

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

FILED

NOV 20 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00140

PETITIONER,

Vs.

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on November 18, 2009, at 9:30 a.m., at the facility. The petitioner was present. Present representing the petitioner was her daughter,

Present as a witness for the petitioner was Dana Darby, with the Florida Long-Term Care Ombudsman Program. The respondent was represented by

Administrator. Present as witnesses for the respondent were business office manager and _____, social services director.

ISSUE

At issue is whether or not the facility's action of August 21, 2009 to discharge the petitioner, was correct on the basis of nonpayment for care and services provided.

The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. §483.12.

FINDINGS OF FACT

1. The petitioner is a resident of the above named respondent skilled nursing facility. The petitioner was admitted into the facility on November 24, 2008.
2. As of November 18, 2009, the petitioner's outstanding bill at the facility was \$2,667.53 for services provided by the facility. The outstanding balance was for services provided by the facility during November 2008 and December 2008 which were not covered by the petitioner's Medicare Advantage Plan and/or Medicaid and which were her copayments.
3. The nursing facility sent statements for payment of the petitioner's cost of care to the petitioner and/or the petitioner's representative. The petitioner's daughter and representative was aware of the amount due to the facility.
4. The petitioner's daughter argued that she was not aware that the petitioner had a copayment that she had to pay while she was enrolled in the Medicare Advantage Plan and when she was told about the copayments that the petitioner was required to pay under the Medicare Advantage Plan she changed the petitioner's Medicare coverage to the Original Medicare Plan.
5. On August 21, 2009, the facility, by Nursing Home Transfer and Discharge Notice, notified the petitioner of its intent to discharge her because the bill for services at the facility had not been paid, after reasonable and appropriate notice to pay.
6. The location to which the petitioner was to be discharged was listed on the above notice as a skilled nursing facility in a nearby town.

CONCLUSIONS OF LAW

The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Federal Regulations limit the reason 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 based on non-payment.

Federal Regulations at 42 C.F.R. § 483.12(a) states in relevant part:

(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; ...

The petitioner has an outstanding balance, owed to the facility, for the cost of her care and the facility has notified the petitioner and/or the representative of the balance due for the cost of her care.

According to the above authorities, the facility may not discharge except for certain reasons, of which one is when the resident has failed, after reasonable and appropriate notice to pay for the stay at the facility. Therefore, the Hearing Officer concludes that the nursing facility has met its burden to prove that the petitioner has failed to pay for her stay at the facility, and that reasonable and appropriate notice to pay for such stay has been made. Therefore, the hearing officer concludes that the discharge action is in accordance with the federal regulations.

DECISION

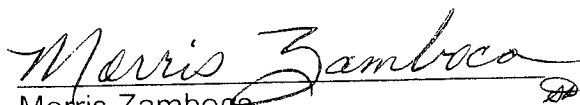
The appeal is denied. The facility met the burden of proof to show the discharge reason meets one of the reasons stated in the Federal Regulation. The facility may proceed with the discharge in accordance with applicable Agency for Health Care Administration requirements, when appropriate placement is found.

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 20th day of November, 2009,

in Tallahassee, Florida.


Morris Zamboca
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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