

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

[REDACTED]

APPEAL NO. 11N-00181

PETITIONER,

Vs.

CASE NO.

FILED

Jan 18 2012

Administrator

[REDACTED]

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice an administrative hearing convened before the undersigned at 9:05 a.m. on December 12, 2011 at [REDACTED] in [REDACTED], Florida.

**APPEARANCES**

For the Petitioner: [REDACTED], petitioner's daughter

For the Respondent: [REDACTED], administrator

**STATEMENT OF ISSUE**

At issue is the respondent's action to discharge the petitioner based on nonpayment after reasonable and appropriate notice to pay.

**PRELIMINARY STATEMENT**

By notice dated October 20, 2011, the respondent informed the petitioner they were seeking to discharge her from the facility due to nonpayment after reasonable and appropriate notice to pay. On October 24, 2011, the petitioner timely requested a hearing to challenge the discharge.

██████████, Ombudsman, and ██████████, petitioner's son in law, appeared as witnesses for the petitioner. ██████████, administrator in training, ██████████, social service director, and ██████████, business office manager, appeared as witnesses for the respondent. ██████████, Agency for Health Care Administration (AHCA) register nurse consultant and ██████████, AHCA facility evaluator appeared telephonically.

### **FINDINGS OF FACT**

1. The petitioner (age 86) was readmitted to the respondent's facility on July 8, 2011, under ██████████ Insurance.
2. The petitioner had previously been a resident in the facility from August 22, 2010 through November 20, 2010. She had a \$6,875 prior balance when she was readmitted on July 8, 2011.
3. On July 22, 2011, the facility notified the petitioner of her Medicare's Skilled Nursing coverage (Respondent Exhibit 9). The notice read in part:

Medicare generally covers the first twenty (20) days of a spell of illness at 100%. Based upon your skilled care and medical needs, as long as you continue to meet the Medical necessity requirement, beginning on day twenty-one (21) of Medicare coverage, there is a Medicare Skilled Nursing co-payment of \$141.50 per day. It has been determined that there is no secondary coverage to Medicare or your plan does not completely cover this co-payment. This will be billed to you unless other arrangements are made or further insurance information is provided.
4. On July 26, 2011, the facility notified the petitioner she had an outstanding balance of \$4,262.50 for October 2010 and \$2,612.50 for November 2010 and ██████████ informed the facility she only had hospitalization coverage (Respondent Exhibit 6).

5. The petitioner's current balance through November 2011 is \$31,692.19

(Respondent Exhibit 2).

6. The petitioner's representative asserted she was unaware of the 2010 outstanding amount until July 2011. However, she realizes the petitioner owes the facility money and asserted when the petitioner's condo sells, the facility would receive payment.

7. On August 31, 2011, the facility notified the petitioner Medicare denied skilled nurse care (Respondent Exhibit 10). The reason for denial states:

Medicare covers medically necessary skilled care needed on a daily bases. You needed skilled nursing care beginning 7/8/11 to observe and evaluate your condition. There is no indication of further likelihood of significant change in your care plan or of acute changes or complications in your condition. Since you no longer need skilled nursing nor skilled rehabilitation services on a daily basis, we believe your stay after 9/2/11 is not covered under Medicare.

8. The facilities representative asserted that in addition to notifying the petitioner and her representative with written notification of outstanding balances, they had numerous conversations with the petitioner's representative regarding the money owed to the facility. She submitted a timeline of these conversations starting August 8, 2011 through October 19, 2011 (Respondent Exhibit 1).

9. On October 20, 2011, the facility issued a Nursing Home Transfer and Discharge Notice notifying the petitioner of their intent to discharge her effective November 20, 2011, due to nonpayment (Respondent Exhibit 12).

10. The petitioner's representative asserted she has been working with an attorney since September 2011 on a Medicaid application and has had difficulties getting the

documents required; as of date of the hearing the Medicaid application had not been submitted.

11. [REDACTED] testified AHCA completed an inspection of the facility on December 5, 2011, that established the facility in compliance with code of federal regulations.

### **CONCLUSIONS OF LAW**

12. 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.

13. 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.

14. 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.

15. 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.

16. The facility has attempted to collect the money owed to them since July 2011. They notified the petitioner's representative numerous times in writing and verbally of the outstanding balances. Additionally, they contacted [REDACTED] and Medicare on behalf of the petitioner for possible payment. The hearing officer concludes that the facility has given the petitioner 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.

17. 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**

Base upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility may proceed with the proposed discharge in accordance to 42 C.F.R. § 483.12 (7), the "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 \_\_\_\_\_, 2012,  
in Tallahassee, Florida.

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Copies Furnished To: [REDACTED] Petitioner  
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[REDACTED]