

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

[REDACTED]

APPEAL NO. 24N-00050

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on August 1, 2024, at 10:00 a.m., in West Palm Beach Florida.

APPEARANCES

For Petitioner: [REDACTED], *pro se*

For Respondent: [REDACTED] Regional Vice President

STATEMENT OF ISSUE

Petitioner appeals Respondent’s action to discharge him from [REDACTED] [REDACTED] (the “Facility”) due to nonpayment of his bill for services and because his health has improved sufficiently so that he no longer needs the services provided by the Facility. Respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

The appeal was continued from a prior scheduled hearing on July 10, 2024, as Petitioner requested an in-person hearing.

██████████, Executive Director, ██████████, Center Station Unit Manager, ██████████, Assistant Executive Director, ██████████, Business Office Manager and ██████████, Petitioner's attending physician were present as witnesses for Respondent.

Petitioner submitted an evidence packet, which was admitted into evidence and marked as Petitioner's Exhibit one ("1"). Respondent submitted an evidence packet, which was admitted into evidence marked as Respondent's Exhibit one ("1") through five ("5").

The record was held open through close-of-business on August 11, 2024, for the parties to submit additional information. No additional evidence was received by the close of business on August 11, 2024. The record was closed on August 11, 2024. On August 13, 2024, after the record was closed, Respondent submitted a medical record for Petitioner. The additional medical record was not admitted into evidence, nor was it considered in the Hearing Officers' decision.

Petitioner's Position

Petitioner took the position that he has not paid the Facility because his Social Security money stopped. He claimed that he has no money to pay the Facility. Additionally, his health has not improved significantly, he is still in pain. He suffers from ██████████. He also has spasms.

Respondent's Position

Respondent took the position that Petitioner has an outstanding balance of \$4,241.00 as of this hearing date. Respondent has been issuing reasonable and appropriate notices to Petitioner to pay for the services he received at the Facility, but Petitioner has failed to pay. Petitioner has an obligation to pay the Facility for services he received. Additionally, Petitioner's health has improved to where he no longer needs skilled services. Petitioner has been making his doctors' appointments outside the facility. He is not accepting the Facility's medical treatment.

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. The Facility admitted Petitioner on September 22, 2022, as he required skilled nursing and therapy services. He is [REDACTED] years old. (Resp't Ex. 6.)
2. Respondent provided Petitioner's progress notes made by Petitioner's attending Physician [REDACTED] ([REDACTED]), M.D, which informs that Petitioner's medical condition has improved significantly since his admission. He can now ambulate without assistance; he is alert and has good mental capacity for making medical and financial decisions. Additionally, he is in noncompliance with the Facility medical instructions, and he is out of the facility every day. He walks independently and he has outpatient doctors. He does not need skilled nursing or long-term care anymore. (Resp't Ex. 6; Resp't Wit. Test.)

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.

3. Petitioner was approved for Medicaid and had monthly Patient Responsibility of \$317.00 in 2023. His current monthly Patient Responsibility beginning January 2024 is \$332.00. Petitioner has not paid his patient responsibility since August 2023. (Resp't Ex. 2; Resp't Test.)

4. The Facility provided copies of its monthly billing statements issued to Petitioner. Petitioner currently has an outstanding balance of \$4,241.00 for August 2023 through August 2024. (Resp't Exs. 2 and 3.)

5. On May 16, 2024, Respondent issued a Nursing Home Transfer and Discharge Notice ("Notice") to Petitioner in person, which informed him he was to be discharged from the facility effective June 16, 2024. The reasons cited were "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay" and "Your health has improved sufficiency so that you no longer need services provided by this facility" (Resp't Ex. 1.)

6. On May 17, 2024, Petitioner timely requested an appeal to challenge Respondent's action. (Appeal R.)

7. Respondent has been issuing regular statements to Petitioner requesting payments for its services, but the facility has not received any payments since August 2023. (Resp't Ex. 3; Resp't Wit. Test.)

8. Petitioner did not dispute that he was given monthly billing statements, and he had not made payments towards his outstanding balance. (Hr'g, R.)

9. Petitioner cannot pay as his Social Security check has stopped. (Pet'r Test.)

10. Petitioner submitted his medical record from [REDACTED]. His medical record shows he suffers from [REDACTED]. He hears high pitch and buzzing

sound. He has ear pain, no headache, no fevers, no chills, no night sweats. (Pet'r Ex.

1.)

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. Section 400.0255(15)(b), Florida Statutes, requires that the burden of proof must be the clear and convincing.

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.

...

(2) **Documentation.** When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through

(F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

(B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—

(A) The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

[Emphasis added]

14. Section 400.0255, Florida Statutes, addresses 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.

CONCLUSIONS OF LAW

15. On May 16, 2024, Respondent issued a discharge notice to Petitioner informing him that he was to be discharged from the Facility effective June 16, 2024, as his health has improved sufficiently so that he no longer needs the services provided by this Facility and his bill for services at the Facility has not been paid after reasonable and appropriate notice to pay.

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 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 Petitioner 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.

18. In accordance with the above authorities, the Facility seeks to involuntarily discharge Petitioner because his health has improved sufficiently so that he no longer needs skilled and long-term care services provided by the Facility and he has not paid the Facility for its services.

19. The findings show Respondent provided monthly billing statements to Petitioner informing him of the balance owed. The evidence submitted establishes that Petitioner has an outstanding balance of \$4,241.00. Petitioner did not dispute the amount owed to the Facility. Additionally, the finding show that Petitioner's health has improved significantly since he was initially admitted to the Facility.

20. Based on the evidence presented, the Facility has established that Petitioner's health has improved sufficiently so that he no longer needs its skilled and long-term care services. Additionally, the Facility has established that Petitioner has not been paying for his stay at the Facility. The undersigned concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for his stay at the facility. These are two of the six reasons allowable reasons provided in the above authority for which a nursing facility may involuntarily discharge a resident.

21. After careful review of the evidence and testimony, the undersigned concludes that Respondent has met its burden of proof by establishing its proposed action to discharge Petitioner for no longer having needs for its services and for non-payment of bills for services.

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 16 day of September, 2024,

in Tallahassee, Florida.



Christiana Gopaul Narine
Hearing Officer
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Tallahassee, FL 32303-4190
Office: 850-488-1429
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Copies Furnished To: [REDACTED], Petitioner
[REDACTED], Respondent
Agency for Health Care Administration

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

[REDACTED]

PETITIONER,

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FLORIDA DEPT OF CHILDREN AND FAMILIES

[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:

I HEREBY CERTIFY that these copies were furnished on September 16, 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