

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

FILED

JUL 7 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00064

PETITIONER,  
Vs.

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Per notice, a nursing home discharge hearing was held before the undersigned hearing officer on July 7, 2009, at 3:01 p.m., at the nursing facility. The petitioner was present to testify and represent himself. \_\_\_\_\_, ombudsman, appeared as a witness for the petitioner. The facility administrator, \_\_\_\_\_, represented the facility and testified. \_\_\_\_\_, social services director, appeared as a witness for the facility.

**ISSUE**

At issue is the correctness of the facility's discharge action of April 9, 2009, to discharge the petitioner based on non-payment. The nursing facility has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner was admitted to the respondent nursing facility on September 29, 2008. The petitioner is a present resident of the respondent facility, and seeks to remain. The respondent permits the petitioner to remain at the facility pending the outcome of this hearing decision.
2. The petitioner has been approved to receive Institutional Care Program and Medicaid (ICP) Medicaid benefits during his stay at the respondent facility. Prior to January 1, 2009, the petitioner owed a patient liability amount to the facility of \$704 monthly under this ICP program. Effective January 2009, this patient liability portion increased to \$746 monthly.
3. The petitioner presently receives \$781 monthly Social Security Disability Income, per belief of both parties. The petitioner has a child support income deduction order of \$150 monthly for a son that lives in Florida. Prior to January 2009, the facility wrote-off this \$150 child support amount in the petitioner's payment liability to the nursing facility. After January 2009, the facility no longer wrote-off this expense.
4. The petitioner gave the facility permission to be the payee of his Social Security funds when he was first admitted to the facility. For the months of November 2008 through March 2009, the petitioner's ICP patient liability amount, minus the child support amount, was paid. The petitioner changed the payee designation of his Social Security funds to himself

- \* effective April 2009. The patient liability portion under the ICP program has not been paid since March 2009.
- 5. The petitioner testifies that he has not received his Social Security checks since he changed the payee designation to himself. The petitioner and the ombudsman believe that the nursing facility has fraudulently received these Social Security funds. The nursing facility administrator testifies that the facility has not received these checks, and does not know where such have been sent. There is insufficient evidence to establish that the facility has received the petitioner's Social Security funds beginning April 2009.
- 6. The respondent presented billing statements for the months of October 2008 through June 30, 2009, labeled Respondent Exhibit 3. The petitioner stipulated that he received four or five of these billing statements delivered directly to his room, but believes that he did not receive all of the billing statements. The administrator testified that mail addressed directly to the petitioner is directly given to the petitioner. The petitioner complains that some of his mail has been misdirected or not received. Upon review of the cumulative evidence, it is presumed that the petitioner received the billing statements labeled Respondent Exhibit 3.
- 7. As of June 30, 2009, the respondent had a balance due the facility of \$2,954.14, per billing statement. The petitioner offered \$200 to \$300 and to change back the Social Security payee designation to the facility to apparently rescind the discharge action, per testimony. However, the

facility does not accept this offer and intends to proceed with the discharge action.

### **CONCLUSIONS OF LAW**

The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42C.F.R. §431.200. Federal Regulations limit the reasons for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the discharge notice indicates the petitioner is to be discharged from the respondent/facility because of non-payment. Federal Regulations do permit a discharge for this reason, as set forth at 42C.F.R. §483.12(a)(2)(v), as follows:

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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;..

The petitioner has been determined eligible for ICP Medicaid benefits during his stay at the facility. The patient liability portion under ICP was paid the facility until these payments stopped in April 2009. Since then, the petitioner has accrued an unpaid past due balance of \$2,954.14 owed the facility as of June 30, 2009. It is concluded that the petitioner received "reasonable and appropriate" notice to pay for his stay at the facility, as required in the language of the above federal regulation.

The respondent nursing facility has valid reason to discharge the petitioner based on non-payment. The nursing facility is concluded to have met its burden of proof in this specific discharge action based on non-payment.

**DECISION**

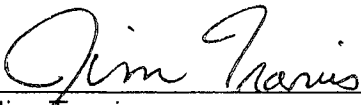

The appeal is denied. The facility is concluded to have met its burden to discharge the petitioner based on non-payment.

**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 Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. 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 24<sup>th</sup> day of July, 2009,

in Tallahassee, Florida.

  
\_\_\_\_\_  
Jim Travis  
Hearing Officer   
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
850-488-1429

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