

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

FILED
FEB 24 2000
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

Vs.

APPEAL NO. 09N-00203

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned at 12:36 p.m. at the _____ Rehabilitation and Nursing Center. The petitioner represented herself with assistance from her brother, _____ her friend, _____, and _____, ombudsman. The respondent was represented by _____, administrator, with testimony also available from _____ social worker.

ISSUE

At issue was whether discharge intent is correct based on nonpayment after reasonable and appropriate notice to pay. The respondent bears the burden of proof with a clear and convincing evidence standard.

FINDINGS OF FACT

1. The petitioner has been a resident at the facility for several years due to serious health problems. She is lucid and legally competent.

2. The petitioner was previously eligible for Medicaid Institutional Care Program and Medicaid was helping to pay the nursing home until November 2009. Since November 2009 and as of the hearing date, the bill was not paid.

3. The petitioner acknowledged she was billed by the facility, had received bills for December 2009 and January 2010, but had not paid the bill, due to lack of available funds.

4. The facility bills a month in advance for room, board and care. The amount owed through January 2010 was \$11,604.03 (just over \$5700 monthly). The petitioner received a bill for payment. The bill was not paid. By date of hearing, the amount owed was \$16,930.47. (There were also some additional pharmacy charges.)

5. On December 9, 2009, the respondent issued the petitioner a Nursing Home Transfer and Discharge Notice saying the discharge to her brother's residence was planned for January 2010.

6. That notice was appealed.

7. The petitioner has gone to her brother's residence for many visits. She takes many medications throughout the day. Her brother may not be able to provide what he considers an adequate environment for her at his home. He works extended hours.

8. The respondent is aware that discharge must meet safety standards.

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....

While agreeing that insufficient payment had occurred, the petitioner and those participating on her behalf, questioned the safety of the discharge location. Facility staff noted that safety requirements would be further addressed as discharge plans continued. Safe location was recognized as a requirement for discharge. At this point in the discharge notice and planning process, evaluation of the location is not a critical element for hearing purposes.

After careful review, it is concluded that inadequate payment has occurred following reasonable and appropriate notice to pay. On that merit, discharge to a safe location is appropriate. Despite preferences of the petitioner, and difficulties

of the situation, the respondent has met burden of proof. Intent to discharge has been justified as set forth.

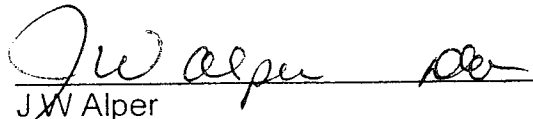
DECISION

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 24th day of February 2010, in
Tallahassee, Florida.



J.W. Alper
Hearing Officer
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Tallahassee, FL 32399-0700
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Copies Furnished T