

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

FILED  
SEP 21 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00105

PETITIONER,

Vs.

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned at 2:52 p.m. on July 30, 2009 at the

, Orlando, Florida. The petitioner represented herself and was assisted with translating and testimony of her nieces, and

The respondent was represented by , administrator. Testimony was available from , social service director, and , administration intern.

**ISSUE**

At issue was whether or not intent to discharge was correct based upon failure to pay for services after reasonable and appropriate notice to pay. The respondent had the burden of proof.

**FINDINGS OF FACT**

1. The petitioner has many health impairments. She requires special care and attention in many areas of daily living. As an example, she uses an electric wheelchair because of severe mobility restrictions. She is lucid, alert, and involved in her care as well as family matters. She does not speak English.

2. She entered the nursing facility in April 2006 following strokes that limited her physical capabilities. Following the strokes, hospital care, and care at a niece's home, nursing home placement was medically ordered.

3. At the time of the first stroke, the petitioner was employed, had medical insurance, and was pursuing legalization of her residency status. When she became institutionalized and ill, she lost her insurance and lost track of the citizenship naturalization process. The extended family was unaware of problems and potential remedies.

4. Until at least the summer of 2008, she received Institutional Care Program (ICP) Medicaid coverage. That ICP and Medicaid coverage was cancelled during 2008 with a determination of citizenship ineligibility. Exact date of ICP closure was not developed and following the cancellation, nursing facility staff tried to assist. They were unsuccessful in resolving the citizenship/naturalization problem. The facility staff hired an outside source to assist with the citizenship problem between December 2008 and May 2009. Citizenship or naturalization status was not achieved. ICP eligibility was not resumed.

5. As of date of hearing, she had Medicare coverage. Also, the citizenship/naturalization problem was being addressed by

6. From November 1, 2008 through June 30, 2009, charges for nursing home care were accruing and not paid. By the end of June 2009, the amount owed was \$83,426.96. Bills were issued, but the amount was not paid.

7. On June 19, 2009, the facility issued Nursing Home Transfer and Discharge Notice to the petitioner due to nonpayment. Location for discharge was a niece's home with home health aide assistance. Physician authorization was obtained. The nursing home staff alleged that discharge must be to a safe location.

8. The petitioner is concerned that her health will suffer without the professional nursing care she receives. The family location is not adequate according to family testimony. The niece lives in a walk up second story apartment with multiple roommates. The niece is gone from home at least ten hours a day for employment purposes. The petitioner believes she will be deported because of the family inability to provide care upon discharge. She believes the deportation process will greatly endanger her life.

#### **CONCLUSIONS OF LAW**

Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Additionally relevant is § 483.12 informing as follows:

##### **Admission, transfer and discharge rights.**

(a) Transfer and discharge--

...  
(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless-- ...

(v) 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.

...  
(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

...  
(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following: ...

(iii) The location to which the resident is transferred or discharged;  
(iv) A statement that the resident has the right to appeal the action to the State....

Serious payment delinquency exists. Reasonable and appropriate notice to pay has been issued by the respondent. It is concluded that inadequate payment has occurred following reasonable and appropriate notice to pay. On that merit, discharge is appropriate.

Despite preferences of the petitioner to remain at the facility and despite uniquely complicated difficulties of the situation, the respondent has met burden of proof. The citizenship problem and the deportation possibility do not provide a means to resolve the unfortunate problem. Intent to discharge has been justified as set forth due to insufficient payment for care and services rendered.

#### **DECISION**

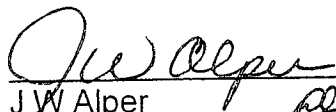
The appeal is denied and the respondent's action is affirmed.

**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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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<sup>st</sup> day of September 2009, in

Tallahassee, Florida.

  
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