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

[redacted]

APPEAL NO. 11N-00202

PETITIONER,

Vs.

Administrator
[redacted]

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on January 17, 2012, at 11:45 a.m., at the [redacted] in [redacted], Florida.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: [redacted] executive director of the facility.

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 November 15, 2011, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to nonpayment. On November 23, 2011, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as witnesses for the petitioner were [redacted] father to the petitioner and [redacted], sister to the petitioner.

Appearing as witnesses for the respondent were [redacted], Director of Social Services, [redacted] Director of Nursing, and [redacted] Business Office Manager.

Appearing as observers were [redacted] and [redacted], Regional Vice President.

A letter dated January 23, 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.

The record was held open until 5:00 p.m. on January 24, 2012 to allow time for the petitioner to submit evidence. Evidence was received and entered as the Petitioner Exhibit 1 and Respondent Exhibit 3.

On January 23, 2012, the respondent submitted correspondence to inform that the petitioner was admitted into the hospital after a doctor's appointment on January 19, 2012 and that she declined to hold her bed. An Order was issued for the petitioner to respond in writing whether or not she wished to return to the facility. Petitioner contacted the undersigned by telephone on February 17, 2012 to inform that she wished to return to the facility. On March 5, 2012, written correspondence was received from the petitioner expressing her desire to return to the facility.

On March 5, 2012, an Order was issued for the facility to indicate if a subsequent discharge notice was issued to the petitioner upon her discharge to the hospital.

On March 7, 2012, correspondence was received from the facility administrator to inform that a subsequent discharge notice was not issued. Therefore, the undersigned will issue an order due to the non-payment issue currently under challenge.

FINDINGS OF FACT

1. On June 23, 2011, the petitioner was admitted into the facility for short term rehabilitation under Medicare, which paid for 100 days of skilled nursing care as long as she met the skilled criteria. The facility was hoping that the petitioner's health would improve through rehabilitation in order for her to be discharged back into the community.

2. After undergoing rehabilitation services, the facility believed that an assisted living facility would be appropriate for the petitioner but after speaking with the facility's medical director, it was determined that the petitioner would need long term care placement. Petitioner became a private pay resident as of October 3, 2011 as Medicare would no longer pay for her care. The petitioner is approved for Community Based Medicaid Waiver program which does not provide coverage for her care at the nursing home.

3. The respondent's Departmental Notes and Medicaid Pending Log contain entries between October 2011 and December 2011 documenting the respondent's attempts to obtain documents from the petitioner that were needed to approve her application for ICP Medicaid (Respondent Exhibit 2). Private Collection Effort Sheet dated September 16, 2011 documents that petitioner was advised that the facility would assist her in applying for ICP Medicaid and petitioner would need to provide the information required to approve the application.

4. On October 10, 2011, the respondent applied for Institutional Care Program (ICP) Medicaid for the petitioner. The ICP Medicaid application was denied due to a copy of the petitioner's bank statement was not received by the Department of Children and Families (DCF). No denial notice was provided to the hearing officer.

5. Petitioner Exhibit 1 includes an email dated December 16, 2011 to the DCF adult payments' eligibility specialist from a staff member at the facility, which states:

> I started the app for this patient, and was advised by CARES that they would not assess and they have done so in the past and due to financial issues she had been denied every time. I was under the impression that she was denied for this particular app, as she never provided me bank

> statements or proof of SS income. However, she is in a conference with our Administrator right now, and, upon running her SSN and DOB through web portal, it brought info stating she may be approved for ICP Medicaid for 10/2011 forward. Can you tell me if this is correct?

6. The DCF eligibility specialist responded, "Ms. Andrews was not approved for ICP benefits, as the ICP application was denied because of no level of care or bank statements. She was approved for Med Waiver program and that is the program that is currently open in our system."

7. On October 13, 2011, October 19, 2011, and November 15, 2011, the respondent notified petitioner of the outstanding balance owed in the amount of $3687.20. On November 21, 2011, the respondent issued a statement to the petitioner notifying her of the outstanding balance in the amount of $5575.20. On December 19, 2011 the respondent issued a statement to the petitioner notifying her of the outstanding balance in the amount of $7463.20. It is the respondent's testimony that the patient responsibility amount is an estimate based on the petitioner's statement as to the amount of her Social Security benefits. The petitioner's current balance through January 31, 2012 is $26,660 (Respondent Exhibit 2).

8. The petitioner's father believes the facility did not discuss any required payments for the petitioner's care when she was first admitted and that he did not sign any papers to indicate that he understood he was responsible for payment for her care at the facility. The petitioner does not dispute that she now owes an outstanding balance to the facility. Petitioner was under the impression that she provided the required bank statements to complete the ICP Medicaid application when she went to Regions Bank with the facility director and business office manager on December 22,

2011. It is the petitioner's position that she was later informed by the Agency for Health Care Administration (AHCA) that the facility was responsible for furnishing the required documents to DCF in order for her ICP Medicaid application to be approved.

9. It is the respondent's testimony that the petitioner was admitted into the facility in June 2011 as a Medicare patient and was covered under that program. Therefore, the facility did not need to discuss with the family any payment arrangements to be made because the petitioner had not incurred any expenses at that time. The petitioner began incurring expenses when her level of care was changed to long term care and would need to apply for ICP Medicaid application. The respondent does not dispute that bank statements were received from the petitioner's bank account located at Regions Bank but that the statements were from a closed account that her Social Security checks were never deposited into.

10. The facility completed another ICP Medicaid application for the petitioner on December 30, 2011. The respondent attempted to obtain the required documents from the petitioner on January 8, 2012 and on January 10, 2012 and has not received a response. It is the respondent's position that the petitioner's ICP Medicaid has not been approved because she has not cooperated with the application process by submitting to the facility a copy of her Social Security check for them to forward to DCF to complete her application.

11. It is the petitioner's father's testimony that the petitioner has personal expenses that he pays with her Social Security income. It is the respondent's position

that the nursing home needs to receive payment for the petitioner's care while she is a resident and that her Social Security income needs to be sent directly to the facility.

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 involuntary 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;

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 October 13, 2011. On November 15, 2011 the respondent mailed to the petitioner the notice of its intent to discharge her from the facility. The hearing officer concludes that the facility has given the petitioner 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.

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

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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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