

FILED

JUN 18 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

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

[REDACTED]

APPEAL NO. 14N-00081

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened in the above styled matter on June 6, 2014 at 10:10 a.m. at the respondent's facility.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's son

For the Respondent: [REDACTED] social services director

ISSUE

At issue is the facility's intent to discharge the petitioner from the respondent facility due to non-payment of bill for services.

PRELIMINARY STATEMENT

On March 18, 2014, the respondent served the petitioner's son with a Nursing Home Transfer and Discharge Notice which informed the petitioner of the facility's intent to discharge the petitioner effective May 18, 2014. The reason for this action, as shown on the notice, was "your bill for services at the facility has not been paid after

reasonable and appropriate notice to pay." Petitioner timely requested a hearing to challenge the respondent's decision.

Petitioner presented one witness who testified: Mary Kennedy, certified Ombudsman. Respondent presented two witnesses who testified: [REDACTED] Director of Financial Services and [REDACTED] Health Care Administrator. [REDACTED] Executive Director of [REDACTED] Campus and [REDACTED] Skilled Nursing Billing coordinator observed the proceedings. Petitioner submitted four exhibits, which were accepted into evidence and marked as Petitioner's Exhibits "1" through "4". Respondent submitted four exhibits, which were accepted into evidence and marked as Respondent's Exhibits "1" through "4".

FINDINGS OF FACT

1. Petitioner is 100 years old with a birth date of [REDACTED]
2. Petitioner became a resident of the facility on May 11, 2009.
3. In January 2014, petitioner's son made a \$40,950.00 payment to the facility toward services received.
4. In March 2014, petitioner's son made a \$20,000.00 payment to the facility toward services received.
5. On May 29, 2014, petitioner's son made an \$8,041.04 payment to the facility toward services received.
6. On March 20, 2014, the respondent facility mailed the petitioner's son a letter that indicated (1) petitioner's past due balance was \$77, 695.35 effective March 2014; (2) petitioner was billed at the private pay rate because she did not complete the Medicaid application process; and (3) if her outstanding balance was not paid and her

account was not kept current, the respondent facility would terminate petitioner's residency at the skilled nursing facility for non-payment and for breach of her Residency Agreement.

7. On April 18, 2014, the respondent mailed petitioner's son a Nursing Home Transfer and Discharge Notice that indicated petitioner would be discharged from the facility effective May 18, 2014 based on non-payment of bill for services. The discharge location is listed as the petitioner's son's residence at [REDACTED], Minnesota. Petitioner requested an appeal challenging the discharge action. Petitioner remains a resident of the nursing facility pending the outcome of this appeal decision.

8. As of April 18, 2014, petitioner's past due balance was \$77,695.35 and as of June 6, 2014, petitioner's past due balance was \$99,728.29. The months covered were from December 2012 through June 2014.

9. On April 8, 2014, petitioner's son completed an application for Institutional Care Program (ICP) benefits on behalf of petitioner with the Department of Children and Families (DCF) ACCESS Program. As of the date of the hearing, the April 8, 2014 application is currently pending and petitioner's ICP benefits have not yet been approved.

CONCLUSIONS OF LAW

10. The jurisdiction to conduct this hearing is conveyed to the Department of Children and Families by Federal Regulations appearing at 42 C.F.R. 431.200. 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.

11. Federal Regulations appearing at 42 C.F.R. § 483.12, Admission, transfer and discharge rights, sets forth the limited reasons a Medicaid or Medicare certified nursing facility may involuntarily discharge a resident and states in part:

(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...

12. The petitioner currently has a Medicaid application pending seeking benefits to pay for the petitioner's nursing facility charges. It is unknown if the benefits will be granted and their effective date. As a result it is unknown what, if any monies would still be owed to the facility. Nor has the petitioner to opportunity to pay that balance.

15. The Department of Health and Human Services, Centers for Medicaid and Medicare Service, State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities states in part:

A resident cannot be transferred for non-payment if he or she has submitted to a third party payor all the paperwork necessary for the bill to be paid. Non-payment

would occur if a third party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

10. The above guidance to the Agency for Health Care Administration surveyors in reviewing if a discharge notice due to non-payment was proper must be considered in this appeal. In this case, there is a pending ICP Medicaid application at the time of the discharge notice or the nursing home billing notices. It is unknown what action will be taken on the application and there has been no denial by Medicaid to pay for the stay. Since there is a pending application, this discharge is premature. The respondent must wait until the application processed before proceeding in this discharge action

DECISION

The appeal is granted. The facility must wait until the Medicaid application has been disposed of and the petitioner given adequate notice of any amounts due after any possible reductions as a result of payments from Medicaid.

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 18th day of June, 2014,

in Tallahassee, Florida.

Mary Jane Stafford

Mary Jane Stafford
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: [REDACTED] Petitioner
[REDACTED] Respondent
Mr. Harold Williams
Agency for Health Care Administration
[REDACTED]