

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

FILED

JUL 08 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 15N-00047

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT

FINAL ORDER

Pursuant to notice, an administrative hearing in the above-referenced matter convened on May 27, 2015 at 2:18 p.m. at [REDACTED] located in Destin, Florida.

APPEARANCES

For the Petitioner: [REDACTED], petitioner's son

For the Respondent: [REDACTED] Executive Director

ISSUE

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

PRELIMINARY STATEMENT

Petitioner's Exhibit 1 was admitted into evidence. This includes information regarding the petitioner's Social Security benefits.

Appearing as a witness for the respondent was [REDACTED] Business Office Manager. The facility presented evidence during the hearing. The evidence was entered as Respondent's Exhibits 1 through 4.

Donah Heiberg, Field Office Manager, appeared by telephone to represent the Agency for Health Care Administration. Ms. Heiberg reported the surveyor's letter was issued May 22, 2015 but not received by the hearing officer prior to the hearing. Based on the AHCA surveyor's notes, there were no deficient practices found.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner is an 87 year old female who entered the facility upon discharge from the hospital on October 21, 2014. The petitioner has a diagnosis of dementia.
2. The respondent has not received any payment from the petitioner or petitioner's family for her stay in the facility since her admission.
3. The respondent requested that the petitioner's Social Security income be directed to the facility in February 2015. The Social Security income has not yet been issued directly to the facility.
4. The respondent referred the petitioner to Medicaid Done Right (MDR) to assist the petitioner with communicating with the Department of Children and Families (DCF) in determining the petitioner's eligibility for Institutional Care Program (ICP) which would help in the payment of the petitioner's bill with the facility.

5. The petitioner signed a contract with MDR to begin the Medicaid application process. The income reported on the contract with MDR was \$0.

6. The petitioner's son informed MDR the petitioner's income consisted of Social Security income only.

7. During the application process, DCF found the petitioner receives a \$567 per month pension that was not previously reported and requested verification of the income. In addition, the amount of income causes the petitioner to be over income for Institutional Care Program (ICP) Medicaid benefits and the petitioner needs to establish a Qualified Income Trust.

8. The petitioner's application for ICP Medicaid was pended for additional information regarding a bank account and funds transferred to the son as reported. (Respondent Exhibit 3, page 1)

9. The petitioner's son does not believe he ever received a request for additional information for his mother's ICP Medicaid eligibility determination.

10. The petitioner's individual Medicaid Eligibility History (Respondent Exhibit 3, page 3) shows the petitioner's Medicaid eligibility status as denied.

11. The petitioner's son submitted a request to Social Security to become the payee of his mother's Social Security benefit in November 2014.

12. The petitioner's son believes the \$567 pension should belong to him as he was his mother's caretaker for 10 years prior to her entering a facility. He contends that due to the ICP brochure he was provided by an Adult Services worker he was to keep part of his mother's income as he is disabled and resided with her for nearly 10 years

prior to her admittance to this facility. His intent is to submit paperwork to have this pension and payments from the pension transferred to him.

13. The petitioner's son, who was not living with her at the time his father was in the facility, recalled his mother had income to pay her bills when his father was in this same facility prior to his death. He does not understand why the facility and DCF are not being more compassionate and allowing him to keep her income as he is disabled and resided with her before her admission to the facility.

14. The respondent submitted a copy of the bills issued to the petitioner's son on April 1, 2015 and May 1, 2015 regarding payment of the bill for the petitioner.

15. The petitioner's son confirmed he did receive bills for his mother's care at the facility, prior to and including the bills for April 2015 and May 2015 submitted by the facility.

16. The petitioner's son challenged a charge on the bill related to a beauty salon treatment in December. He stated the appointment was cancelled prior to the appointment date.

17. [REDACTED] Business Office Manager, stated the petitioner's son has not brought this issue forward prior to the hearing. She stated she would confirm the appointment was cancelled and update the petitioner's bill once the cancellation was confirmed.

18. The petitioner's son believed that Medicaid would pay for his mother's stay at the facility. He explained this is why he did not make any payments to the facility.

19. The petitioner's son does not dispute the facility's report that he has not paid on his mother's bill since her admission to the facility.

PRINCIPLES OF LAW AND ANALYSIS

20. 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.

21. Federal Regulations appearing 42 C.F.R. § 483.12, sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(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; or

(vi) The facility ceases to operate.

22. Based on the evidence presented, the nursing facility has established that the discharge reason is for non-payment of a stay in 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.

23. 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.

24. 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.

25. The findings show the petitioner has applied for Medicaid with the assistance of MDR. The findings also show the ICP Medicaid application has been denied. The findings further show no payment has been made to the facility.

26. The undersigned concludes the facility has given reasonable and appropriate notice to pay for the petitioner's stay at the facility. Based on the findings and the cited authorities, the undersigned concludes that the facility's action to discharge the petitioner is in accordance with federal regulations.

DECISION

Based upon the foregoing Findings of Fact and controlling legal authorities, the petitioner's appeal is denied. The facility's action to discharge the petitioner is in accordance with federal regulations. The respondent may proceed with the discharge as described above 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 8th day of July, 2015,

in Tallahassee, Florida.


Melissa Roedel
Hearing Officer
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FINAL ORDER (Cont.)

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Copies Furnished To: [REDACTED] Petitioner

[REDACTED]
Respondent

Ms. Donna Heiberg, Agency for Health Care Administration

[REDACTED]