

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

**FILED**

Jan 24, 2025

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]  
[REDACTED]

APPEAL NO. 24N-00112

PETITIONER,  
VS.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic nursing home discharge hearing in the above-referenced matter on December 12, 2024, at 9:45 a.m.

**APPEARANCES**

For Petitioner: [REDACTED] *pro se*

For Respondent: [REDACTED] Administrator

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging Petitioner from [REDACTED] [REDACTED] (the "Facility") because his bill for services has not been paid. Respondent carries the burden of proof by clear and convincing evidence.

**SUMMARY OF PROCEEDINGS**

[REDACTED] Business Office Manager (Resp't Wit. 1), [REDACTED], Assistant Director of Nursing (Resp't Wit. 2), [REDACTED], Director of Social

Services (Resp't Wit. 3), [REDACTED] Nurse (Resp't Wit. 4), and [REDACTED], Director of Nursing (Resp't Wit. 5), appeared as witnesses for Respondent.

Respondent submitted five (5) evidence packets, which were marked and entered as Respondent's Exhibits one ("1") through five ("5").

The record was held open until December 12, 2024 to allow Respondent to provide additional evidence. Respondent submitted one (1) additional evidence packet, which was marked as Respondent's Exhibit six ("6"). The record was closed on December 12, 2024.

### **Petitioner's Position**

Petitioner took the position that he paid the Facility \$39,200.00 in November 2024.

### **Respondent's Position**

Respondent took the position that the Facility notified Petitioner's POA and gave him ample time to pay the balance owed.

### **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's power-of-attorney ("POA"), [REDACTED], filed an application for Institutional Care Program ("ICP"). The Facility received only partial verifications from the POA for the ICP application. The ICP application was denied due to the POA's failure to provide bank statements. (Resp't Ex. 5; Resp't Wit. 1 Test.)

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<sup>1</sup> Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rule of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

2. The Facility has emailed correspondence and mailed billing statements to the POA to inform him of the balances owed during the period of August 2024 through November 2024. The Facility hand-delivered a bill to Petitioner on October 24, 2024. (Resp't Ex. 3; Resp't Ex. 4; Resp't Ex. 6; Hr'g R.)

3. On October 31, 2024, a Nursing Home Transfer and Discharge Notice ("Notice") was issued with an effective date of November 30, 2024. Respondent is seeking to discharge Petitioner due to non-payment for services to the Facility after giving him reasonable notice to pay. (Resp't Ex. 1; Hr'g R.)

4. On November 20, 2024, Petitioner paid the Facility \$39,220.01 with a cashier's check. Petitioner continues to accrue a balance due to the Facility each month. (Resp't Ex. 6 at 14; Resp't Wit. 1 Test.)

5. As of December 12, 2024, the balance owed to the Facility was \$10,500.00. (*Id.*)

6. Petitioner does not dispute that he owes the Facility. Petitioner wishes to continue residing at the Facility, as he does not have a place to go. (Hr'g R.)

#### **CONTROLLING LAW**

7. 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.

8. Title 42 Code of Federal Regulations 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—

(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...

9. Section 400.0255, Florida Statutes, Resident transfer or discharge;

requirements and procedures; hearings in part states:

...

(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**

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

11. Based on the evidence presented, the nursing facility has established that the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. This is one of the six reasons provided in federal regulations for which a nursing facility may involuntarily discharge a resident.

12. 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 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.

13. 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.

14. After careful review of the cumulative evidence and authorities, the undersigned concludes the Facility has met the burden of proof in establishing that Petitioner failed to pay for his stay after reasonable and appropriate notice. The undersigned concludes Respondent's intended action to discharge Petitioner is proper.

### **DECISION**

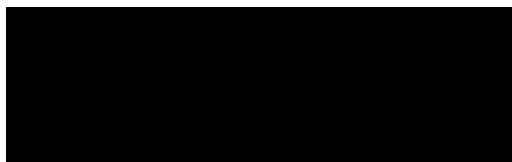
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance 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 24 day of January, 2025,

in Tallahassee, Florida.



Hearing Officer  
Suite I, Room 129  
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-00112

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 January 24, 2025.

[REDACTED]

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