

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

[REDACTED]

APPEAL NO. 11N-00176

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED
Jan 26 2012
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 15, 2011, at 2:21 p.m., at the [REDACTED] Nursing and Rehabilitation Center in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED], sister to the petitioner.

For the Respondent: [REDACTED] facility administrator.

ISSUE

At issue is whether or not the nursing home's action to transfer and discharge the petitioner is an appropriate action based on the federal regulations at 42 C. F. R. § 483.12. The nursing home is seeking to discharge the petitioner because the petitioner's "bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

The respondent will have the burden to prove by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. §483.12(a) and Section 400.0255, Florida Statutes (2009).

PRELIMINARY STATEMENT

By notice dated September 26, 2011, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to nonpayment. The location to which the resident is to be transferred or discharge is the petitioner's sister's residence located in [REDACTED], Florida. On September 30, 2011, the petitioner timely requested a hearing to challenge the discharge/transfer.

The petitioner was present. The petitioner's son was not present.

Appearing as witnesses for the respondent were [REDACTED], office manager and [REDACTED], assistant office manager.

A letter dated January 3, 2012 from the Agency for Health Care Administration (AHCA) was sent to the undersigned and it stated that the representative(s) did not find the facility in violation of any laws or rules. This was entered as Hearing Officer Exhibit 1.

FINDINGS OF FACT

1. The petitioner was admitted to the respondent's facility in April 2011. The petitioner suffers from paralysis.

2. The petitioner's Social Security payments are being received by the facility. However, the petitioner's son is not funding the petitioner's qualifying income trust

account with her State of Florida retirement checks. The petitioner will lose her eligibility for Institutional Care Program (ICP) Medicaid if the account is not properly funded.

3. On August 25, 2011, the facility mailed the petitioner's son a statement notifying him of the petitioner's outstanding balance owed in the amount of \$5581.81. On December 31, 2011, the facility mailed the petitioner's son a statement notifying him of the petitioner's current outstanding balance owed in the amount of \$12,047.07. The petitioner's sister and facility have not been able to reach the petitioner's son by telephone.

CONCLUSIONS OF LAW

4. 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.

5. 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.

6. 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.

7. 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.

8. On August 25, 2011 and December 31, 2011, the respondent notified the petitioner's son in writing to inform him of the petitioner's unpaid bill. On September 26, 2011 the respondent mailed the son the notice of its intent to discharge the petitioner. The hearing officer concludes that the facility has given the petitioner and petitioner's son reasonable and appropriate notice to pay for her stay at the facility. Based on the

cited authorities, the hearing officer concludes that the facility's action to discharge the petitioner is in accordance with Federal Regulations.

9. 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 _____, 2012,
in Tallahassee, Florida.

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