

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

FILED

JUL 21 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00093

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative motion hearing in the above-referenced matter on July 16, 2014, 2014, at 2:17 p.m., at the [REDACTED] in Clearwater, Florida.

APPEARANCES

For the Petitioner: [REDACTED] the petitioner's daughter

For the Respondent: [REDACTED] administrator

ISSUE

At issue is the facility's intent to discharge petitioner due to non-payment of a bill 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

Witness for the respondent, appearing in person, was [REDACTED], licensed practical nurse unit leader. Appearing telephonically was Frances Lima, Agency for Health Care Administration surveyor. [REDACTED] friend of the family, was observing in person.

FINDINGS OF FACT

1. On December 10, 2013, the petitioner was admitted to the nursing center. The petitioner has incurred expenses for his care while at the nursing center.
2. The petitioner's daughter authorized the nursing center to apply for Medicaid Institutional Care Program (ICP) benefits on behalf of the petitioner. In January 2014, an application for Medicaid (ICP) benefits was filed on behalf of the petitioner with the Department of Children and Families (DCF). The application was denied. In March 2014, the application was reopened.
3. On May 13, 2014, the respondent sent the petitioner a Nursing Home Transfer and Discharge Notice. The reason for the discharge, as listed in the discharge notice, was that the petitioner's bill for services at the facility had not been paid after reasonable and appropriate notice to pay. The respondent assumed that as the petitioner was denied Medicaid ICP benefits for the January 2014, the petitioner would be responsible for payment of the outstanding balance for services the petitioner received during December 2013, January 2014 and February 2014. The outstanding balance for services during December 2013, January 2014 and February 2014 was \$34,287.53

4. Since March 2014, the respondent has only charged the petitioner an amount that the respondent anticipates will be the patient responsibility, and the petitioner has made a monthly payment in the amount of what is anticipated as his patient responsibility. The respondent has offered the petitioner a payment agreement for the remaining unpaid balance; however, the petitioner has not entered into a payment agreement.

5. As of the date of the hearing, the DCF had not made a decision on the petitioner's application for Medicaid ICP benefits.

CONCLUSIONS OF LAW

6. 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.

7. All discharges must meet the requirements of Code of Federal Regulations at 42 C.F.R. § 483.12, admission, transfer and discharge rights and the regulation at 42 C.F.R. § 483.12 (a) is applicable:

(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...(emphasis added)

8. The petitioner currently has a Medicaid ICP application pending, in which he is seeking benefits to pay for his nursing care charges. It is unknown if the benefits will

be granted and effective date. As a result, it is unknown what, if any amount would still be owed to the facility.

9. The Centers for Medicare and Medicaid Services State Operations Manual Appendix PP - Guidance to Surveyors for Long Term Care Facilities sets forth: "Guidelines §483.12...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 by the hearing officer in this appeal. In this case, there was a pending ICP Medicaid application at the time of the discharge notice, the dates the billing notices were sent, and the hearing. It is unknown what action will be taken by DCF on the application. Since there is a pending application, this discharge is premature. The respondent must wait until the application is processed before proceeding in this discharge action. It is concluded that at this time the resident cannot be discharged/transferred for non-payment.

11. This does not preclude the nursing center from reissuing a discharge notice upon the decision of DCF for the March 2014 application for Medicaid ICP Program benefits. The petitioner retains his right to appeal any subsequent notice of discharge from the respondent.

DECISION

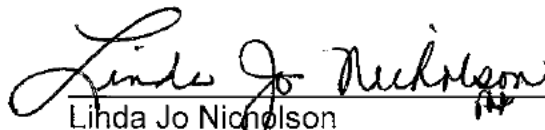
This appeal is grant. The facility may not proceed with the discharge, at this time. The facility must wait until the Medicaid application has been disposed of and the petitioner is given adequate notice of any amounts outstanding balance, as a result of payments from Medicaid.

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 21st day of July, 2014,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner

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Ms. Patricia Reed Cauffman, Agency for Health Care Administration
STEPHANIE SCOLA, for the petitioner