

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[REDACTED]

APPEAL NO. 24N-00036

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 12, 2024 at 3:34 p.m.

APPEARANCES

For Petitioner: [REDACTED], Petitioner's son

For Respondent: [REDACTED], Administrator

STATEMENT OF ISSUE

Petitioner is appealing Respondent's intent to discharge to Petitioner from [REDACTED] [REDACTED] (the "Facility") for non-payment of her bill. Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

The hearing was reconvened on June 18, 2024 at 2:29 p.m. Both parties were present. Petitioner also called [REDACTED], an [REDACTED] representative, and [REDACTED] [REDACTED], ombudsman from [REDACTED] Long-Term Care office, as witnesses.

Respondent presented evidence which was marked and entered into the record as Respondent's Exhibits one ("1") through six ("6").

Petitioner presented evidence, which was marked and entered into the record as Petitioner's Exhibit one ("1") and two ("2"). The record closed on June 18, 2024.

Petitioner's Position

Petitioner took the position that the Facility representatives should be "on the same team" to keep her in the Facility receiving the care she needs. Petitioner took the position that this action is being taken on false assumptions. Petitioner believes that Respondent should continue to bill ██████ even after the Notice of Medicare Non-Coverage was issued. Petitioner's son should not be the guarantor on her account and should therefore not be billed.

Respondent's Position

Respondent took the position that Aetna is Petitioner's Medicare HMO provider. Respondent took the position that Medicare stopped paying effective February 29, 2024. Respondent further took the position, Petitioner's children have made no effort toward paying for any of Petitioner's stay since February 29, 2024.

FINDINGS OF FACT¹

1. On January 10, 2024, Petitioner was admitted to the Facility with her HMO ██████ as her Medicare provider. (Hr'g R. June 12, 2024)
2. On January 16, 2024, Petitioner's signed the Acknowledgement of Receipt of documentation regarding Petitioner's admission to the Facility. (Resp't Ex. 6 at 1.)

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.

3. Resident's representative, legal guardian, or the responsible party, is to "[p]ay all of the fees and charges describes in this Agreement upon the terms agreed to." The cost for semi-private room as \$275.00 per day. (*Id.* at 2-32.)

4. The [REDACTED] Evidence of Coverage for [REDACTED] [REDACTED] (HMO) book identifies the individual must have both Medicare Part A and Part B. Page nine of chapter one discusses Getting started as a member and displays sample cards. Chapter four is the Medical Benefits Chart (what is covered and what you pay). Page sixty-one (61) in the upper right corner described what is required to be paid when in an inpatient stay: covered services received in a hospital or SNF during a non-covered inpatient stay. While the coverage shows if you have exhausted your benefits or if the inpatient stay is not reasonable and necessary, we will not cover your inpatient stay. Continued non-skilled residential care is not listed on the list of covered services. (Pet'r Ex. 1.)

5. On February 23, 2024, Respondent notified Petitioner that the Notice of Medicare Non-Coverage was issued to terminate skill services effective February 28, 2024. Petitioner confirmed that Respondent provided the number to contact to appeal the decision. (Resp't Ex. 4 at 2.)

6. On February 28, 2024, Petitioner was issued a Notice of Medicare Non-Coverage to inform Petitioner that coverage her current skilled services would end on February 28, 2024. This included her physical therapy ("PT"), occupational therapy ("OT"), and speech therapy ("ST"). (Resp't Ex. 3.)

7. On February 28, 2024, Respondent held a care plan meeting with Petitioner's son. The Director of Nursing, Care Plan Coordinator, Rehabilitation Director, Social

Worker and Facility Administrator were present. Petitioner was reported to be walking fifty feet with minimum to moderate assistance. Petitioner met the maximum potential due to her cognition and diagnosis of dementia. A discussion regarding discharge of Petitioner was held. Petitioner's son indicated he would like to take Petitioner home, but not sure because he wants to ensure she receives services. Petitioner's son desired to wait for the KePro appeal letter to determine next steps. Petitioner's son inquired about the cost for private pay which was provided to him. (Resp't Ex. 4 at 2.)

8. Respondent considered Petitioner as a "private pay" resident effective February 29, 2024 due to the Medicare non-coverage. (Hr'g R. June 12, 2024)

9. On March 11, 2024, Respondent documented providing Petitioner's son with scripts for durable medical equipment and home health services. (Resp't Ex. 4 at 1.)

10. On March 13, 2024, Respondent issued Petitioner a bill for Petitioner's stay at the Facility for the period of February 29, 2024 through March 31, 2024. (Resp't Ex. 2.)

11. On March 27, 2024, Respondent documented Petitioner's son coming to the facility to discuss the appeal with his mother's insurance Aetna. Petitioner's son reported that he had appealed the decision and lost the appeal. Respondent informed him that the Facility does not have Aetna authorization for March. Respondent informed Petitioner's son that he would need to pay the Facility bill privately if the appeal was unsuccessful. (Resp't Ex. 4 at 1.)

12. On April 3, 2024, Respondent issued a Nursing Home Transfer and Discharge Notice ("Notice") which informs Petitioner of the intent to discharge her from the Facility effective May 4, 2024 as "[y]our bill for services at this facility has not been paid after reasonable and appropriate notice to pay." (Resp't Ex. 1.)

13. On April 4, 2024, Respondent's Social Worker attempted a call to Petitioner's son to discuss thirty-day notice for non-payment. The Social Worker left a voicemail message for Petitioner's son to return the call. (Resp't Ex. 4 at 1.)

14. On April 8, 2024, Aetna provided an explanation of benefits to Petitioner for services covered. Respondent was last paid by Aetna for services bills dated February 1, 2024 on March 13, 2024. (Pet'r Ex. 2.)

15. On May 13, 2024, Respondent issued a bill to Petitioner's son as her representative for room and board from February 29, 2024 through May 31, 2024. The bill total was \$25,575.00. (Resp't Ex. 2 at 2.)

16. Respondent confirmed Medicare will pay up to 100 days of care, but not a guarantee of the full 100 days. In Petitioner's case, her 100 days would have expired on April 19, 2024. Petitioner's son has not attempted to pay the bills from April 20, 2024 forward while still disputing the billing for February 29, 2024 through April 19, 2024. (Hr'g R. June 12, 2024.)

17. Respondent has not billed Medicare ██████████ as they will not pay unless it is for skilled care. (*Id.*)

18. Aetna representative confirmed there are no pending claims for Petitioner with Aetna. (Pet Wit. Test. June 18, 2024.)

19. Respondent noted Petitioner's son has not made any progress in paying Petitioner's bill after three and one-half months or even locating an attorney to assist with establishing Medicaid eligibility. (Hr'g R. June 18, 2024.)

20. Petitioner's son had not applied for Medicaid for Petitioner prior to the June 12, 2024 hearing or the June 18, 2024 reconvened hearing. (*Id.*)

21. Petitioner's son identified issues with obtaining an attorney to assist with getting Petitioner on Medicaid due to his sister's unwillingness to comply. Petitioner's son reported his sister as having the access to his mother's accounts to pay the bill. (*Id.*)

22. As of the June 18, 2024 hearing, Petitioner remains at the Facility. Petitioner's son would prefer that she remain there. (*Id.*)

CONTROLLING LAW

23. 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.

24. Title 42 Code of Federal Regulations section 409.61, General limitations on amount of benefits, states in relevant part:

(b) Posthospital SNF care furnished by a SNF, or by a hospital or a CAH with a swing-bed approval. Up to 100 days are available in each benefit period after discharge from a hospital or CAH. For the first 20 days, Medicare pays for all covered services. For the 21st through 100th day, Medicare pays for all covered services except for a daily coinsurance amount that is the beneficiary's responsibility.

25. 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.

...
(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

CONCLUSIONS OF LAW

26. Based on the evidence presented, the Facility has established that Petitioner has failed to pay their bill with the Facility after reasonable and appropriate notice to pay. This is one of the six reasons provided in federal regulation (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident.

27. The above controlling authorities identifies for the first twenty days, Medicare will pay all covered services. The above controlling authorities additionally show that Medicare will pay for all covered services except for a daily coinsurance amount that is the beneficiary's responsibility for days twenty-one through 100. The findings show Petitioner was admitted to the Facility on January 10, 2024. The findings show Petitioner was issued a Notice of Medicare Non-Coverage effective February 28, 2024. The undersigned concludes the Notice of Medicare Non-Coverage was issued more than twenty days after admission. The undersigned concludes when the Notice of Medicare Non-Coverage was issued, the services provided after that date are for services that were not covered.

28. The above controlling authority specifies non-payment applies if the resident does not submit the necessary paperwork for third party payment OR if the claim is denied. The findings show Petitioner's son appealed the Notice of Medicare Non-Coverage. The findings show that appeal was denied. The undersigned concludes non-payment applies in the instant case.

29. The above controlling authority requires that Petitioner and the representative be given reasonable and appropriate notice to pay for their stay at the facility. The findings show Respondent notified Petitioner's son of Medicare ceasing to cover Petitioner's stay at the Facility. The findings show Respondent notified Petitioner's son, as her representative, that Medicare would no longer cover her stay at the Facility as she no longer required skilled care. The findings show Respondent provided a bill to Petitioner's son as her representative dated March 13, 2024 and May 13, 2024. The findings show Petitioner's son, as representative, has not attempted to pay any portion of the amount owed to the Facility. The findings additionally show Petitioner's son has not applied for Medicaid to assist with covering Petitioner's bill with the Facility. The undersigned concludes Respondent has provided reasonable and appropriate notice of the bill to Petitioner's representative.

30. 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 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.

31. 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.

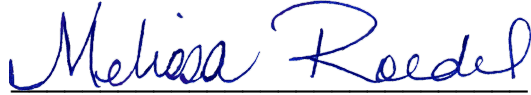
DECISION

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. 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 19 day of July, 2024,
in Tallahassee, Florida.



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

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[REDACTED]

PETITIONER,

APPEAL NO. 24N-00036

Vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: [REDACTED]

CASE NO.

RESPONDENT.

CERTIFICATE OF SERVICE

This is to certify that a copy of the attached notice or order was provided to Petitioner at the above address and to the following individuals by either regular U.S. or electronic mail:

[REDACTED]

I HEREBY CERTIFY that these copies were furnished on July 19, 2024.

[REDACTED]

Agency Clerk, Office of Appeal Hearings
Department of Children and Families
Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190