

**FILED**

**JUL 25 2014**

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

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DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00088

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, a hearing in the above-referenced matter convened on June 26, 2014 at 11:22 a.m. at the [REDACTED] facility, located in Jacksonville Beach, Florida.

**APPEARANCES**

For the Petitioner: The petitioner was not present and was represented by her son and power-of-attorney, [REDACTED]

For the Respondent: [REDACTED] executive director.

**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 April 23, 2014 with an effective date of May 23, 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**

Appearing as a witness for the petitioner was [REDACTED] friend to the petitioner.

Appearing as a witness for the respondent was [REDACTED], Social Services Director, and [REDACTED] business office manager.

**FINDINGS OF FACT**

1. The petitioner, age 85, has been a resident of the respondent's facility since February 26, 2008. In February 2012, the petitioner was approved for ICP Medicaid. The petitioner was due for recertification and an application for ICP Medicaid was completed on June 12, 2013. The facility's evidence shows the collection efforts made to obtain monies due to the facility. A letter was sent to the petitioner's son from the facility's business office manager on June 21, 2013 to inform him to submit requested documents to be sent to the Department of Children and Families (DCF) in order to approve the petitioner's application for ICP Medicaid for continued coverage. On July 12, 2013, the petitioner's ICP Medicaid application was denied for the months of March 2013 through August 2013 due to failure to provide proof of assets and proof of unearned income. Another application for ICP Medicaid was completed in April 2014 but it was denied.

2. The facility has been mailing monthly statements to the petitioner's son to inform of balances owed and payments received on the account since February 1, 2012 to present (Respondent Exhibit 2, pages nine through 41). The evidence also includes the "Activity Report" on pages four through eight where the business office documents any telephone calls and the nature of the calls made to the petitioner's son from May 2012 through June 18, 2014.

3. The facility conducted multiple conversations and meetings with the petitioner's son to inform him of the information needed by DCF in order to cooperate with the ICP Medicaid application process. The facility continued to be diligent in its efforts to address the issue.

4. The facility met with the petitioner and her son on June 12, 2013 and informed of the balance owed and that their assistance was needed to complete the ICP Medicaid application process; it was explained that the facility would assist with the process, if needed. On July 11, 2013, two messages were left for the petitioner's son to inform of the requested documents by DCF to get the application for ICP Medicaid approved.

5. In August 2013, the facility began to initiate the petitioner's discharge for non-payment but, out of courtesy, it delayed plans for discharge for one year due to concerns over her health. Her condition improved and stabilized; therefore, the petitioner's discharge from the facility was initiated once again in April 2014.

6. The facility mailed monthly statements to the petitioner's son at [REDACTED]  
[REDACTED] Jacksonville, Florida 32208, on January 1, 2014, February 1, 2014, March

1, 2014, and April 1, 2014 to inform of the balance due. The facility's director acknowledges that the petitioner's son is paying the petitioner's patient responsibility owed to the facility in the amount of \$2000 each month. The current balance owed to the facility as of the date of the hearing is \$162,660.85.

7. The petitioner's son argues that he has tried to comply with the application process for ICP Medicaid at least six times over the past two years and does not know where all of the information has been filed. The petitioner's friend argues that she has faxed nine pages of the requested documents to the facility on August 12, 2013 and does not understand what else is needed to get the ICP Medicaid application approved. The petitioner's son argues that there was never a problem in the past getting his mother approved for ICP Medicaid and believes there is a communication problem with the facility. The petitioner's son contends that he does not receive his mail at his home address. He reported a business and mailing address at [REDACTED] Jacksonville, Florida 32205 where he would like for his mail to be sent since he is there most of the day.

8. The facility contends that the petitioner's son did not provide to the facility his mailing address until March 2014.

#### **CONCLUSIONS OF LAW**

9. 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. In this case, the

discharge notice indicates the petitioner is to be discharged from the respondent/facility based on non-payment.

10. Federal Regulations at 42 C.F.R. § 483.12(a) states in relevant part:

(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; ...

11. According to the above federal authority, the facility may not discharge except for certain reasons, of which one is when the resident has failed, after reasonable and appropriate notice to pay for the stay at the facility.

12. The petitioner has an outstanding balance owed to the facility for the cost of her care. The facility has notified the petitioner's power of attorney of the balance due for the cost of the petitioner's care on a monthly basis.

13. Petitioner's granddaughter acknowledges receipt of the January 2014 billing statement; she met with the staff to discuss the overdue balance. Therefore, the undersigned concludes the facility has followed the above controlling authority to issue reasonable and appropriate notice prior to issuing the discharge notice.

14. Based on the findings and the federal and state controlling authorities, the undersigned concludes the facility's discharge is proper.

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. 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**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility may proceed with the discharge action in accordance with the Agency for Health Care Administration's rules and guidelines.

### **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 15<sup>th</sup> day of July, 2014,  
in Tallahassee, Florida.

*Paula Ali*

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Copies Furnished To: [REDACTED] Petitioner  
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Mr. Robert Dickson, AHCA  
[REDACTED]