

FILED

APR 06 2015

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

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DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 15N-00013

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 25, 2015 at 9:00 a.m., at [REDACTED], [REDACTED] Florida.

APPEARANCES

For the Petitioner: Steven Spence, Esq., attorney for the petitioner

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. A Nursing Home Transfer and Discharge Notice was issued on January 9, 2015. 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

The petitioner was present. Witnesses for the petitioner appearing in person were [REDACTED], stepdaughter, and [REDACTED] the petitioner's wife. Witnesses for respondent appearing in person were [REDACTED], financial consultant, [REDACTED], business office manager, and [REDACTED], payroll and prior business office manager. Observing telephonically was Laura Wertz, Agency for Health Care Administration health facility evaluator supervisor.

The petitioner presented one exhibit which was accepted into evidence and marked as Petitioner Exhibit "1". The respondent presented eight exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "8", respectively.

FINDINGS OF FACT

1. The petitioner was admitted to the above facility on February 1, 2014 by his daughter [REDACTED]. At a later date, [REDACTED] advised the facility that she was not responsible for the petitioner.
2. Medicare pays for the first 20 days of the expenses incurred by the petitioner for his stay at the facility. Starting February 21, 2015, the petitioner was private pay at a room and board rate of \$152 a day.
3. The facility anticipated that the petitioner would need assistance to pay for his stay at the facility, and attempted to assist with an application for Medicaid Program benefits. The petitioner could not assist the facility with any information or documentation. The petitioner's wife, who also resides in the facility, was not able to provide the facility with documents needed to apply for Medicaid Program benefits for

the petitioner. As the petitioner's wife was determined eligible for Hospice services, the facility also contacted Hospice in an attempt to get information and/or documentation to assist in applying for Medicaid Program benefits for the petitioner.

4. On February 20, 2014, the facility met with the petitioner's stepdaughter (hereafter referred to as DJS) and her two siblings. DJS was indicated as the contact person for the petitioner; however, she did not have power of attorney. The purpose of the meeting was to determine if the petitioner had secondary insurance, and/or for the facility to get information and documentation of the petitioner's income and assets to help with filing a Medicaid application.

5. Each month since March 1, 2014, the facility has sent the petitioner's family a bill for his stay at the facility and the services provided by the facility for the petitioner.

6. From March 14, 2014 through September 17, 2014, the business officer manager called DJS for information of the petitioner's income and assets and for payment. The facility sent her collection letters informing her that there was an outstanding balance and information was needed to complete an application for Medicaid. No payment or information was received.

7. The business officer manager submitted a Medicaid application on behalf of the petitioner. This Medicaid application was denied due to insufficient information to establish eligibility.

8. On April 24, 2014, the room and board rate increased to \$210 a day. As of the October 1, 2014 billing, the petitioner had not made any payments and the outstanding balance was \$41,820.

9. In September 2014, DJS became the petitioner's power of attorney. On September 18, 2014, the administrator and the business office manager met with her to discuss the outstanding balance owed to the facility, as of that date, \$34,315. The facility gave her a Nursing Home Transfer and Discharge Notice but decided not to pursue it at that time as DJS and she agreed to work with the facility regarding payments for the bill.

10. The facility received the following payments:

Check date	amount	posted
September 22, 2014	\$7,200	October 1, 2014
October 15, 2014	\$2,200	October 29, 2014
December 8, 2014	\$2,100	December 17, 2014
December 26, 2014	\$2,200	January 7, 2015

11. On December 12, 2014, the facility reapplied for Medicaid for the petitioner. The petitioner was only billed for what might be his patient responsibility. On January 13, 2015, the Medicaid application was denied. As the facility could not anticipate that there would be Medicaid payment for the petitioner's stay at the facility, the petitioner's billing was adjusted to entirely private pay. As of January 8, 2015, the outstanding balance was \$50,699.93.

12. On January 9, 2015, the facility sent a Nursing Home Transfer and Discharge Notice to the petitioner. The notice indicated the petitioner would be discharged for the reason that the petitioner's bill for services at the facility has not been paid after reasonable and appropriate notice to pay.

13. After the discharge notice, the facility received the following payments

Check date	amount	posted
February 6, 2015	\$3,200	February 20, 2015
February 26, 2015	\$1,300	March 6, 2015
March 24, 2015	\$2,000	March 24 2015

14. As of the date of the hearing, the petitioner incurred total expenses to the facility for his room and board charges, incontinence supplies, medical supplies, and pharmacy bill in the amount of \$74,159.86. The facility paid the petitioner's pharmacy bill so the petitioner could get his medication, as the petitioner's family was not making payments to the Pharmacy or for Medicare Part D. The total payments to the facility by the petitioner were \$20,200. The outstanding balance due is \$53,959.86.

15. Counsel for the petitioner argued that the family has made all payments that could be made from the petitioner's income. DJS asserted as follows. The \$7,200 payment she made to the facility on September 26, 2014 was all the money the petitioner had left in the bank. Prior to the date she became the power of attorney, she had no access to any of the petitioner's funds. She had no idea what happened to any of his income prior to that date.

16. The facility's position is as follows. The facility has worked with the family for over a year to work out payment arrangements. The petitioner is not eligible for Medicaid Program benefits. The facility expects payment for room and board, services received, and reimbursement of pharmacy bills paid by the facility. To date, the petitioner owes the facility \$53,959.86.

CONCLUSIONS OF LAW

17. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 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.

18. The Code of Federal Regulation limits 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...

19. Each month, the facility has sent the petitioner a monthly billing statement for the expenses incurred by the petitioner for his stay at the facility. The facility has sent collection letters seeking payment. As of March 25, 2015, the outstanding balance due is \$53,959.86. The hearing officer did consider the testimony that the petitioner does not have the funds to pay the outstanding balance. The petitioner's Medicaid application was denied on January 13, 2015. As of the date of the hearing, there is no pending Medicaid application. There is no provision in the regulations for the hearing officer to disregard the amount of the outstanding balance based on an inability to pay. 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 facility has established that the petitioner 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.

20. 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.

21. 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 as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

NOTICE OF RIGHT TO APPEAL

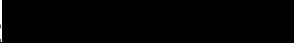
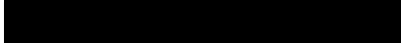

The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the 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 10th day of April, 2015,

in Tallahassee, Florida.


Linda Jo Nicholson

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Copies Furnished To:  Petitioner
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