

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

FILED

APR 28 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15N-00017

[REDACTED]
PETITIONER,

VS.

ADMINISTRATOR
[REDACTED]

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 1, 2015 at 9:02 a.m. at [REDACTED]

[REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED] social services 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 September 18, 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

Observing telephonically was Claudia Hoppe-DeLaEspirella, Agency for Health Care Administration health facility evaluator II.

The petitioner presented one exhibit which was accepted into evidence and marked as Petitioner Exhibit "1". The respondent presented six exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "6", respectively

FINDINGS OF FACT

1. The petitioner entered the facility on September 15, 2014. Medicare paid for the petitioner's stay at the facility, in full, through September 30, 2014. For the period of October 1, 2014 through October 14, 2014, Medicare paid part and the petitioner had a co-pay of \$584.21. On October 13, 2014, the facility sent the petitioner a notice that payment by Medicare to the facility would end effective October 15, 2014.

2. On December 17, 2014, an application for Medicaid Program benefits was filed on behalf of the petitioner with the Department of Children and Families (DCF) ACCESS Program. The petitioner's gross income reported to DCF ACCESS Program was used in determining his patient responsibility. On January 9, 2015, a Notice of Case Action was sent to the facility and the petitioner informing them that the petitioner's patient responsibility would be \$1,856.49 a month; that was the amount the petitioner was to pay to the facility each month for his cost of care, and the petitioner could retain \$105 from his gross income for personal needs. Effective January 2015, the petitioner's monthly patient liability increased to \$1,879.49.

3. Each month the facility sent the petitioner a notice for the petitioner's patient responsibility (amount he was to pay to the facility each month), and the billed amounts were \$584.12 for October 2014, \$1,856.49 effective November 2014, and \$1,879.49 effective January 2015.

4. The payments received by the facility from the petitioner were \$500 on January 15, 2015, \$1,256.60 on February 3, 2015, \$51.60 on February 11, 2015, \$105 on March 1, 2015, \$1,506.40 on March 6, 2015, and \$109 on March 20, 2015. The payment on March 6, 2015 was the petitioner's Social Security net benefits, with the facility as the petitioner's representative payee.

5. As of January 30, 2015, the petitioner had an outstanding balance due to the facility of \$5,998.25. The facility gave 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. Based on expenses incurred and payments made by the petitioner as of March 16, 2015, the petitioner had a balance due to the facility of \$4,958.14.

6. The petitioner asserted as follows. He only received two billing statements, one on January 28, 2015 and one on March 20, 2015. He only received the \$105 personal needs allowance one month. His patient responsibility is not correct, as his income is less than what the facility is stating. His income is two pensions, one for \$223 and the other for \$357, and his Social Security. He does not understand how he can owe that much, \$4,958.14, to the facility.

CONCLUSIONS OF LAW

7. 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.

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

9. Each month, the respondent has sent the petitioner a monthly billing statement for the amount of patient responsibility. The petitioner has not made a full payment in the amount of his patient responsibility each month. As of March 16, 2015, the petitioner had a balance due to the facility of \$4,958.14. 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 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.

10. 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.

11. 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 action in accordance with the Agency for Health Care Administration's rules and guidelines.

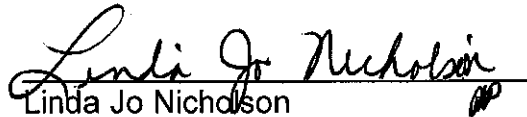
NOTICE OF RIGHT TO APPEAL

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 28th day of April, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner

[REDACTED] Respondent
Ms. Patricia Reed Cauffman, Agency for Health Care Administration