

May 20, 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-00010

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on April 2, 2024 at 9:48 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For Petitioner: [REDACTED], pro se

For Respondent: [REDACTED], North Port Rehabilitation Center

STATEMENT OF ISSUE

Petitioner appeals Respondent's action to discharge her from [REDACTED] [REDACTED] (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

Presented as a witness for Respondent were:

[REDACTED] (“DM”) (“Resp’t Wit. 1”), Director of Nursing
[REDACTED] (“LP”) (“Resp’t Wit. 2”), Social Services Director
[REDACTED] (“BM”) (“Resp’t Wit. 3”), Business Office Manager
[REDACTED] (“LB”) (“Resp’t Wit. 4”), Unit Manager
[REDACTED] (“MK”) (“Resp’t Wit. 1”), Care Director

Neither Petitioner nor Respondent submitted any evidence. The record was left open through close of business on April 8, 2024 for Respondent to submit evidence consisting of Petitioner’s bills, case notes for Petitioner, all Notice of Medicare Non-Coverage (“NOMNC”) notices, and any meeting notes related to non-payment. Post hearing, Respondent submitted the additional evidence which was marked as Respondent’s Exhibits one (“1”) through eleven (“11”).

The record closed on April 8, 2024.

Petitioner’s Position

Petitioner took the position that her bill should be paid by her insurance company, [REDACTED], and that she does not owe the Facility money. Petitioner argued that the Facility is refusing to accept her [REDACTED] insurance, that if accepted would cover Petitioner’s bills at the Facility.

Respondent’s Position

Respondent took the position that Petitioner has not been paying her bill since she became private pay on August 27, 2023. Respondent argued that Petitioner’s [REDACTED] plan does not pay for long-term care facilities, only short-term rehabilitation and/or community care. Respondent argued that Petitioner refused to apply for Medicaid.

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. Petitioner was admitted to the Facility on July 28, 2023 for rehabilitation. (Resp't Ex. 1; Hr'g R.)
2. Petitioner's room charge for the Facility is \$277.00 daily. Petitioner is responsible to pay her full bill/balance each month. (Resp't Ex. 11; Hr'g R.)
3. On August 18, 2023, Petitioner was provided a copy of a NOMNC informing her that her Medicare insurance coverage would end on August 20, 2023 and she was would be private pay at the Facility as of August 21, 2023. Petitioner signed the NOMNC. Petitioner appealed the NOMNC. (Resp't Ex. 5; Hr'g R.)
4. On August 24, 2023, Petitioner was provided a copy of a second NOMNC informing her that her Medicare insurance coverage would end on August 26, 2023 and she would be private pay at the Facility as of August 27, 2023. Petitioner refused to sign the NOMNC. (Resp't Ex. 6; Hr'g R.)
5. On August 27, 2023, Petitioner became private pay at the Facility. (Hr'g R.)
6. On January 12, 2024, Petitioner and BM met to discuss her care plan and past due bill for services. Petitioner refused to apply for Medicaid benefits. (Resp't Ex. 9; Hr'g R.)
7. On January 30, 2024, Respondent provided Petitioner with her bill for services of \$51,799.00 due on February 1, 2024. This is undisputed. (Resp't Ex. 8; Hr'g R.)

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.

8. On February 8, 2024, Petitioner was issued a Nursing Home Transfer and Discharge Notice (“NHTDN”) informing her that she was being discharged due to “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” Petitioner refused to sign the NHTDN. (Resp’t Ex. 4; Hr’g R.)

9. As of April 2, 2024, Petitioner’s outstanding balance owed to the Facility is \$68,696.00. Petitioner remains in the facility pending the hearing decision. Petitioner’s bill has not been brought current and continues to accumulate. (Resp’t Ex. 7; Hr’g R.)

CONTROLLING LAW

10. 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.

11. 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.

12. 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.

CONCLUSIONS OF LAW

13. Based on the evidence presented, the nursing facility has established that Petitioner is being discharged due to non-payment. This is one of the six (6) reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

14. According to the above authority, a facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the Facility. As of February 1, 2024, Petitioner's balance owed to the Facility was \$51,799.00, with a current balance of \$68,696.00 as of April 2, 2024. Petitioner is responsible for paying her full patient responsibility each month.

15. Based on the evidence and testimony, Petitioner has refused to apply for Medicaid, signed the August 18, 2023 NOMNC, refused to sign the second NOMNC, and was aware she had an unpaid bill of \$51,799.00 as of January 30, 2024. The undersigned concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for her stay at the Facility. This is one of the six (6) reasons provided in federal regulation 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

16. 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.

17. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration ("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 AHCA 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 20 day of May, 2024,
in Tallahassee, Florida.

[REDACTED]
[REDACTED]
Hearing Officer
Suite I, Room 129
[REDACTED]
Tallahassee, FL 32303-4190
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED], Petitioner
[REDACTED], Respondent
Agency for Health Care Administration