

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

FILED

APR 18 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00028

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 2, 2014 at 1:09 p.m., at [REDACTED] in Clearwater, Florida.

APPEARANCES

For the Petitioner: Annette Perry, district ombudsman manager

For the Respondent: [REDACTED] nursing home administrator

ISSUE

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on February 11, 2014. The facility has the burden of proof to establish by clear and convincing evidence that the discharges are appropriate under federal regulations found in 42 C.F.R. §483.12.

PRELIMINARY STATEMENT

Witnesses for respondent appearing in person were [REDACTED] director of nursing, and [REDACTED], social services director. Observing in person was Mary Jane Stafford, hearing officer. Observing telephonically was Frances Lima, Agency for Health Care registered nurse.

The petitioner did not present any exhibit into evidence. The respondent presented four exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "4", respectively.

FINDINGS OF FACT

1. On October 31, 2012, petitioner entered the respondent's facility. The petitioner was 50 years old at the time. The petitioner's level of care was Intermediate I with placement recommendation of temporary nursing facility. The petitioner applied for Social Security disability and for Institutional Care Program (ICP) benefits with the Department of Children and Families (DCF) ACCESS Program. On January 30, 2013, Social Security denied the petitioner's application indicating the petitioner was not disabled. The petitioner is appealing the denial by Social Security. On June 30, 2013, the DCF ACCESS Program denied the petitioner's application for ICP benefits. At the time of the hearing, the petitioner did not have a pending application with DCF ACCESS Program.

2. Since September 2012, the facility has provided services to the petitioner. Each month, the facility has given the petitioner a bill for the petitioner's stay at the facility and for the services provided by the facility for the petitioner.

3. The petitioner has not made any payment to the facility for the amount billed each month. The respondent determined that as of January 30, 2014, the petitioner had a balance due to the facility of \$111,837.97, for which payment arrangements had not been made by the petitioner. The petitioner declined an offer by the respondent to enter into a repayment agreement for the past due balance, as she has no income or resources to pay the bill. The facility sent the petitioner a Notice of Transfer and Discharge. The reason for discharge indicated on the notice was the bill for services at the facility has not been paid after reasonable and appropriate notice to pay.

4. As of the April 1, 2014 billing statement, the past due amount was \$126,861.76.

CONCLUSIONS OF LAW

5. 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.

6. The Code of Federal Regulation limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the petitioner was sent notice indicating that she would be discharged from the facility in accordance with of Code of Federal Regulation at 42 C.F.R. § 483.12:

(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...

7. Each month since October 2012, the respondent has sent the petitioner a monthly billing statement in the amount of the cost of the petitioner's stay at the facility. The April 2014 billing statement indicated a past due amount of \$126,861.76. The hearing officer concludes that the facility has given the petitioner reasonable and appropriate notice of the need to pay for the petitioner's stay at the facility and reasonable and adequate financial arrangement have not resulted. Based on the evidence presented, the nursing facility has established that 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. 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.

8. 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.

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

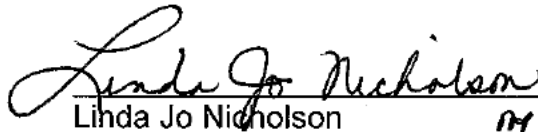
This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The facility may proceed with the discharge, in accordance with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements.

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 15th day of April, 2014,

in Tallahassee, Florida.



Linda Jo Nicholson *HL*
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Copies Furnished To: [REDACTED] Petitioner

[REDACTED] Respondent
Ms. Patricia Reed Cauffman, Agency for Health Care Administration
Annette Perry, district ombudsman manager