

PRELIMINARY STATEMENT

The respondent issued a discharge notice on July 28, 2011 alleging nonpayment after proper notice to pay. The petitioner timely appealed.

Respondent's Exhibit 1 was entered as evidence. Hearing Officer's Exhibit 1 was also entered and is enclosed with this order. That document was the survey result from the Agency for Health Care Administration. Such a survey is directed whenever a hearing is requested and this was explained in the undersigned's initial Order to Produce Notice and Begin Hearing Process. The survey is not controlling to the hearing process, but it can be useful at times. In this instance it identified no deficiency for discharge merit, it did not appear to be factually accurate. It showed the petitioner "no longer resides at facility."

FINDINGS OF FACT

1. The petitioner is profoundly ill and requires skilled nursing care. She has been a resident of the facility since late November 2009. Need for skilled residential care is not in dispute. As of date of hearing, she resided at the [REDACTED] institution.
2. The petitioner's husband died in December 2010 and his estate is in probate.
3. The petitioner entered the facility while he was alive and presumably there was a signed agreement for care and payment. That document was not entered to evidence.
4. Since at least November 2010, the facility has been charging \$200 per day, and payment for a month was expected by the 5th of the month. Following the husband's death, those payments were not made in full.

5. The bill for services rendered was shown at \$39,509.84 as of June 30, 2011, but that did NOT reflect the payment of \$11,287.45 made on June 24, 2011. That payment left the alleged balance at \$28,222.39, as set forth in the Statement of Account, page 9, Respondent's Exhibit 1.

6. On July 28, 2011 the facility issued a discharge notice alleging nonpayment of more than \$28,000 following "reasonable and appropriate notice to pay." The document was included in Petitioner's Exhibit 1, pages 74-76. Discharge location was another skilled facility in a different county.

7. The bill was contested by the petitioner and requests for details were made. The guardian's attorney wrote on August 5, 2011 "...if your daily rate is \$200.00 per day, why would a bill exist for \$28,222.39, when there no cents in the daily rate? The lack of explanation, detail and cooperation from your staff and facility has resulted in the current situation being unresolved...hope to reach an amicable resolution..."

8. An additional \$6000 (approximate figure) was recently paid, and a total of approximately \$18,000 has been paid. Payments were made on October 26th and December 2nd. The amounts paid have not been payment in full and the parties agree on that point, with some argument as to the exact amount. It is found that the amount owed is at least several thousand dollars.

9. The petitioner's position is that she is indigent, the estate has not yet been resolved, there are other creditors, and there was no source of funding (other than Social Security income) until Medicaid was approved. The petitioner noted awareness that a "tremendous amount is owed to this facility."

10. The petitioner filed a Medicaid Institutional Care Program (ICP) and that was approved effective September 1, 2011. The payment situation has improved since then, but the respondent remains unsatisfied, and continues to intend discharge.

11. The petitioner believes that discharge will make the payment situation more difficult once the estate is settled. She requested the respondent to negotiate a lower bill, but the respondent rejected the offer.

12. The respondent affirmed that the facility could wait for a few more months but not as long as a year.

13. As of date of hearing, the matter had not resolved.

14. The petitioner would prefer to remain at the Deltona facility.

CONCLUSIONS OF LAW

15. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to s. 400.0255(15), Fla. Stat. In accordance with that section this order is the final administrative decision of the Department of Children and Families. The burden of proof is clear and convincing evidence and is assigned to the respondent.

16. Federal Regulation at 42 C.F.R. § 483.12 sets forth the reasons a facility may involuntarily discharge a resident as follows:

Admission, transfer and discharge rights.

(a)...

(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--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(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;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(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; or

(vi) The facility ceases to operate.

17. Based on the evidence presented, the nursing facility has established that nonpayment is reason for discharge. This is one of the six reasons provided in federal regulation (42 C.F.R. § 483.12) for which a nursing facility may involuntarily discharge a resident.

18. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing facility must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

19. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

20. After carefully considering the facts and arguments, it is concluded that nonpayment of a very significant sum has occurred after reasonable and appropriate notice to pay. There may be some debate as to the details of the full amount, and there were negotiation efforts, but the final conclusion is that nonpayment has occurred after payment notice was issued. The situation may be complicated by the estate probate process, and significant payment was achieved, but a large amount remains owing. Thus, discharge notice was justified and is upheld.

DECISION

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.

FINAL ORDER (Cont.)

11N-00140

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DONE and ORDERED this _____ day of _____, 2012,
in Tallahassee, Florida.

J W Alper
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
[REDACTED], Agency for Health Care Administration
[REDACTED], Esq
[REDACTED]