

Feb 07, 2025

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

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 24N-00092

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on November 26, 2024 at 11:22 a.m. and reconvened on January 28, 2025 at 3:08 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner: [REDACTED], Petitioner's brother

For Respondent: [REDACTED] Social Services Director, [REDACTED]  
[REDACTED]

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action to discharge him from [REDACTED] [REDACTED] (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

**SUMMARY OF PROCEEDINGS**

At hearing on November 26, 2024, the undersigned appeared. [REDACTED], Social Services Director, the Facility, appeared and represent Respondent. Petitioner appeared and represented himself. Present as witnesses for Respondent were [REDACTED] ("ZS") ("Resp't Wit. 1"), Administrator for the Facility and [REDACTED] ("CR") ("Resp't Wit. 2"), Business Office Manager for the Facility. [REDACTED] Department of Elder Affairs, Ombudsman, appeared as an observer without objection. On record, Petitioner requested to continue and reschedule the hearing so that he could obtain someone to represent him. The request was granted, and the hearing continued.

On December 2, 2024, a new Notice of Hearing ("NOH") was issued to all parties rescheduling the hearing to January 28, 2025 at 3:00 p.m.

At hearing on January 28, 2025, the undersigned, Petitioner, [REDACTED] ZS, and CR reappeared. [REDACTED], Petitioner's brother, appeared and represented Petitioner. [REDACTED], Department of Elder Affairs, Ombudsman, appeared as an observer without objection. Petitioner did not submit any exhibits. Respondent presented eighteen (18) pages of evidence which were into evidence and marked as Respondent's Exhibits one ("1") through four ("4"). The record was left open through close of business on February 3, 2025 for the submission of additional evidence from Respondent.

On January 31, 2025, Respondent submitted the additional evidence which was marked as Respondent Exhibit five ("5").

The record closed on February 3, 2025.

### **Petitioner's Position**

Petitioner took the position that he did not receive any statements or notice that he owed the Facility money. Petitioner argued that he was not informed that his patient responsibility changed in January 2024. Petitioner argued that the Facility did not inform him of his bill because they wanted to discharge him. Petitioner argued that he cannot afford to be discharged from the Facility.

### **Respondent's Position**

Respondent took the position that Petitioner has not been paying his patient responsibility since January 2024. Respondent argued that Petitioner was made aware he had an outstanding balance by hand-delivered bills each month. Respondent argued that Petitioner has not fully paid for the services received at the Facility after reasonable and appropriate notice, and Respondent has requested that Petitioner be discharged.

### **FINDINGS OF FACT<sup>1</sup>**

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. Petitioner has been a resident of the Facility for at least five years. (Hr'g R.)
2. In January 2024, Petitioner's community spouse was admitted to a separate facility and Petitioner's patient responsibility changed to \$1520.00 monthly. CR verbally notified Petitioner of the change. (Hr'g R.)
3. For January 2024 through August 2024, CR hand delivered Petitioner's monthly billing statements each month. (Resp't Ex. 2 at 1 - 9; Hr'g R.)

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<sup>1</sup> 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.

4. In June 2024, CR and ZS delivered Petitioner's June 2024 billing statement together as Petitioner's balance continued to accumulate. (*Id.* at 6 – 7; Hr'g R.)

5. On August 9, 2024, Petitioner was issued a Nursing Home Transfer and Discharge Notice ("Discharge Notice") informing him that he was being discharged due to "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." Petitioner refused to sign the Discharge Notice. Petitioner's outstanding balance owed to the Facility was \$12,160.00. (Resp't Ex. 4; Hr'g R.)

6. As of January 28, 2025, Petitioner's outstanding balance to the Facility is \$19,760.00. Petitioner remains in the facility pending the hearing decision. Petitioner's bill has not been brought current and continues to accumulate. (Resp't Ex. 1; Hr'g R.)

### **CONTROLLING LAW**

7. Section 400.0255(15), Florida Statutes ("F.S."), 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.

8. Title 42 Code of Federal Regulations ("C.F.R.") Section 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; [emphasis added]**

(F) The facility ceases to operate.

9. Section 400.0255, F.S., 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, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge...

...

(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.... 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.

### **CONCLUSIONS OF LAW**

10. Based on the evidence presented, the nursing facility has established that Petitioner is being discharged due to non-payment. This is one of the six (6) reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

11. According to the above authority, a facility may not discharge except for certain reasons, one of which is when the resident has failed, after reasonable and appropriate notice, to pay for the stay at the facility. As of August 9, 2024, Petitioner's balance owed to the facility was \$12,160.00. As of the date of the hearing, Petitioner is responsible for paying his full patient responsibility of \$1520.00 each month and his current balance was \$19,760.00.

12. Consideration was given to Petitioner's arguments that he was not informed that he owed money to the Facility until receiving the August 9, 2024 Discharge Notice and that the Facility failed to notify him of his change in patient responsibility and bill because they wanted to discharge him. However, Petitioner had been in the Facility for at least five years prior to the Discharge Notice being issued and ZS and CR's testimony as direct witnesses lends more credibility to Respondent's argument rather

than Petitioner's argument. Therefore, Respondent's evidence and testimony is more credible.

13. Based on the evidence and testimony, the undersigned concludes that the Facility has given Petitioner reasonable and appropriate notice to pay for his stay at the Facility. This is one of the six (6) reasons provided in federal regulation 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

14. 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.

15. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration ("AHCA") requirements. Should the resident 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.

### **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 AHCA 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 07 day of February, 2025,

in Tallahassee, Florida.

[REDACTED]  
[REDACTED]  
Hearing Officer

[REDACTED]  
Tallahassee, FL 32303-4190  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal.Hearings@myflfamilies.com

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

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

[REDACTED]

PETITIONER,

Vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES

[REDACTED]

RESPONDENT.

APPEAL NO. 24N-00092

CASE NO.

**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 February 07, 2025.

/s/

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