

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

[REDACTED]

APPEAL NO. 11N-00167

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

FILED

Dec 22 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice an administrative hearing convened before the undersigned at 12:05 p.m. on November 14, 2011 at [REDACTED] in [REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED] power of attorney

For the Respondents: [REDACTED], facility administrator

ISSUE

At issue was whether intent to discharge was correct based on nonpayment after reasonable and appropriate notice to pay.

PRELIMINARY STATEMENT

By notice dated September 16, 2011, the respondent informed the petitioner that they were seeking to discharge/transfer her from the facility due to nonpayment. On

September 20, 2011, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as a witness for the petitioner was [REDACTED] certified Ombudsman.

FINDINGS OF FACT

1. The petitioner has been a resident at the facility since February 11, 2011. At the time of admission, the petitioner was a private pay (Medicare) resident.
2. The petitioner's has two Power of Attorney's (POA); her son who lives in [REDACTED] and the petitioner's representative who was her friend and neighbor prior to her becoming a resident at the facility (Respondent Exhibit 3).
3. The petitioner's son applied for Medicaid for the petitioner in April 2011, prior to leaving for [REDACTED] and was denied due to income.
4. The respondent attempted communication with the petitioner's son in [REDACTED] starting in April 2011 for payment of the petitioner's unpaid bill. The petitioner's representative and POA informed the facility he was not financially responsible for the petitioner; her son had financial responsibility for his mother.
5. In July 2011, the respondent succeeded in email communication with the petitioner's son, notifying him of the petitioner's unpaid bill (Respondent Exhibit 4). The petitioner's son mailed the facility two checks totaling \$4,900 in July 2011.
6. On July 20, 2011, the petitioner's representative applied for Medicaid for the petitioner.
7. On August 16, 2011, the facility mailed the petitioner's son a letter notifying him of the petitioner's \$32,575.43 outstanding balance and their intent to discharge the

petitioner for unpaid bills (Respondent Exhibit 2). This letter was the first intent to discharge notification.

8. On September 16, 2011, the facility notified the petitioner and both POA's that they were seeking to discharge/transfer her from the facility due to nonpayment (Respondent Exhibit 1).

9. On November 7, 2011, the petitioner was approved Medicaid for April 2011, July 2011, August 2011, November 2011 and ongoing. Medicaid was denied for May 2011 due to over assets, for June 2011, September 2011 and October 2011 for failure to fund the Qualified Income Trust, making her over income (Respondent Exhibits 6 and 7).

10. The petitioner's current unpaid amount to the facility is \$33,091.49 (Respondent Exhibit 5). This amount includes the months not covered by Medicaid and her patient responsibility for the months Medicaid was approved (see #9).

11. The petitioner's representative asserted he cannot accept the petitioner be discharged to his address. He asserted limited POA responsibilities, asserting that the petitioner's son has financial responsibility for the petitioner. The petitioner's representative claimed the petitioner's son also does not respond to his email communication.

12. The petitioner's witness explained arrangements needed to be made to have the petitioner's monthly income go directly to the facility.

13. The petitioner's representative asserted if the hearing officer or the facility order him (in writing) to have the bank bill pay the facility he will do that. He provided the petitioner's bank statements asserting he does not know where the petitioner's money is

going other than installing new carpet, paying for prepaid taxes, maintenance fees, and utilities at the petitioner's home.

CONCLUSIONS OF LAW

14. 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.

15. Federal Regulations appearing 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.

16. Based on the evidence presented, the nursing facility has established that the petitioner 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.

17. Establishing 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.

18. The respondent attempted communication with the petitioner's son in [REDACTED] starting in April 2011 for payment of the petitioner's unpaid bill. In July 2011, they successfully communicated with the petitioner's son via email about her unpaid bill. On August 16, 2011, the respondent mailed him the first letter of their intent to discharge the petitioner. The hearing officer concludes that the facility has given the petitioner and her POD's reasonable and appropriate notice to pay for the petitioner's stay at the facility. Based on the cited authorities, the hearing officer finds that the facility's action to discharge the petitioner is in accordance with Federal Regulations.

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.

DECISION

This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge, as describe in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

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.

Priscilla Peterson
Hearing Officer
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Copies Furnished To: [REDACTED], Petitioner
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Agency for Health Care Administration
[REDACTED]