

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

[REDACTED]

APPEAL NO. 10N-00211

PETITIONER,

Vs.

Administrator

[REDACTED]

FILED

Jan 31, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter at the nursing facility on January 27, 2011, at 2:26 p.m.

APPEARANCES

For the Petitioner: [REDACTED], daughter

For the Respondent: [REDACTED], Business Officer Manager of the facility

PRELIMINARY STATEMENT

Present for the petitioner was [REDACTED] district nursing home ombudsman manager; [REDACTED] legal advocate of the ombudsman program and [REDACTED] friend of the petitioner.

Present for the facility was [REDACTED] administrator; [REDACTED], wound care and restorative nurse; [REDACTED] director of nursing and [REDACTED] social services director.

Present as observers was [REDACTED] ombudsman and [REDACTED],
ombudsman.

ISSUE

At issue is the discharge notice issued by the facility on December 14, 2010, stating, “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.”

FINDINGS OF FACT

1. The petitioner was admitted to the facility on December 12, 2009 under Medicare skilled care. She became Medicaid eligible January 2010 and presently has a patient responsibility of \$1979 per month.
2. As of September 20, 2010, the petitioner owed the facility a total of \$31,358.82.
3. The facility began collection efforts with one of two individuals (resident’s step-daughter) who admitted the petitioner into the facility on October 29, 2010.
4. A financial agreement to pay was agreed upon with the step-daughter. However, this was not followed through on.
5. On November 8, 2010, a check in the amount of \$4,000 was paid to the facility. In addition, other partial payments have been made. As of the date of the hearing, there was an outstanding balance of \$8,273.48.
6. The facility sent several letters and left phone messages for the step-daughter. During November 2010, calls were made on the 16th, 17th, 18th, 19th, 22nd and 23rd. Subsequent to that, the administrator wrote a letter attempting to collect on the bill.
7. An exploitation referral was made to the Department of Children and Families as well as a police report made against the step-daughter.

8. On December 14, 2010, the facility issued a Nursing Home Transfer and discharge Notice with an effective date of the discharge of January 12, 2010. The petitioner remains in the facility pending the outcome of the fair hearing.
9. Staff are in the process of changing the payee of petitioner's monthly checks to the facility to ensure payment.
10. The petitioner's daughter indicated she had no objection to the facility transferring her mother to a facility in Georgia as long as her monthly income follows her.

CONCLUSIONS OF LAW

11. The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. §431.200.
12. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing, informs at (15) (b) that the burden of proof must be clear and convincing evidence.
13. 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 to discharge the petitioner due to non-pay of a stay at the facility. 42 C.F.R. §483.12 (a) (2) (v) indicates that once "the resident has failed, after reasonable and appropriate notice, to pay for...a stay at the facility," the facility may transfer or discharge the resident.
14. The findings show that the resident has failed to pay for a stay at the facility and that reasonable and appropriate notice to pay has been issued. Therefore, the

undersigned concludes that the facility's proposed discharge action is within the federal and state guidelines for discharge.

DECISION

The appeal is denied. The facility may proceed with its proposed discharge action in accordance with the Agency for Health Care Administration's rules for safe transfer and discharge.

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.

Susan Dixon
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

10N-00211

PAGE – 5

Copies Furnished To:

