

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

[REDACTED]

APPEAL NO. 10N-00205

PETITIONER,

Vs.

CASE NO.

FILED

Mar 2, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned at 11:07 a.m. on February 2, 2011 at the respondent nursing facility. The petitioner was not present but was represented by her daughter [REDACTED] with additional testimony from [REDACTED] Long-Term Care Ombudsman. The respondent was represented by [REDACTED], with testimony from [REDACTED] administrator and [REDACTED] business office manager.

**STATEMENT OF ISSUE**

At issue is the respondent's action of December 2, 2010 to discharge the petitioner based on nonpayment after reasonable and appropriate notice to pay.

**FINDINGS OF FACT**

1. The petitioner was admitted to the facility on July 3, 2010, after being released from [REDACTED] hospital.
2. On December 2, 2010 the facility sent the petitioner a Nursing Home Transfer and Discharge Notice showing she owed \$19,200.07 and stating that Medicaid was pending since July 24, 2010 (Respondent Exhibit 1).
3. Medicaid Notice of Case Action dated January 19, 2010 shows the petitioner's Medicaid was approved. The notice shows \$1,959.39 her gross countable income, minus \$35 (personal needs) and \$1,924.39 to the nursing facility for August 2010 through November 2010. From December 2010 through February 2011 it shows \$2,189.12 her gross countable income, minus \$35 (personal needs) and \$2,154.12 to the nursing facility (Respondent Exhibit 1).
4. The respondent was unsure why the petitioner's financial responsibility to the nursing facility changed from \$1,924.39 to \$2,154.12 in December 2010. She was also unsure why Medicaid did not pay for July 2010.
5. The petitioner's representative was also unsure why her mother's financial responsibility to the nursing facility increased in December 2010, especially since her mother only receives \$2,073, net, from social security. The Department is reviewing the petitioner's financial responsibility increase.
6. As of the date of the hearing the amount the petitioner owed to the facility was no longer \$19,200.07. The respondent testified the balance was now \$9,245.87.

7. The petitioner's representative had a check in the amount of \$5,230 to give the nursing facility the day of the hearing and stated she might have an additional \$787 from a life insurance surrender policy her mother had. The petitioner's representative stated that her mother was willing to give up the monthly \$35 personal needs to pay the remaining amount.

8. The respondent did not have the authority to make arrangements with the petitioner to work out a plan to pay the remaining amount. The respondent was concerned that the petitioner's financial responsibility to the nursing facility is more money than what she receives monthly from social security.

9. The petitioner's representative agreed to look for another nursing facility to move her mother to if the respondent was unable to work with her mother on paying the remaining balance. She requested assistance from the respondent in relocating her mother.

10. The respondent agreed on assisting the petitioner's representative with the relocation of her mother.

#### **CONCLUSIONS OF LAW**

11. Jurisdictional to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Florida Statute 400.0255 addresses "Resident transfer or discharge; requirement and procedures; hearing..." with section (15) (b) informing that the burden of proof is one of clear and convincing evidence. Federal regulations limit the reason for which discharge may occur and provide for certain emergency discharge procedures.

12. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

13. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the respondent.

14. The Code of Federal Regulations at 42 C.F.R. § 483.12 Admission, transfer and discharge rights states in part:

(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....

15. The above authority states before a facility transfers or discharges a resident, the facility must notify the resident, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing. The Findings of Facts show the nursing facility notified the petitioner's daughter on December 2, 2010. Although the petitioner has paid the nursing facility a portion of the amount originally

owed, a remaining balance exists. After careful review, the undersigned concludes the respondent has met burden of proof.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 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.

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Priscilla Peterson  
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

FINAL ORDER (Cont.)

10N-00205

PAGE - 6

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