

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

[REDACTED]

APPEAL NO. 11N-00210

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned at 1:45 p.m. on February 6, 2012 at [REDACTED] in [REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED] pro se

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 December 5, 2011, the respondent informed the petitioner they were seeking to discharge him from the facility due to nonpayment after reasonable and

appropriate notice to pay. On December 14, 2011, the petitioner timely requested a hearing to challenge the discharge.

Appearing as witness for the petitioner was [REDACTED], friend. Appearing as witnesses for the respondent were, [REDACTED] director of social service, [REDACTED], business office manager and [REDACTED], assistant administrator.

FINDINGS OF FACT

1. The petitioner was admitted to the respondent's facility on June 17, 2010 due to abnormality of gait and other specified rehabilitation procedures. He has also been diagnosed with chronic lymphoid leukemia. The petitioner was admitted under Medicare and was approved Medicaid in 2011.
2. Every month the facility provided the petitioner statements showing what he owed (Respondent Exhibit 2). His outstanding balance as of January 31, 2012 was \$12, 219.72 (Respondent Exhibit 4).
3. The facility resident notes starting August 2011 show they had numerous conversations with the petitioner regarding his unpaid balance (Respondent Exhibit 6).
4. The petitioner asserts he is unable to pay the facility because money from his bank account has been missing. Only his name appears on the bank account and he does not know who took the money. The petitioner does not have a power of attorney; he manages his own finances.
5. In December 2011, a representative from the Ombudsman Program, the petitioner and the respondent's representative met to discuss the respondent's intent to discharge notice and outstanding balance. The results of the meeting were addressed

in a memorandum from the Ombudsman dated January 4, 2012 (Respondent Exhibit 5) and states in part:

Resolution Statement: Administrator agreed to the resident's request to remain until relocating February 9, 2012. Resident agrees to pay, at a minimum, the January private pay of \$1267.00.

6. As a result of the above memorandum, the facility believed the petitioner would be leaving the facility on February 9, 2012.

CONCLUSIONS OF LAW

7. 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.

8. 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.

9. Based on the evidence presented, the nursing facility established that the petitioner has failed, after reasonable and appropriate notification, 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.

10. 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.

11. The respondent provided the petitioner with monthly statements of money owed to them; they had numerous conversations with the petitioner regarding his outstanding balance. The facility, the petitioner and a representative from Ombudsman Program met to discuss the outstanding balance and discharge notice. The resolution of this meeting was that the facility agreed to allow the petitioner to remain in the facility until February 9, 2012.

12. The hearing officer concludes that the facility has given the petitioner reasonable and appropriate notice to pay for 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.

13. 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 described 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 _____, 2012,
in Tallahassee, Florida.

Priscilla Peterson
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
Agency for Health Care Administration