

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

[REDACTED]

APPEAL NO. 24N-00088

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on November 6, 2024, at 3:37 p.m.

APPEARANCES

For the petitioner: [REDACTED] pro se

For the respondent: [REDACTED] Nursing Home Administrator ("NHA")

STATEMENT OF ISSUE

The petitioner appeals the respondent's action to discharge him from [REDACTED] [REDACTED] the "Facility") due to nonpayment of his bills for services. The respondent carries the burden of proof by clear and convincing evidence.

SUMMARY OF PROCEEDINGS

██████████, Director of Social Services was present as a witness for the respondent.

The petitioner did not submit any exhibits. The respondent submitted a packet of documents which was accepted into evidence and marked as Respondent's Exhibits one ("1") through three ("3").

The Petitioner's Position

The petitioner's position is that he cannot afford to pay for long term care. He does not wish to sign over his Social Security check to the facility. Additionally, the other facilities recommended for him was not appropriate.

The Respondent's Position

The respondent's position is that the petitioner has not made any payments to the facility for services he received. The petitioner promised to make a payment in September 2024 but when he was approached for the payment he refused. The petitioner has an outstanding balance of \$6,021.45 as of November 2024.

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 May 1, 2024, the petitioner, age 65, was admitted to the respondent's Facility as a short-term Rehabilitation resident. (Resp't Test.)
2. The petitioner has a monthly patient responsibility of \$1,009.00. (Resp't 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. On August 15, 2024, the respondent issued the Nursing Home Transfer and Discharge Notice for not paying his outstanding bills for services with the effective date of discharge as September 15, 2024. (Pet'r Test.; Resp't Ex. 1.)

4. The respondent provided outstanding bills from June 2024 through September 2024. The petitioner's current outstanding bill is \$6,021.45. (Resp't Test; Resp't Ex. 2.)

5. The petitioner confirmed that he has not made any payments to the Facility as he does not have the money to pay. (Pet'r Test.)

6. The respondent has not received any payments towards the petitioner's bills for service. The respondent has asked the petitioner multiple times to make payments, but he has not made any payments towards his outstanding balance. (Resp't Test.)

CONTROLLING LAW

7. 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.

8. Florida Statutes Section 400.0255, 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.

9. 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

10. On August 15, 2024, the Facility issued to the petitioner the Nursing Home Transfer and Discharge Notice. The Facility's reason for discharging the petitioner was that bills for services have 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.

11. In accordance with the above Federal Regulation and State Statute, the Notice were signed by the Facility's Administrator. The Notice also indicated the reason, effective date of the discharge, and appeal rights.

12. In accordance with the above authorities, the Facility seeks to involuntarily discharge the petitioner because payment for services remains unpaid after reasonable and appropriate request/notice to pay. The evidence shows that on August 15, 2024, the petitioner was given the Nursing Home Transfer and Discharge Notice and his outstanding bills for services. Since, August 15, 2024, the petitioner has not made any attempts to pay or make arrangements to pay his outstanding bills.

13. The petitioner confirmed that he has not made any payments towards his outstanding bills. The petitioner was not aware that he had an outstanding balance.

14. 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.

15. 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, he may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

16. After careful review of the authorities, 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 for services is proper.

DECISION

Based on the foregoing Findings of Fact 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.

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.

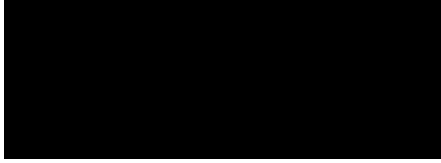
DONE and ORDERED this 21 day of November, 2024,
in Tallahassee, Florida.

Christiana Gopaul Narine

Christiana Gopaul-Narine
Hearing Officer
Suite I, Room 129
2415 North Monroe Street
Tallahassee, FL 32303-4190
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Copies Furnished To: [REDACTED], Petitioner
[REDACTED], Respondent
Agency for Health Care Administration

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
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PETITIONER,

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FLORIDA DEPT OF CHILDREN AND FAMILIES

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 November 21, 2024.



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