

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

FILED

DEC 03 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00154

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned hearing officer on October 28, 2009, at 9:10 a.m., at the respondent's facility in Port St. Lucie, Florida. The petitioner was present. His wife, _____, was also present and represented him. Present to represent the respondent were _____ social services director, _____ accounts receivable, and _____ director of nursing.

The record was left open for 14 days for the petitioner's wife and the respondent to have the opportunity to discuss or reach an agreeable payment plan. Neither party contacted the undersigned to inform that an agreement plan was reached, and the record was closed.

ISSUE

At issue is whether or not the facility's proposed action on September 17, 2009 to discharge the petitioner is 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 respondent's skilled nursing facility. He was admitted on December 9, 2008.
2. The Medicare payment ceased for skilled nursing services on January 9, 2009. AARP insurance paid in addition to Medicare's portion until January 16, 2009. The petitioner was considered in a "Medicaid pending" status on January 17, 2009. An initial application for Medicaid benefits was submitted to the Department of Children and Families on December 1, 2008. It was approved in March 2009. The petitioner was assigned a patient responsibility of \$856.57 for January 2009, \$1770.25 for February 2009, and \$1184.30 from March 2009 through September 30, 2009. Effective October 1, 2009, he has no patient responsibility. The patient responsibility is the monthly amount due to the facility from the resident/petitioner.
3. The total amount owed to the respondent for the petitioner's skilled nursing care from mid-January 2009 through the end of September 2009 was \$10,917.55. Payments totaling \$7484.39 were received during that time period, leaving an outstanding balance of \$3433.16 (Respondent's Exhibit 1).

4. The respondent's representative explained that the petitioner's wife received an invoice each month in the mail showing the amount due for the petitioner's patient responsibility. She also recalled phone calls made to the petitioner's wife about the balance and gave her an explanation of the patient responsibility form the Notices of Case Action received from the Department of Children and Families. Four notices were received in October 2009 alone.
5. On September 17, 2009, the respondent issued a Nursing Home Transfer and Discharge Notice to notify the petitioner of its intent to discharge him because his bill for services at the facility had not been paid after reasonable and appropriate notice to pay (Petitioner's Exhibit 1).
6. The petitioner's wife acknowledges that she did not make payments to the nursing home in several months and paid more than the patient responsibility in other months. She believed that she did not have to pay anything at all when her husband was admitted to the facility and thought that Medicare would pay for the first month and insurance would pay for the second month. She had large household bills to take care of in the months that she made no payments. She started paying in April 2009. She asserts that she could not pay the full patient responsibility because she could not live on the money that was left over. She explains that she wants to work out an acceptable payment plan for the outstanding balance. She has not been offered the opportunity to make one and her husband would like to stay in the respondent's facility.
7. The location to where the petitioner is to be discharged to is the petitioner and wife's residence. The petitioner's wife explained that she can not provide his care

because of her own medical limitations. There was no evidence that any other discharge planning has been completed.

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.

The petitioner has an outstanding balance, owed to the facility, for the cost of his care and the facility has notified the petitioner and/or his wife of the balance due for the cost of his care. The petitioner's wife is aware of the balance owed and was eager to work out a suitable payment arrangement.

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.

The hearing officer concludes that the nursing facility has met its burden to prove that the petitioner has not appropriately paid for his stay at the facility, and that reasonable and appropriate notice to pay for such stay has been made. 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 the reasons stated in the federal regulation. The facility may proceed with the proposed discharge in accordance with applicable Agency for Health Care Administration requirements, once a safe and 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 3rd day of December, 2009,

in Tallahassee, Florida.



Margaret Poplin
Hearing Officer
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Copies Furnished To