

May 28, 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-00012

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 22, 2024 at 2:05 p.m.

APPEARANCES

For Petitioner: [REDACTED], *pro se*

For Respondent: [REDACTED], Administrator

STATEMENT OF ISSUE

Petitioner is appealing Respondent's action of February 28, 2024 notifying him of intent to discharge him from Respondent's facility due to non-payment of his bill.

Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

[REDACTED], Director of Nursing, [REDACTED], Social Services Director, and [REDACTED], Business Office Manager, [REDACTED], were present as witnesses for Respondent.

Cannon Butler and Vanessa Romero, hearing officers, were present as observers. Petitioner offered no objections to the observers.

Respondent presented the Discharge / Transfer Notice which was marked and entered as Respondent's Exhibit one ("1") and the Statement of Account for Petitioner dated February 29, 2024 which was marked and entered as Respondent's Exhibit two ("2").

The record was held open for additional information from both parties.

Respondent submitted additional documentation on April 26, 2024 which was marked and entered as Respondent's Exhibits three ("3") through six ("6").

Petitioner submitted two emails on April 26, 2024 which were marked and entered as Petitioner's Exhibit one ("1") and two ("2") respectively.

The record closed on April 29, 2024.

Petitioner's Position

Petitioner took the position that he had not been told he had a patient responsibility to pay until the new administrator came to the facility.

Respondent's Position

Respondent took the position that Petitioner has refused to pay his patient responsibility for his stay at the facility. Respondent further took the position they have offered a payment plan to Petitioner to assist him in bringing his account current, but he refuses to pay any portion of his bill.

FINDINGS OF FACT¹

¹ Citations within the Findings of Fact, Controlling Law, 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.

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 March 17, 2021, Petitioner was admitted to this facility. (Hr'g R.)
2. On July 27, 2021, Respondent documents trying to start the process for applying for Medicaid for Petitioner. Petitioner was not cooperative. (Resp't Ex. 6 at 1.)
3. On October 31, 2022, Respondent issued a Statement of Account to Petitioner which showed Petitioner's account balance of \$41,734.40 was written off on September 30, 2022 as bad debt. As of October 31, 2022 Petitioner owed \$395.60. (Resp't Ex. 3; Resp't Ex. 4; and Resp't Ex. 5 at 1.)
4. September 1, 2023, the current administrator began at this facility. Respondent completed thorough review of all past due accounts at the facility shortly after he began as administrator. Respondent advised following his review of Petitioner's account, he did meet with Petitioner to discuss his account and payment arrangements. (Hr'g R.)
5. On October 13, 2023, Respondent discussed Petitioner's outstanding bill with Petitioner as it was several thousand dollars in arrears to facility. Respondent documented Petitioner's statement that he had only learned of this "a couple of weeks ago." (Resp't Ex. 6 at 2-3.)
6. On December 31, 2023, Respondent issued a Statement of Account to Petitioner which showed an accrued balance of \$9875.00 through December 31, 2023 and advance charges for January 2024 bringing the total amount due to \$10,270.00. The resident liability listed on the statement was \$395.00 per month. (Resp't Ex. 5 at 2-3.)

7. On January 31, 2024, Respondent issued a Statement of Account to Petitioner showing his balance resident liability was \$10,270.00. The advance charges for February 2024 were listed as \$395.00 and his balance owed increased to \$10,665.00. (Resp't Ex. 5 at 4.)

8. On February 29, 2024, Respondent entered a late note regarding providing Petitioner with his Discharge notice and reason for the discharge. Petitioner confirmed to Respondent's staff he understood the notice and had no other questions. (Resp't Ex. 6 at 2.)

9. On February 28, 2024, Respondent issued a Nursing Home Transfer and Discharge Notice to Petitioner. The reason listed for Discharge or Transfer was "[y]our bill for services at this facility has not been paid after reasonable and appropriate notice to pay." The Notice was signed by the facility administrator and Petitioner. (Resp't Ex. 1.)

10. On February 29, 2024, Respondent issued a Statement of Account to Petitioner informing him that through February 29, 2024 his resident liability was \$10,665.00. The Statement additionally advised Petitioner his charges for March 1, 2024 through March 31, 2024 would be \$395.00 and the total due would be \$11,060.00. (Resp't Ex. 2; Resp't Ex. 5 at 5.)

11. On March 31, 2024, Respondent issued a Statement of Account to Petitioner showing his balance as of March 31, 2024 was \$11,060.00. The statement additionally advised him of the resident liability charge for April 2024 of \$395.00 added to his account bringing his balance due to \$11,455.00. (Resp't Ex. 5 at 6.)

12. On April 5, 2024, Respondent spoke with Petitioner regarding his discharge plan and offered assistance if needed. (Resp't Ex. 6 at 2.)

13. Petitioner confirmed he had received the discharge notice on February 29, 2024. (Hr'g R.)

14. Petitioner has some medical issues and believes he still requires are in a nursing home. (*Id.*)

15. Petitioner is concerned facility wants to discharge him to a homeless shelter. (*Id.*)

16. Petitioner believes he was only spoken to once or twice about his bill. Petitioner asserted he went "years with no one telling him he owed the facility anything." (*Id.*)

17. Petitioner thought "everything was covered" regarding his stay at the facility until the arrival of the current facility administrator. (*Id.*)

18. Petitioner stated his income was only \$500.00 per month. Petitioner lost his Supplemental Security Income ("SSI"). Petitioner a \$300.00 per month storage bill for a unit in a storage facility in [REDACTED], a cell phone bill of \$55.00 per month, insurance for his van of \$57.00 per month, and a credit card bill of which he is paying \$100.00 per month. These bills were from prior to his arrival at the facility and Petitioner plans to continue paying them. (Pet'r Ex. 2.)

19. Petitioner stated he understands he has a monthly patient responsibility of \$395.00 owed to the facility. (Pet'r Ex. 1; Hr'g R.)

CONTROLLING LAW

20. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

21. Federal Regulations appearing 42 C.F.R. § 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; or

(F) The facility ceases to operate.

CONTROLLING LAW

22. The above controlling authorities list six reasons for which a nursing facility may involuntarily discharge a resident. The findings show the nursing facility has established that non-payment of the account is the reason the discharge notice was issued. The findings show Respondent has issued a bill to Petitioner monthly beginning

with October 2023. The findings show Respondent discussed the option of a payment plan with Petitioner. The findings show Petitioner's belief that his bills established prior to his arrival at the facility must be paid first leaving him no funds to pay the facility. The undersigned concludes Respondent properly notified Petitioner of his patient responsibility. The undersigned concludes Respondent attempted to work with Petitioner to pay his patient responsibility bill. The undersigned further concludes Petitioner has not paid his bill after appropriate and reasonable notice. The undersigned concludes Petitioner did not meet his burden of proof to show Respondent's attempt to discharge him for non-payment was in error or not for a lawful reason.

23. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

24. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration'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. 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 28 day of May, 2024,

in Tallahassee, Florida.



Melissa Roedel
Hearing Officer
Suite I, Room 129
2415 North Monroe Street
Tallahassee, FL 32303-4190
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

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