

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-00106

PETITIONER,

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned on September 3, 2009 at 12:33 p.m. at the _____, Florida. The petitioner was represented by her daughter, _____ assisted by the petitioner's son, _____. The respondent was represented by _____, director of social services, with testimony from _____, business office manager.

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 been a resident of _____ since the end of November 2007.

2. For some time, she paid the full monthly costs of care. Her funds became depleted during the summer of 2008. She continued to use her monthly income to pay for care, but it did not cover the full monthly cost of care. Her income was under \$2000 per month, and cost of care was almost \$6000 per month.

3. Her family realized that her income exceeded standards for the state's Institutional Care Program (ICP). An attorney was engaged to facilitate financial arrangements that would enable ICP eligibility.

4. During the summer of 2008, and several times since then, ICP applications were filed with the Department of Children and Families. All applications were denied. An example of ICP denial was Petitioner's Exhibit 4, dated April 22, 2009. Until the date of the nursing home discharge hearing, the petitioner had not filed a DCF appeal regarding ICP denials.

5. During the nursing home discharge hearing, her daughter requested an ICP hearing and it was registered. There will be a DCF hearing regarding ICP eligibility. It is separate and apart from the discharge hearing.

6. The respondent issued notices of balance owed. As an example, on June 4, 2009, a statement was issued for July 2009 charges at \$5,736.51. It reflected a "Sub Total as of 05/31/09...8,087.31" and a "Balance 13,823.82." The statement (Respondent's Exhibit 2) was an indication of what was owed if ICP coverage had existed.

7. On June 11, 2009, with no ICP eligibility authorized and adequate payment not achieved, the respondent issued discharge notice due to

nonpayment. The notice is Respondent's Exhibit 1, as under challenge. It shows a discharge location as another care facility.

8. On June 17, 2009, the petitioner's daughter wrote to the facility and advised of ICP eligibility pursuit (Respondent's Exhibit 3) and problems. ICP approval did not occur.

9. Other billing statements were issued (Respondent's Exhibit 4). Monthly payments of at least \$1912.17 each were shown. ICP eligibility was not shown and the balances due increased. By July 31, 2009, balance owed was shown as \$57,724.61.

10. The petitioner's daughter continued to hope that ICP would be authorized. She continued to encounter obstacles that she attributed to DCF failures, and eligibility never happened.

11. The petitioner's daughter acknowledged that a significant amount was owed to the facility and had not been paid. She had encountered difficulties dealing with the ICP application, financial institutions, and legal assistance.

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 difficulties of the situation, the respondent has met burden of proof. Pursuit of the ICP eligibility, along with the problems that were encountered, do not provide a point of mitigation. 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

FINAL ORDER (Cont.)


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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 21st day of September, 2009, in

Tallahassee, Florida.



J W Alper
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: