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

[REDACTED], Petitioner’s nephew, and [REDACTED], Petitioner’s nephew’s wife, appeared as witnesses for Petitioner.

██████████, Social Services Director (Resp't Wit. 1) and ██████████, Business Office Manager (Resp't Wit. 2), appeared as witnesses for Respondent.

On November 14, 2023, the Facility issued a Nursing Home Transfer and Discharge Notice ("Notice") informing Petitioner of its intent to discharge her from the Facility effective December 14, 2023 due to her bill for services at the Facility has not been paid after reasonable and appropriate notice to pay.

Respondent submitted five (5) evidence packets, which was marked and entered as Respondent's Exhibits one ("1") through five ("5"). The record was closed at the conclusion of the hearing.

Petitioner's Position

Petitioner took the position that, initially, she was not familiar with the application process for ICP Medicaid, and that her nephew has begun making payments to the Facility now that he has been handling her business matters.

Respondent's Position

Respondent took the position that Petitioner owes a balance to the Facility after being provided with reasonable and appropriate notice to pay. Respondent is seeking to discharge her from the Facility due to nonpayment of the balance owed.

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 Citations within the Findings of Fact, Controlling Laws, 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.

1. On April 27, 2023, Petitioner was admitted into the Facility as a long-term care resident. Respondent stated that Petitioner's sister agreed to complete an application for ICP Medicaid and appointed Petitioner's nephew as the power-of-attorney and responsible party. Respondent stated that Petitioner's sister agreed to retain an attorney to assist in the application process, as Petitioner's income of Social Security Administration ("SSA") income of \$1970.00 and pension of \$2800.00 was over the income limit. (Hr'g R.)

2. On July 18, 2023, Respondent spoke with Petitioner's nephew to discuss the application for ICP Medicaid and informed him of the balance owed. (Hr'g R.)

3. Respondent issued billing statements each month to Petitioner's nephew. (Hr'g R.)

4. On November 14, 2023, the Facility issued a Nursing Home Transfer and Discharge Notice ("Notice") informing Petitioner of its intent to discharge her from the Facility. The effective dated listed was on December 14, 2023. The Notice informed Petitioner the reason for her discharge was that her "[b]ill for services at the Facility has not been paid after reasonable and appropriate notice to pay." The Notice was signed by the Facility's administrator and Petitioner. (Resp't Ex. 1 at 1-2; Hr'g R.)

5. On December 5, 2023, Petitioner timely requested an appeal to challenge Respondent's action. (Hr'g R.)

6. On December 14, 2023, Petitioner completed an application for ICP Medicaid. Petitioner stated that the application is currently pending; this is an undisputed relevant fact. (Hr'g R.)

7. As of January 8, 2024, Petitioner's bill for service amounts to \$58,001.00

(Resp't Ex. 2 at 9; Hr'g R.)

CONTROLLING LAW

8. 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.

9. Title 42 Code of Federal Regulations 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—

(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...

10. Section 400.0255, F.S. addresses Resident transfer or discharge; requirements and procedures; hearings and 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. 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.

(15)(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.

CONCLUSIONS OF LAW

11. Based on the evidence presented, the nursing facility has not established that Petitioner has not paid her bill for services after reasonable and appropriate notice to pay. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

12. 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.

13. 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.

14. The findings show that Petitioner currently has a Medicaid application pending seeking benefits to pay for her nursing facility charges. The findings do not show what action will be taken on the application and there has been no denial by Medicaid to pay for the stay. The findings do not show if the benefits will be granted and their effective date. As a result, it is unknown what, if any monies would still be owed to the Facility.

15. The above controlling authorities require a higher standard of proof in nursing home discharge hearings; there must be substantial and credible evidence at the level of clear and convincing. Therefore, the undersigned concludes that since there is a pending application, this discharge is premature. The undersigned concludes that Respondent must wait until the application is processed before proceeding in this discharge action.

16. After careful review of the evidence and testimony, the undersigned concludes that Respondent has not met its burden of proof in establishing that its proposed action to discharge Petitioner from the Facility is proper. Therefore, the undersigned concludes that Respondent may NOT discharge Petitioner from Facility based on her pending application for Medicaid.

DECISION

Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is GRANTED. The Facility's action to discharge Petitioner is NOT in accordance with Federal Regulations. The Facility may NOT proceed with its proposed discharge action. If Petitioner has been discharged, the Facility is ORDERED to immediately readmit Petitioner to the Facility. If a bed is not currently open to readmit Petitioner, the Facility must readmit Petitioner as soon as a bed becomes available.

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. Respondent 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 February, 2024,

in Tallahassee, Florida.

[Redacted Signature]

Hearing Officer
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Copies Furnished To: [Redacted], Petitioner
[Redacted], Respondent

Agency For Health Care Administration
[Redacted]