

Mar 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. 24N-00001

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 14, 2024 at 10:48 a.m.

APPEARANCES

For Petitioner: [REDACTED], *pro se*

For Respondent: [REDACTED], 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

Appearing as witnesses for Respondent were [REDACTED] Business of Manager (“BOM”), and [REDACTED], Social Worker. Respondent submitted three (3) evidence packets, which were marked and entered as Respondent’s Exhibits one

("1") through three ("3"). The record was left open until February 21, 2024 to allow Respondent to submit additional evidence. Respondent submitted one (1) additional evidence packet, which was marked and entered as Respondent's Exhibit four ("4").

The record was closed on February 21, 2024.

Petitioner's Position

Petitioner took the position that her bank limits the withdrawals she can make each day and that she can pay the balance she owes to the Facility.

Respondent's Position

Respondent took the position that the Facility has notified Petitioner and her spouse and given them ample time of the balance owed. Respondent is seeking to discharge Petitioner from the facility.

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 5, 2023, Petitioner was admitted into the Facility. (Hr'g R.)
2. On December 8, 2023, Petitioner's application for Institutional Care Program ("ICP") was approved. Based on Petitioner's Medicaid eligibility for ICP, her monthly patient responsibility towards her care to Respondent was \$1796.00, effective September 2023 through December 2024. Effective January 2024 and ongoing months, Petitioner's patient responsibility increased to \$1858.00. (Resp't Ex. 3 at 1-3.)

¹ 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.

3. Respondent stated that collection letters were sent to Petitioner and her husband prior to the discharge notice being issued. Respondent stated that on August 2, 2023, the Facility issued a collection letter to Petitioner while her husband was visiting her at the Facility. Respondent stated that invoices were given directly to Petitioner at the Facility and that invoices were also given to Petitioner's husband when he visited the Facility. Respondent's evidence includes collection letters dated August 2, 2023, October 30, 2023, and November 30, 2023, which show the past due amounts of \$1200.00, \$13,600.00, and \$6465.60, respectively. Respondent's evidence also includes invoices dated September 20, 2023 through February 14, 2024. Respondent stated that the Facility has left several voicemails for Petitioner's spouse to return their calls regarding the balance owed but were not able to reach him. (Resp't Ex. 4 at 4-12; Hr'g R.)

4. Respondent's social worker stated that she reviewed the discharge process with Petitioner and her husband to ensure that she understood her rights. Respondent stated that as of the date of the hearing, Petitioner's balance owed to the Facility was \$7833.60. (Hr'g R.)

5. On January 2, 2024, a Nursing Home Transfer and Discharge Notice ("Notice") was issued with an effective date of February 2, 2024. Respondent is seeking to discharge Petitioner due to non-payment for services to the Facility after giving her reasonable notice to pay. (Resp't Ex. 1; Hr'g R.)

6. Petitioner stated that she does not dispute that she owes the Facility but recalls receiving only one bill. Petitioner stated that she does not recall receiving the collection letter dated August 2, 2023 but acknowledges she was sick around that time

and did not have a good memory. Petitioner stated that she and her husband do not check their voicemails. Petitioner stated that there may have been a miscommunication between herself and the Facility, as she thought Medicare was paying for her stay. Petitioner stated that she has now been paying the Facility but has a limit on the amount she can withdraw each day from her bank to pay the Facility. (Hr'g R.)

CONTROLLING LAW

7. 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.

8. 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...

9. 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...

(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.

CONCLUSIONS OF LAW

10. In accordance with the above Federal Regulation and State Statute, the Notice was signed by the Facility Administrator thirty days prior to the discharge date. The Notice also indicated the reason, effective date of the discharge, and appeal rights.

11. Based on the evidence presented, the nursing facility has established that the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. 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.

DECISION

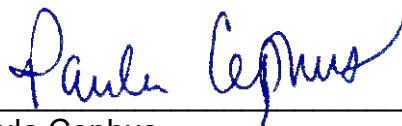
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance 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. 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 March, 2024,

in Tallahassee, Florida.



Paula Cephus
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
[REDACTED],
Respondent
[REDACTED]
Agency for Health Care Administration