

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

[REDACTED]

APPEAL NO. 10N-00149

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

FILED

Jan 19, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 14, 2010 at 9:05 a.m. at the facility. The hearing was scheduled on November 4, 2010. However, at continuance was granted as requested by the parties.

APPEARANCES

For the Petitioner: [REDACTED].

For the Respondent: [REDACTED] administrator.

STATEMENT OF ISSUE

The petitioner is appealing the decision to discharge her from the respondent facility.

PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated September 8, 2010, the respondent notified the petitioner she was to be discharged from the respondent facility effective October 8, 2010 due to non-payment of bill for services.

On September 13, 2010, the petitioner's sister timely requested a hearing on behalf of the petitioner to challenge the respondent's action.

The hearing was conducted on December 14, 2010. Appearing as witnesses for the petitioner were the petitioner's sister, [REDACTED] and [REDACTED] Long-Term Care Ombudsmen. Appearing as witnesses for the respondent were [REDACTED] [REDACTED], business office manager and [REDACTED] social service director.

After the hearing was convened, the facility staff brought the petitioner to the conference room in the facility where the hearing was being held. However, the petitioner's sister asked that the petitioner be excluded from the proceedings as she did not want to upset the petitioner. Therefore, the petitioner did not attend the hearing.

FINDINGS OF FACT

1. The petitioner was admitted into the facility on May 30, 2008 as a private pay resident. Her diagnosis was cardio vascular accident with quadriplegia. The petitioner was born on September 4, 1959 and was 60 years old.

2. The petitioner did not initially apply for Medicaid. It is not clear as to why the petitioner delayed her application for Medicaid. The petitioner subsequently applied for Medicaid and her application was approved effective April 2010.

3. As of the date of the hearing, the petitioner owes the respondent approximately \$42,476.64. The petitioner's sister did not dispute that the petitioner has an outstanding bill for services provided to the petitioner that has not been paid. The petitioner has made some payments to the respondent prior to and after the approval of Medicaid.

4. On September 8, 2010, the respondent issued the petitioner a Nursing Home Transfer and Discharge Notice which explained that it intended to discharge her from the facility effective October 8, 2010 due to nonpayment of bill for services. The petitioner's sister requested a hearing on September 13, 2010. The petitioner remains in the facility pending the hearing decision.

5. Since April 2010, the petitioner's cost for services provided by the respondent have been paid. The amount owed to the respondent is for services provided prior to April 2010. The respondent has been issuing monthly billing statements since February 24, 2009. The respondent sent the September 8, 2010, Nursing Home Transfer and Discharge Notice to the sister. The billing statements were also sent to the petitioner's sister as the sister had requested that all correspondence related to the petitioner's stay at the facility be sent to her.

6. The petitioner gave the sister power of attorney to act on her behalf and was her representative in matters related to her care at the facility. The petitioner and the sister informed the respondent that they should contact the sister in matters related to the petitioner's stay at the facility. The sister received the billing statements and the discharge notice and was aware of the amount the

petitioner owed the respondent and that the respondent was discharging the petitioner due to the non-payment of the outstanding bill owed to the respondent. The sister did not tell the petitioner that she had an outstanding unpaid balance owed to the respondent and that the respondent was discharging her due to non-payment, as the sister did not want to upset the petitioner. The sister also asked the respondent not to give the petitioner any information related to the amount owed and the discharge action as it would upset the petitioner.

7. The September 8, 2010, Nursing Home Transfer and Discharge Notice listed the location to which the petitioner was to be discharged as the sister's home. The respondent acknowledged that the petitioner requires skilled nursing care and would not discharge the petitioner until they are able to transfer the petitioner to another skilled nursing facility. The respondent listed the sister's address as the discharge location because the sister was trying to apply for a Medicaid Waiver Program which would provide services that would allow the petitioner to be cared for in the sister's home. However, the respondent acknowledged that due to the petitioner's medical condition a discharge to the sister's home would not be possible.

8. It is the ombudsmen's position that the discharge notice does not meet the statutory requirements as the notice was not sent to the petitioner and that the discharge location was not an appropriate location. It is also the ombudsman's position that the discharge was not appropriate as the billing statements were sent to the sister and were not sent to the petitioner.

CONCLUSIONS OF LAW

9. The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. §431.200.

10. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing.--, informs at (15) (b) that the facility's burden of proof must be clear and convincing evidence.

11. Federal regulations limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In the instant case, the respondent proposes discharging the petitioner from the facility due to non-payment for services. Federal regulations do permit a discharge for this reason, as set forth at 42 C.F.R. §483.12(a)(2)(v) which states in relevant part, "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 resident only allowable charges under Medicaid..."

12. The petitioner owed the respondent approximately \$42,476.64. This fact is not disputed. What is at issue is whether she failed, after reasonable and appropriate notice, to pay for her stay at the facility. The petitioner was admitted into the facility on May 30 2008 as a private pay resident. The petitioner did not immediately apply for Medicaid. It is not clear as to why the petitioner delayed her application for Medicaid. The petitioner subsequently applied for Medicaid and her application was approved effective April 2010. Since April 2010, the petitioner's cost for services provided by the respondent have been paid. The amount owed to the respondent is for services provided prior to April 2010. The

respondent has been issuing monthly billing statements since February 24, 2009, which have been sent to the sister. Additionally, the respondent sent the September 8, 2010, Nursing Home Transfer and Discharge Notice to the sister. The billing statements and the discharge notice were sent to the petitioner's sister as the sister had requested that all correspondence related to the petitioner's stay at the facility be sent to her. The petitioner gave the sister power-of-attorney to act on her behalf in matters related to her care at the facility. The sister received the billing statements and the discharge notice and was aware of the amount the petitioner owed the respondent and that the respondent was discharging the petitioner due to the non-payment of the outstanding bill owed to the respondent. The sister did not tell the petitioner that she had an outstanding unpaid balance owed to the respondent and that the respondent was discharging her due to non-payment, as the sister did not want to upset the petitioner. The sister also asked the respondent not to give the petitioner any information related to the amount owed and the discharge action as it would upset the petitioner.

13. The ombudsman argued the petitioner was harmed by the respondent sending the notice of discharge to petitioner's sister as opposed to sending the notice to the petitioner. The statute at 400.0255 (7) requires that the notice be sent to both the resident and family member or the resident's legal guardian or representative except under emergency situations. This is a procedural due process issue. Procedural due process includes many requirements such as:

- An unbiased tribunal

- Notice of the proposed action and the grounds asserted for it
- Opportunity to present reasons why the proposed action should not be taken
- The right to present evidence, including the right to call witnesses
- The right to know opposing evidence
- The right to cross-examine adverse witnesses
- A decision based exclusively on the evidence presented
- Opportunity to be represented by counsel
- Requirement that the tribunal prepare a record of the evidence presented
- Requirement that the tribunal prepare written findings of fact and reasons for its decision

14. All of these rights were afforded the petitioner. A notice was provided to a family member who was her power-of-attorney. Based on that notice, the petitioner's representative requested a hearing. Evidence was presented by both sides; the hearing officer, based on that evidence, can make a proper ruling on the case. There is the allegation the petitioner was harmed by not getting a copy of the notice, with the requested remedy that the undersigned rule for the petitioner in spite of the overwhelming evidence that the petitioner, through her representative, had not paid the nursing facility bill after proper notice. A failure to pay such is grounds for discharge. Following receipt of the notice, the petitioner's representative requested a hearing to protect the petitioner's rights. The petitioner has made some payments to the respondent prior to and after the approval of Medicaid. The ombudsman was involved

with the hearing process. Therefore, the hearing officer cannot conclude the petitioner was harmed by the notice going to the sister.

15. The ombudsman argued that the discharge was not appropriate as the billing statements were sent to the sister and were not sent to the petitioner. Therefore, she did not receive reasonable and appropriate notice to pay for her stay at the facility. The findings show that the sister was the petitioner's power-of-attorney and representative who was handling the petitioner's affairs related to her stay at the facility. Additionally, the petitioner and the sister requested that the respondent contact the sister on any matters related to the petitioner's stay at the facility. Based on the above, it is determined that the petitioner received reasonable notice to pay for her stay at the facility as the billing statements were sent to the petitioner's sister who had power-of-attorney and was her representative.

16. Additionally, the ombudsman argued that the discharge location was not appropriate because the petitioner could not be discharged to the sister's home as she required skilled nursing care in a skilled nursing facility. The facility has agreed to transfer to an appropriate facility that can provide for her needs.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The respondent may proceed with the proposed discharge in accordance with the Agency for Health Care Administration's applicable rules.

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 _____ day of _____, 2011,

in Tallahassee, Florida.

Morris Zamboca
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To:

[REDACTED]