

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

**FILED**

**MAY 13 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00035

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 9, 2014, at 2:30 p.m., at the [REDACTED], in St. Peterburg, Florida.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED], nursing home administrator

**ISSUE**

At issue is the facility's intent to discharge petitioner due to non-payment of billing for services. 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**

On February 21, 2014, the petitioner timely requested a hearing to challenge the discharge.

Observing in person was Teresa Kenny, Esq. Observing telephonically was Jacqueline Gosely, Agency for Health Care health facility evaluator II. The petitioner presented two exhibits which were accepted into evidence and marked as Respondent Exhibits "1" and "2", respectively. The respondent presented 13 exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "13", respectively.

**FINDINGS OF FACT**

1. The petitioner is 48 years old. Her right leg was amputated below the knee.
2. In June 2013, the petitioner was admitted to the facility. From June 4, 2013 through August 22, 2013, Medicare paid for the petitioner's stay and the charges incurred at the facility.
3. The facility applied for Institutional Care Program (ICP) benefits on behalf of the petitioner. The petitioner's was approved for ICP Program benefits effective Aug 2013. The income the petitioner reported to the Department of Children and Families (DCF) ACCESS Program was used in determining her patient responsibility. The respondent is required to charge the resident the amount of patient responsibility, as determined by the DCF ACCESS Program. Each month, the petitioner could retain \$35 from her gross income for personal needs. Initially, the information provided by the DCF ACCESS Program was that the petitioner's patient responsibility was \$900 a

month. Effective January 2014, the petitioner's patient responsibility increased to \$914 a month.

4. On December 19, 2013, a Notification of Level of Care was completed. It indicated the petitioner's level of care was Intermediate I, she met the program requirements for Aged and Disabled Adults, and placement recommendation was Community. The Level of Care was effective September 16, 2013. In December 2013, a Care Plan was completed and the petitioner's home was undergoing renovation to make it handicap accessible.

5. 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 to her. Each month the facility billed the petitioner the patient responsibility as stated by DCF. The mailings were done in the normal course of business, and sent to both the petitioner's home and hand-delivered to the petitioner. On October 23, 2013, January 6, 2014, January 20, 2014, January 27, 2014, and February 4, 2014, the facility also sent the petitioner letters regarding the outstanding balance and the need to make payment. In each letter, the facility reminded the petitioner of her obligation to pay her patient responsibility.

6. As of the February 1, 2014 billing statement, the petitioner had not made payment to the facility for the amount billed each month. The respondent determined that the petitioner had a balance due to the facility of \$5,539.27, for which payment arrangements had not been made by the petitioner.

7. On February 7, 2014, the petitioner agreed to make a monthly payment of \$50 to \$100 a month on the outstanding balance. On February 10, 2014, the petitioner paid

the facility \$40. The petitioner made no other payment for the outstanding balance or for the current charges for the month of February 2014.

8. On February 17, 2014, 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.

9. As of the date of the hearing, the petitioner's outstanding balance to the facility was \$7,366.27. The only payment the petitioner made to the facility due her stay was the \$40 payment received on February 10, 2014.

10. As of the date of the hearing, the renovations on the petitioner's home were not completed. The petitioner asserted her attorney told her not to make any payments to the facility while the hearing was in process.

#### **CONCLUSIONS OF LAW**

11. 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.

12. 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 he 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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

13. The Florida Administrative Code at 65A-1.701 defines patient responsibility:

“(23) Patient Responsibility: That portion of an individual’s monthly income which the department determines must be considered as available to pay for the individual’s institutional care, ALW/HCBS or Hospice care.”

14. The DCF ACCESS Program sent a Notice of Case Action informing the petitioner and the facility of the amount of the patient responsibility. By rule, DCF determines patient responsibility. The facility does not have the authority to reduce or waive the patient responsibility. Each month since August 2013, the petitioner has not paid the full patient responsibility payment to the respondent. The only payment by the petitioner was \$40 on February 10, 2014. This amount did not pay the balance due. The petitioner asserted that her attorney told her not to make any payments to the facility while the hearing was in process. This assertion does not relieve the petitioner from making payment or preclude the hearing officer from determining whether the discharge would be appropriate on the basis that the petitioner has failed to pay for her stay at the facility.

15. Each month, the respondent has sent the petitioner a monthly billing statement for the amount of patient responsibility. The respondent has sent the petitioner letters informing her of her patient responsibility, the amount due, and the need to make payment arrangement. The April 2014 billing statement indicated a past due amount of \$7,366.27. 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 arrangements 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.

16. 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.

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 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 13<sup>th</sup> day of May, 2014,

in Tallahassee, Florida.

*Linda Jo Nicholson*  
Linda Jo Nicholson *LNJ*

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Copies Furnished To: [Redacted] Petitioner  
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Ms. Patricia Reed Cauffman, Agency for Health Care Administration  
Annette Perry, LTCOP district manager