

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

[REDACTED]

APPEAL NO. 11N-00075

PETITIONER,

Vs.

FILED

JULY 19, 2011

Administrator

[REDACTED]

OFFICE OF APPEAL HEARINGS

DEPARTMENT OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 21, 2011, at 8:02 a.m., in [REDACTED], Florida. The petitioner was present. Representing the petitioner was her husband [REDACTED].

Representing the respondent was [REDACTED], administrator. Appearing as witnesses were [REDACTED] business manager, and [REDACTED], director of social services. Also appearing telephonically was [REDACTED] [REDACTED] customer service.

ISSUE

At issue is whether or not the nursing home's action to transfer or discharge the petitioner is an appropriate action based on the federal regulations found at 42 C.F.R. § 483.12. The respondent is seeking to transfer the petitioner because "your bill for

services at this facility has not been paid after reasonable and appropriate notice to pay". The nursing home has the burden of proof.

FINDINGS OF FACT

1. The petitioner is an eighty-nine year old [REDACTED] resident of the [REDACTED] [REDACTED] nursing facility. She has been a resident since October 2010 when she was transferred from a hospital stay due to a broken arm.

2. The petitioner was sent to the facility for rehabilitation purposes. She was admitted under Medicare eligibility.

3. In February 2011 the petitioner's Medicare benefits were exhausted. The husband wanted long term care and was willing to pay privately.

4. The husband had long term care coverage under his [REDACTED] [REDACTED]. This Plan would cover skilled care but not residential care.

5. When the facility was not being paid by the Plan, it directly billed the husband. The petitioner is accumulating charges at the rate of approximately \$7,000-\$8,000 per month. As of the date of the hearing the charges totaled \$42,640.90

6. On March 24, 2011 the facility issued a Nursing Home Transfer and Discharge Notice to the petitioner with an effective transfer date of April 24, 2011. The Notice indicated the reason for transfer as "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay".

7. The husband explains that the petitioner requires skilled care and that his [REDACTED] [REDACTED] should pay. There was no medical documentation to substantiate this claim for skilled care.

8. Lastly, at the request of the hearing officer, the Agency for Health Care Administration (AHCA) conducted a review of the petitioner's circumstances. The resulting interviews and documentation on April 27, 2011 provided that "it has been determined that there were no violations".

CONCLUSIONS OF LAW

9. **42 C.F.R. § 483.12 Admission, transfer, and discharge rights** states in part:

(a) Transfer and discharge--

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(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.

(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.

(5) Timing of the notice. (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph

(a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or Discharged....

10. Pursuant to federal guideline, the nursing facility issued a Nursing Home Transfer and Discharge Notice to the petitioner March 24, 2011. [REDACTED], the business manager, signed this Notice.

11. The notice, as required, indicated the reason for transfer or discharge as "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay". The effective date of the transfer or discharge was given as April 24, 2011. The location to which the petitioner was to be transferred or discharged as given as [REDACTED] Florida.

12. All requirements have been met by the nursing facility.

DECISION

The appeal is denied. Pursuant to 42 C.F.R. § 483.12(7), "A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility".

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

FINAL ORDER (Cont.)

11N-00075

PAGE - 5

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.

Melvyn Littman
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], Petitioner
[REDACTED] Respondent
Ms. Arlene Mayo-Davis, Agency for Health Care Administration
[REDACTED]