

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

[REDACTED]

APPEAL NO. 11N-00109

PETITIONER,

vs.

FILED

Administrator

JULY 27, 2011

[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 July 5, 2011, at 9:30 a.m., at [REDACTED] in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's sister

For the Respondent: [REDACTED] Administrator

ISSUE

Whether respondent can show by clear and convincing evidence that petitioner's discharge in the notice dated April 7, 2011 is in accordance with the requirements of Code of Federal Regulation at 42 C.F.R. § 483.12(a)(2)(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."

PRELIMINARY STATEMENT

On a notice dated April 11, 2011, the administrator informed petitioner that he was to be discharged because “[y]our bill for services at this facility has not been paid after a reasonable an appropriate notice to pay.” (Respondent’s Exhibit 7 at 1). On April 12, 2011, the petitioner timely requested a hearing to challenge the discharge. On a notice dated June 8, 2011, the administrator reissued discharge notice stating the same reasoning as the initial discharge. (Respondent’s Exhibit 1 at 1).

Appearing on behalf of petitioner was [REDACTED], Ombudsman with [REDACTED]. Appearing on behalf of the administrator is [REDACTED], Nurse LPN, [REDACTED] Director of Nursing, and [REDACTED], Social Service Director. Also observing with administrator was [REDACTED], administrator in training.

FINDINGS OF FACT

1. Petitioner was hospitalized in February 2011, for uncontrolled diabetes and alcohol consumption. (Petitioner’s Exhibit 9). On March 12, 2011, Petitioner was admitted to administrator’s facility and continues to reside there as of the date of the hearing. Petitioner is a high functioning adult who suffers from a previous brain injury and diabetes.

2. On a notice dated April 11, 2011, the administrator informed petitioner that he was to be discharged because “[y]our bill for services at this facility has not been paid after a reasonable and appropriate notice to pay.” (Respondent’s Exhibit 7 at 1). Additionally, the discharge notice stated, “Denied Medicaid payments-private payment of \$8,415 past due-collection attempts not successful.” (Respondent’s Exhibit 7 at 1).

3. On a reissued notice of discharge dated June 8, 2011, it stated: "outstanding account balance of \$21,621.68. Physician evaluations indicate resident does not require services of skilled nursing facility. (cares deemed only temporary placement + needed @ admission)". (Respondent's Exhibit 1 at 1).

4. [REDACTED] testified that Medicaid and Social Security applications were denied for petitioner due to his income and condition(s) and therefore a discharge is appropriate due to petitioner's inability to pay his balanced owed.

5. Administrator submitted into evidence a Notification of Level of Care, indicating the level of care petitioner needed when admitted into the facility was skilled nursing on a temporary basis (Respondent's Exhibit 2 at 1). Administrator also submitted into evidence a medical exam taken by [REDACTED] and [REDACTED], M.D. The exam identifies petitioner with alcohol abuse and potential depression issues.

6. [REDACTED], Director of Nursing, testified that petitioner is a high functioning adult and has diabetes that is well maintained. [REDACTED] testified that petitioner has been taught proper procedures regarding taking care of his medical condition.

7. Administrator submitted into evidence Social Service Progress Notes taken by [REDACTED]. (Respondent's Exhibit 8). [REDACTED], Social Services Director, also testified regarding the attempts made to contact petitioner's sister, who holds power of attorney over petitioner.

8. [REDACTED] also testified that she is responsible for finding adequate placement for petitioner upon discharge. [REDACTED] testified she has made numerous

attempts to speak to [REDACTED] who has been uncooperative with the facility throughout this process. [REDACTED] testified that after [REDACTED] failure to cooperate, she found a homeless shelter, [REDACTED] in Tallahassee, Florida in which petitioner indicated he would be willing to go since he is unable at that time to stay with his sister.

9. [REDACTED] testified that she called [REDACTED] on her cell phone and/or work and left messages regarding a creating a post-discharge plan for petitioner on the following dates: March 28, 2011, March 29, 2011, April 19, 2011, May 3, 2011, and May 6, 2011.

10. In addition, [REDACTED] testified that on March 29, 2011, [REDACTED] visited the facility; however [REDACTED] left before the staff had an opportunity to conduct a post-discharge plan meeting with her.

11. [REDACTED] testified that when it became apparent [REDACTED] was not willing or interested to participate in a discharge plan, she started seeking alternative placements. [REDACTED] contacted [REDACTED], homeless shelter, and began the necessary steps in order to discharge petitioner there. [REDACTED] testified that she talked to petitioner on May 5, 2011 regarding placement at [REDACTED] and he appeared to be fine.

12. [REDACTED] also testified that she sent a statement in the mail to [REDACTED] regarding petitioner's discharge. [REDACTED] testified the statement was misaddressed and held at the post office until she eventually picked it up.

13. [REDACTED] testified that she feels the administrator failed to adequately provide her with statements and discharge information relating to petitioner. [REDACTED]

████████ further testified that phone calls were not proper under the circumstances and the only letter she received relating to the matter was delayed and misaddressed (to her maiden name).

14. ██████████ testified that the first time she learned of the administrator discharging petitioner was on May 3, 2011, when she listened to a voice message from ██████████

15. ██████████ also testified that a homeless shelter is an improper placement due to petitioner's medical condition. ██████████ testified that petitioner is unable to properly treat his diabetes by himself. However, ██████████ agreed petitioner has learned significant steps to treat himself and has become much more self sufficient since initially entering the administrator's facility. Petitioner submitted an article that describes ██████████ and entered as Petitioner's Exhibit 5, which described the proposed homeless shelter petitioner will be discharged to. ██████████ testified that petitioner needs more services in which the shelter can provide and that a combat veteran deserves better.

CONCLUSIONS OF LAW

16. Jurisdiction over this matter has been assigned to the Department of Children and Families by 42 Code of Federal Regulations § 431.200 and Florida Statutes § 400.0255.

17. This proceeding is a de novo proceeding pursuant to Florida Administrative Code § 65-2.056.

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

19. 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--

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(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.

(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;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman....

20. Federal Regulation limits the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, petitioner was sent notice indicating that he would be discharged from the facility based on 42 C.F.R. § 483.12(a),

which states: “(2)(v) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.”

21. In the instant case, petitioner’s representative was hand delivered a discharge notice, dated June 8, 2011, pursuant to federal guidelines indicating that petitioner would be discharged from the facility to petitioner’s representative’s personal residence (closest known family member) on July 8, 2011 for failing to pay for services at the facility after reasonable and appropriate notice to pay.

22. Petitioner argues administrator failed to provide reasonable or appropriate notice to pay for petitioner’s bill and that administrator failed to properly develop a post-discharge plan of care required under 42 C.F.R. § 483.20(1)(3). Petitioner cites that she only received voice messages regarding petitioner’s discharge, except for a single letter she received which was misaddressed and receipt was delayed. Petitioner also cites that she was not involved in any post-discharge plan of care meetings, and believes petitioner is in need of skilled nursing to control his diabetes.

23. The undersigned concludes that petitioner has an outstanding bill for services at the administrator’s facility that has not been paid.

24. The undersigned concludes that administrator provided reasonable and appropriate notice of petitioner’s failure to pay for petitioner’s stay at the facility. The administrator left multiple voice messages with petitioner’s representative over a three month period and submitted a letter to petitioner’s representative indicating petitioner’s overdue balance to, what the administrator reasonably believed, was the correct name and address of petitioner’s representative.

25. The undersigned concludes that a post-discharge plan of care was developed with reasonable opportunity for petitioner and petitioner's representative to participate. The evidence shows that petitioner's representative was contacted multiple times regarding developing a post-discharge plan of care and at one point was at the facility and left while the administrator was attempting to hold a post-discharge plan of care meeting with her. The evidence shows that petitioner is a high functioning adult and was consulted with on at least two occasions regarding a discharge location.

26. The undersigned concludes that the facility's action to discharge petitioner is in accordance with Federal Regulations and Florida law. Respondent may proceed with petitioner's discharge as set forth in the discharge notice and in accordance with the Federal Regulation, Florida Statutes and all pertinent Agency for Health Care Administration's requirements.

DECISION

Based on the above Findings of Fact and Conclusions of Law the appeal is denied and the administrator's actions are affirmed. The facility is to follow AHCA's rules on proper discharge locations for petitioner.

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.

Nathan Koch
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
[REDACTED], Respondent
[REDACTED]
Agency for Health Care Administration
[REDACTED]