

Apr 29, 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-00133

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 February 28, 2024, at 9:07 a.m. and reconvened on March 20, 2024, at 3:07 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 "Facility") due to nonpayment of her bills for services. The respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

A continuance was granted to the petitioner for the hearing scheduled on February 1, 2024.

██████████, the petitioner's sister and ██████████, friend/minister appeared as witnesses for the petitioner on February 28, 2024. ██████████, Director of Finance, ██████████, Director of Nursing and ██████████, Nurse Unit Manager appeared as witnesses for the respondent on February 28, 2024, and on March 20, 2024.

The petitioner did not submit any exhibits. The respondent submitted one (1) exhibit which was entered into evidence and marked as Respondent's Exhibit one ("1"). The record was held open until March 10, 2024, for the respondent to submit monthly billing statements provided to the petitioner and for the petitioner to submit the letters she received from ██████████ Support Services informing her that she was approved for 100 % financial assistance. The petitioner did not provide any evidence by March 10, 2024. The respondent submitted an additional evidence packet which was accepted into evidence and marked as Respondent's Exhibits two ("2") through four ("4").

The hearing convened on March 20, 2024. After taking closing statements the record was held open until March 25, 2024, for the petitioner to provide the letters from ██████████ Support Services informing her that she was approved for 100 % financial assistance and for the respondent provide the most recent billing statement and the board and room rate for the period July 13, 2017, through April 30, 2019. The petitioner did not submit any exhibits. The respondent did not submit any additional evidence. The record was closed on March 25, 2024.

The Petitioner's Position

The petitioner's position is that she was approved for 100% financial assistance from [REDACTED] Support Services. She was not aware that she had to make payments to the Facility as she was approved for 100% financial assistance. She was not given any monthly billing statements prior to December 11, 2023, when she was provided with the Nursing Home Transfer and Discharge ("Discharge Notice").

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 has not made any attempt to apply for Medicare, Medicaid or make any payments towards her outstanding bill. She was given monthly billing statements on December 11, 2023, and again on February 28, 2024. These statements were issued in person. The petitioner currently owes \$723,270.00.

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 July 13, 2017, the petitioner was admitted to the respondent's Facility as a private pay patient. (Resp't Ex. 2; Resp't Test.)
2. On December 11, 2023, the respondent provided the petitioner a billing statement with her outstanding balance of \$707,205.00. This included a balance carried forward of \$176,430.00, the room and board charges from May 1, 2019, through November 30, 2023, for \$527,310.00, December 1, 2023, through December 31, 2023,

¹ 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.

for \$9,765.00 and January 1, 2024, through January 31, 2024, for \$9,765.00. (Resp't Ex 3.)

3. On December 11, 2023, the respondent issued the Discharge Notice in person to the petitioner, informing her that she was to be discharged from the Facility effective January 1, 2024. 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. 1.)

4. On December 11, 2023, the petitioner timely requested an appeal to challenge the respondent's action. (Appeal R.)

5. On February 27, 2024, the respondent provided the petitioner with a billing statement with an outstanding balance of \$723,270.00. This included an outstanding balance carried forward of \$176,430.00, the room and board rate for May 1, 2019, through November 30, 2023, of \$527,310.00, the room and board rate for December 1, 2023, through December 31, 2023, of \$9,765.00 and January 1, 2024, through January 31, 2024, of \$9,765.00. (Resp't Ex. 4.)

6. The petitioner confirmed that she has not made any payments to the Facility as she believed that her bills were fully paid by [REDACTED] Support Services. (Pet'r Test.)

7. The respondent has not received or applied any payments towards the petitioner's bills for service from [REDACTED] Support Services. (Resp't Test.)

8. The petitioner claimed that she was not aware of any bills from the Nursing Facility when she was initially admitted to the Facility. She became aware of bills when she was presented with the Discharge Notice. (Pet'r Test.)

9. The petitioner has not applied for Medicare, Medicaid or made any payments towards her outstanding bills as of March 20, 2024. (Resp't Test.)

10. The petitioner has not provided the financial support letter from [REDACTED] Support Services. (Hr'g R.)

CONTROLLING LAW

11. 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.

12. 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.

13. 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

14. On December 11, 2023, the Facility issued to the petitioner the Nursing Home Transfer and Discharge Notice. 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.

15. In accordance with the above Federal Regulation and State Statute, the Notice were signed by the Facility's Administrator. The Notice also indicated the reason, effective date of the discharge, and appeal rights.

16. 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.

17. 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.

18. 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 shows that on December 11, 2023, the petitioner was given a billing statement with an outstanding balance of \$707,205.00. The evidence also shows that the petitioner was given another billing statement on February 27, 2024, with an outstanding balance of \$723,270.00 for services through

January 31, 2024. As of March 20, 2024, the petitioner has not made any payments towards her outstanding bill.

19. The petitioner confirmed that she has not made any payments towards her outstanding bills as they are paid by [REDACTED] Support Services. The petitioner was not aware that she had an outstanding balance until December 11, 2023, when she was given the Discharge Notice. The petitioner has not provided proof that her bills are paid by [REDACTED] Support Services.

20. As of March 20, 2024, the respondent has not received any payments from [REDACTED] Support Services or from the petitioner. The petitioner's outstanding balance is \$723,270.00 for services through January 31, 2024.

21. After careful review of the authorities, 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 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 29 day of April, 2024,

in Tallahassee, Florida.



Christiana Gopaul Narine
Hearing Officer
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