

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

[REDACTED]

APPEAL NO. 11N-00158

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED
Dec 01 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

_____ /

FINAL ORDER

Pursuant to Notice, the undersigned convened an administrative hearing in the above referenced matter on November 15, 2011, at 8:10 a.m., in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED], administrator.

Appearing as a witness for the respondent was [REDACTED], Director of Social Services.

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 the facility has not been paid after reasonable and appropriate notice to pay".

FINDINGS OF FACT

1. The petitioner is a sixty-six year old [REDACTED] resident of the [REDACTED] Health and Rehabilitation Center. He has been a resident since September 2008.
2. Prior to 2008, the petitioner had been approved for Medicaid while being hospitalized. This authorization was done even though the petitioner, from [REDACTED] never obtained appropriate citizenship status.
3. The petitioner also had attempted to be found disabled by Social Security since 2008. Because he could not provide the necessary citizenship documentation, this was denied.
4. Medicaid was approved until September 1, 2011. At that time it was terminated because the petitioner did not meet a required citizenship requirement.
5. As of August 26, 2011, the petitioner owed \$27,910. He is accumulating approximately \$6,000-\$7,000 per month in charges.
6. The nursing facility has attempted through the Federal Senator and Congressman to obtain citizenship for the petitioner. They have even tried the Immigration office.
7. Lastly, the facility has attempted to apply for Social Security and Medicaid but there was a denial for both due to citizenship status.
8. The petitioner has no family to assist him. There is no verification when he came to this country.
9. The Agency for Health Care Administration (AHCA) on October 11, 2011, found no violations with the Discharge Notice.

CONCLUSIONS OF LAW

10. 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.

11. Federal Regulations appearing 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.

12. Based on the evidence presented, the nursing facility has established that “the resident has failed, after reasonable and appropriate notice, to pay for ... a stay at the facility”. 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.

13. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home 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.

14. 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.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied.

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.)

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DONE and ORDERED this _____ day of _____, 2011,
in Tallahassee, Florida.

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Copies Furnished To: [REDACTED], Petitioner
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Agency for Health Care Administration
[REDACTED]