

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

[REDACTED]
[REDACTED]
[REDACTED]

APPEAL NO. 24N-00080

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on September 23, 2024, at 3:31 p.m.

APPEARANCES

For the petitioner: [REDACTED], daughter of the petitioner

For the respondent: [REDACTED], Nursing Home Administrator

STATEMENT OF ISSUE

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

SUMMARY OF PROCEEDINGS

██████████ ("C.V"), Director of Social Services, ██████████ ("J.H."), Business Office Manager, and ██████████, Regional Director of Case Management, all appeared as witnesses for the respondent.

The petitioner did not submit any exhibits at the hearing. The respondent submitted an evidence packet that was marked and entered as Respondent's Exhibit one ("1"). The record was held open through September 30, 2024 for the petitioner to submit any information she wants to provide and for the respondent to submit a copy of the bills that were given to the petitioner and any record of correspondence with the petitioner regarding payment. On September 25, 2024, the petitioner submitted evidence that was marked and entered as Petitioner's Exhibit one ("1"). On September 27, 2024, the respondent submitted additional evidence that was marked and entered as Respondent's Exhibits two ("2") through seven ("7"). The record was closed on September 30, 2024.

The Petitioner's Position

The petitioner made a partial payment in June 2024 when she was made aware that she owed money. She wants to take her mother home with her but needs her mother to be approved for additional hours of care so she would be able to work. JH informed the petitioner that she must pay the entire past due amount, or her mother needs to leave the Facility and did not give her a payment plan. Her mother still has expenses like rent that she has to pay, so she doesn't have the money to pay the Facility.

The Respondent's Position

The petitioner currently owes the Facility \$7555.00 and they have made multiple attempts to reach out for collection, but the petitioner has not paid. The petitioner is receiving Medicaid and has a patient liability of \$1551.00 a month. The respondent provided the petitioner monthly bills, and the petitioner has only paid \$200.00 since she arrived in the facility in January 2024. The Facility is requesting the petitioner to be discharged because they have given reasonable and appropriate notice to the petitioner for services, she receives but she is not making payments to 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 April 25, 2024, the petitioner's daughter was mailed a bill indicating the amount owed of \$1551.00 and a due date of May 10, 2024. (Resp't Ex. 5.) Monthly bills were mailed to the petitioner's daughter around this time every month. (Resp't Ex. 4-6.)

2. On June 4, 2024, J.H. called the petitioner's daughter to inform her that the Medicaid application for the petitioner was approved and beginning May 2024, the petitioner has a patient responsibility of \$1551.00 a month. The petitioner's daughter was not aware of this until now and she made a \$200.00 payment to the Facility. (Pet'r Test.)

3. On July 19, 2024, the respondent issued a Nursing Home Transfer and Discharge notice ("Notice") to the petitioner's representative via email informing her that

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.

her mother would be discharged from the facility effective August 18, 2024. (Resp't Ex.

1.) The reason cited is:

(1) "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

4. On August 15, 2024 and September 23, 2024, J.H. called the petitioner's daughter regarding outstanding balance owed by the petitioner. (Resp't Ex. 7.)

5. As of the date of the hearing, the balance due to the Facility is \$7555.00. No additional payments have been received from the petitioner. The respondent has been mailing the petitioner monthly bills to the petitioner's daughter. The Facility started charging the petitioner beginning May 2024 as they were waiting to confirm her patient responsibility and hospice was also pending. (J.H. Test.)

6. The petitioner attempted to make a payment plan with the Facility but was told that if she can't pay off the balance than her mother needed to leave the Facility. (Pet'r Test.)

7. The Facility always tries to work out payment plans with all residents but if they do not get a response back from the resident or their family, then it is hard for them to make an agreement. (Resp't Test.)

CONTROLLING LAW

8. 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.

9. Section 400.0255, Florida Statutes addresses Resident transfer or discharge; requirements and procedures; hearings and 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.

10. 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.

...

[Emphasis added]

CONCLUSIONS OF LAW

11. On July 19, 2024, the Facility issued the petitioner the notice. The Facility's reason for discharging the petitioner is that bills for services rendered had not been paid after reasonable and appropriate notice to pay. This is one reason permitted for discharge from the Facility in accordance with the above Federal Regulation.

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

13. Establishing that the reason(s) for a discharge is lawful is just one step in the discharge process. The Facility must also identify an appropriate transfer or discharge location and a safe and orderly transfer or discharge from the facility. The undersigned cannot and has not considered either of these issues. The undersigned only considered whether the discharge was for a lawful reason(s) and that the requirements of the controlling authorities have been met.

14. Discharge by the Facility must comply with all applicable Federal Regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the petitioner have concerns about the appropriateness of the discharge location or the discharge process, she may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

15. In accordance with the above authorities, the Facility seeks to involuntarily discharge the petitioner for the reason that a bill for services rendered has remained unpaid after reasonable and appropriate notice to pay. The evidence submitted establishes that the petitioner has an outstanding balance of \$7555.00 for services and the petitioner's daughter was mailed monthly bills informing her of this beginning on April 25, 2024. The findings show that the respondent reached out multiple times to the petitioner's daughter to advise them of the overdue balance.

16. After careful review of the evidence and testimony, the undersigned concludes that the respondent met its burden of proof. The undersigned concludes that the respondent's discharge of the petitioner for non-payment of a bill for services is proper.

DECISION

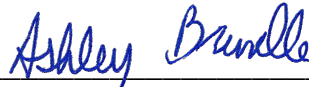
Based upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge the petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and 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 29 day of October, 2024,

in Tallahassee, Florida.



Ashley Brunelle
Hearing Officer
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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
[REDACTED]

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

[REDACTED]

PETITIONER,

APPEAL NO. 24N-00080

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 October 29, 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