

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

FILED  
JAN 11 2010  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00176

PETITIONER,  
Vs.

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

**FINAL ORDER**

Per notice, a nursing home discharge hearing was held before the undersigned hearing officer on December 4, 2009, at 2:48 p.m., at the nursing facility. The petitioner was not present. \_\_\_\_\_, district manager of the West Central Florida Long-term Ombudsman Program, represented the petitioner and testified. The petitioner's son and power of attorney (POA), \_\_\_\_\_, appeared as a witness for the petitioner. The wife of \_\_\_\_\_, \_\_\_\_\_ observed.

The facility administrator, \_\_\_\_\_ represented the facility and testified. \_\_\_\_\_ facility business office manager, appeared as a witness for the facility. \_\_\_\_\_, facility social worker, observed. \_\_\_\_\_ ombudsman, observed. \_\_\_\_\_, employed with the Office of the Public Guardian, also observed.

### ISSUE

At issue is the correctness of the facility's discharge action of October 26, 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 in March 2007. The petitioner presently resides at the respondent facility, and seeks to remain. The respondent permits the petitioner to remain at the facility pending the outcome of this hearing decision. This hearing was requested on October 28, 2009 in the petitioner's behalf.
2. The petitioner was approved to receive Institutional Care Program and Medicaid (ICP) Medicaid benefits during his stay at the respondent facility beginning in July 2007. The petitioner owes a patient liability amount to the facility of \$3,700.87 monthly under this ICP program.
3. In February 2009, the facility received a \$1,000 payment toward the balance due the facility. On March 31, 2009, another \$1,000 payment was received. On May 4, 2009, another payment of \$1,000 was received. On May 29, 2009, the facility received payment of \$2,000. As of June 1, 2009, the petitioner had a balance of \$53,391.29 due the facility.
4. In both July and August 2009, the facility received payments of \$2,000 each. In September 2009, the facility received two payments of \$2,000 for a total of \$4,000. The last payment received by the facility was the

payments received in September 2009. The petitioner had a balance due the facility of \$69,971.03 as of the hearing date of December 4, 2009.

5. The respondent presented billing statements for the months of June 2009 through November 2009 labeled Respondent Exhibit 10. The petitioner's son and POA agreed that billing statements have been received while the petitioner has resided at the facility.

### 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 for her stay at the facility. The petitioner has an ongoing patient liability obligation under the ICP program of \$3,700.87 monthly. The evidence shows that the petitioner has been making only partial payments toward this ICP patient liability amount. The petitioner has accrued an unpaid past due balance of \$69,971.03 owed the facility as of the hearing date.

Since the petitioner's POA has received billing statements during the petitioner's stay at the facility, the petitioner is concluded to have received "reasonable and appropriate" notice to pay for her 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 the unpaid balance that has accrued over time due to partial payment of the ICP patient liability portion. The nursing facility is concluded to have met its burden of proof in this specific discharge action based on non-payment of the full ICP patient liability obligation.

#### **DECISION**

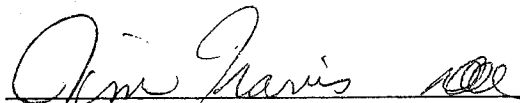
The appeal is denied. The facility is concluded to have met its burden to discharge the petitioner based on non-payment.

#### **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.

FINAL ORDER (Cont.)  
09N-00176  
PAGE - 5

DONE and ORDERED this 11<sup>th</sup> day of January, 2010,  
in Tallahassee, Florida.



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

Copies Furnished T