

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

[REDACTED]

APPEAL NO. 11N-00107

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED

JULY 19, 2011

OFFICE OF APPEAL HEARINGS
DEPARTMENT OF CHILDREN AND FAMILIES

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on June 28, 2011, at 8:00 a.m., in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED] attorney. Appearing as witnesses were [REDACTED], son-in-law, and [REDACTED] daughter.

For the Respondent: [REDACTED], attorney, [REDACTED]. Appearing as a witness was [REDACTED], administrator. Present as an observer was [REDACTED] assistant administrator.

STATEMENT OF 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 a ninety-three year old [REDACTED] resident of the [REDACTED]. She has been a resident since November 17, 2010. It is noted that there have been several hospitalizations since this time with the petitioner returning to the nursing facility each time.
2. On November 18, 2010, the petitioner signed an admission agreement which included the resident's rights and responsibilities. Section 3.2 A. of these responsibilities stated what the petitioner would pay the facility for.
3. The petitioner was originally admitted under Medicare eligibility. This eligibility would be for 100 days. The Medicare eligibility included payment of co-pays and deductibles that the petitioner was responsible for.
4. The Medicare payments were due to expire March 3, 2011. The facility indicates that the son-in-law came on February 28, 2011 to discuss private pay.

5. Discounted payments could not be done by the respondent so an agreement could not be made. Private pay began March 4, 2011.

6. When no payments were forthcoming the respondent issued the Nursing Home Transfer and Discharge Notice April 28, 2011. At the time of the Notice, the petitioner owed \$24,425.

7. The petitioner was accumulating charges of approximately \$10,000 per month. At the time of this hearing the outstanding bill was \$42,774.79.

8. The April 28, 2011 Notice had an effective transfer date of May 28, 2011. The Notice indicated the reason for discharge as "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay".

9. The respondent never offered any alternative in writing for payments to be made.

10. [REDACTED] claims that the respondent gave his client's family a false sense of security in the sense that everything was OK and the facility was working on a resolution to the problem of the outstanding bill.

11. He also believes that the facility neglected the petitioner who fell three or four times. He notes that if it were not for the hospitalizations his client would have already left the facility.

12. He presently has a suit against the facility for the falls and notes that if the suit is won the money awarded would cover any outstanding bill now.

13. There was also a belief by the family that if the petitioner remained at the facility she would not be responsible for full payment. The respondent notes that there was nothing in writing to this affect.

14. The family explains that they never received any of the bills sent to the petitioner's address. All mail was forwarded from the petitioner's home address to the daughter. There was no mention of any of the mail being returned to the facility.

15. [REDACTED] questions what is "an appropriate notice to pay"? He also questions what services were not paid for. He also reminds the hearing officer that the petitioner remains at the facility because of the facility's neglect.

16. The respondent explains that the family knew of the outstanding bill because they sought to have it discounted. They note that the amount can be disputed but there were no payments forthcoming.

17. Lastly, at the request of the hearing officer, the Agency for Health Care Administration (AHCA) conducted a review of the petitioner's circumstances on June 1, 2011. The resulting interviews and documentation on June 6, 2011 provided that "it has been determined there were no violations".

CONCLUSIONS OF LAW

18. **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....

19. Pursuant to federal guideline, the nursing facility issued a Nursing Home Transfer and Discharge Notice to the petitioner April 28, 2011. [REDACTED] the administrator, signed this Notice.

20. 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 May 28, 2011. The location to which the petitioner was to be transferred or discharged as given as: [REDACTED], Florida.

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

22. Even if the [REDACTED] did not receive any of the billing statements, they were certainly aware of the outstanding billing once the April Discharge Notice was sent. To date no payments have been made by the family on the petitioner's behalf.

23. Regulation does not allow for the withholding of outstanding payments.

DECISION

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

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
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Copies Furnished To: [REDACTED], Petitioner

[REDACTED]
Respondent

[REDACTED] Agency for Health Care Administration
[REDACTED]