

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

[REDACTED]

APPEAL NO. 11N-00214

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above referenced matter on February 9, 2012, at 8:05 a.m., in [REDACTED] Florida.

Appearing for the petitioner was her husband, [REDACTED]

Present for the respondent was [REDACTED] administrator. Appearing as a witness was [REDACTED] business office manager.

No one from AHCA was present.

**PRELIMINARY STATEMENT**

On December 15, 2011, the respondent issued a Nursing Home Transfer and Discharge Notice to petitioner with an effective date of January 14, 2012. The discharge location is to the residence of [REDACTED]. The reason cited was "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

Respondent presented three exhibits, which were accepted into evidence and marked as the Respondent's Exhibit 1-3 respectively.

### **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 this facility has not been paid after reasonable and appropriate notice to pay". The nursing home has the burden of proof.

### **FINDINGS OF FACT**

1. The petitioner has been a resident of the facility since July 29, 2011. She came from a hospital stay for skilled rehabilitation. She was originally covered under her Medicare benefits.

2. On September 12, 2011, the facility determined that the petitioner no longer required skilled care. The petitioner has congestive heart failure. On September 13, 2011, the petitioner was placed under custodial care with hospice.

3. The petitioner has insurance coverage through Blue Cross Blue Shield of New Jersey (hereinafter Blue Cross). When bills were submitted for payment to Blue Cross, they were not paid because the petitioner no longer needed skilled care. Payment would be made if the petitioner was in a contract bed under end of care, similar to a hospice situation. This has not happened yet.

4. When Hospice came to evaluate the petitioner it was determined that she needed to be private pay because she only needed custodial care.

5. The last payment the facility received was (private pay status) \$4,816 for the period September 13 through September 30, 2011. As of October 1, 2011 the petitioner was accumulating bills of approximately \$8,500-\$9,000 per month. As of the hearing date approximately \$41,000 is owed. Bills were provided to the husband on a monthly basis. The petitioner's husband was in constant contact with the facility, as he was frequently visiting his wife on a regular basis.

6. The husband explains that he and his wife have paid into the Blue Cross system and does not understand why they are not paying. The facility explains that each bill has been sent to them for payment but they have been returned unpaid.

7. It is noted that neither the husband nor the daughter has applied with the Department of Children and Families for hospice Medicaid. There was a belief that the petitioner would not have been eligible.

#### **CONCLUSIONS OF LAW**

8. 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.

9. 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--

(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....

10. Based on the evidence presented, the nursing facility has established that the petitioner has failed to pay for the stay after reasonable and appropriate notice to pay. 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.

11. 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.

12. 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 on the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility may proceed with the discharge 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.

\_\_\_\_\_  
Melvyn Littman  
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: \_\_\_\_\_, Petitioner  
\_\_\_\_\_ Respondent

Agency for Health Care Administration  
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FINAL ORDER (Cont.)

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