

FILED

Nov 02 2015

Office of Appeal Hearings
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 15N-00079

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened in the above-styled matter on September 16, 2015 at 9:08 a.m. at the respondent's facility.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's daughter

For the Respondent: Kevin Shavel, administrator

ISSUE

At issue is the facility's intent to discharge the petitioner from the respondent's facility due to non-payment of bill for services. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. § 483.12.

PRELIMINARY STATEMENT

Petitioner was not present and was represented by [REDACTED] who testified.

Petitioner presented two witnesses who testified: [REDACTED] and [REDACTED]

both certified Ombudsmen. Petitioner submitted four exhibits, which were accepted into evidence and marked as Petitioner's Exhibits "1" through "4". Respondent was represented by Kevin Shavel, who testified. Respondent presented one witness who testified: Richard Horton, Social Services Director. Respondent submitted one exhibit, which was accepted into evidence and marked as Respondent's Exhibit "1". The record closed on September 16, 2015.

FINDINGS OF FACT

1. Petitioner became a resident of the facility on May 2, 2012.
2. Petitioner's Institutional Care Program (ICP) Medicaid benefits ended effective November 30, 2014.
3. Petitioner's Medicare benefits paid for services rendered for the month of November 2014 and for part of December 2014 (December 1, 2014 through December 6, 2014).
4. Petitioner has been continuously paying her patient responsibility each month since December 2014. She paid \$316.13 for December 2014 and \$392 per month for January 2015 and ongoing.
5. Once petitioner's ICP Medicaid benefits ended, she became a private pay individual who is responsible for the total amount of the facility's bill for services rendered.
6. On April 4, 2015, the respondent's facility completed an application for ICP benefits on behalf of petitioner with the Department of Children and Families (DCF) ACCESS Program. Petitioner was pended for proof of spend down of her assets as she was over the asset limit for ICP Medicaid.

7. On May 28, 2015, DCF denied petitioner's April 2015 ICP Medicaid application as she did not submit the necessary information to determine her eligibility.

8. On July 31, 2015, the respondent issued petitioner a Nursing Home Transfer and Discharge Notice that indicated petitioner would be discharged from the facility effective August 8, 2015 based on non-payment of bill for services. The discharge location listed was the [REDACTED] Petitioner requested an appeal challenging the discharge action. Petitioner remains a resident of the nursing facility pending the outcome of this appeal decision.

9. As of July 31, 2015, petitioner's past due balance was \$49,042.43 for the months of December 2014 through July 31, 2015.

10. On August 26, 2015, the respondent's facility completed an application for ICP Medicaid benefits on behalf of petitioner with the DCF ACCESS Program. As of the date of the hearing, petitioner's August 26, 2015 ICP Medicaid application was pending and petitioner's ICP Medicaid eligibility had not yet been determined. Petitioner's daughter asserted she requested the necessary documents from her mother's bank and should receive them shortly to submit to DCF so her mother's ICP Medicaid eligibility can be determined.

CONCLUSIONS OF LAW

11. The jurisdiction to conduct this hearing is conveyed to the Department of Children and Families by Federal Regulations appearing at 42 C.F.R. 431.200. 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.

12. Federal Regulations appearing at 42 C.F.R. § 483.12, Admission, transfer and discharge rights, sets forth the limited reasons a Medicaid or Medicare certified nursing facility may involuntarily discharge a resident and states in part:

(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...

13. Petitioner currently has an ICP Medicaid application pending as she is seeking benefits to pay for the facility's unpaid charges. It is unknown when and if petitioner's ICP Medicaid benefits will be approved or the effective date of her ICP Medicaid benefits. As a result it is unknown if petitioner would still owe payments to the facility. Furthermore, petitioner has been faithfully paying her patient responsibility each month since her ICP Medicaid benefits were terminated on November 30, 2014.

14. The Department of Health and Human Services, Centers for Medicaid and Medicare Services, State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities states in part:

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.

15. Pursuant to the above authority, the aforementioned guidance to the Agency for Health Care Administration surveyors allows the reviewing of a discharge notice due to non-payment to be considered in this appeal. In this instance, petitioner had a pending ICP Medicaid application when the facility issued their unpaid billing notices to her. Petitioner's August 26, 2015 ICP Medicaid application has not been denied; therefore, it is unknown if Medicaid will not pay for petitioner's unpaid bills for any services rendered since December 2014. Since there is a pending ICP Medicaid application, this discharge is premature. Respondent must wait until the August 26, 2015 ICP Medicaid application is processed before proceeding with this discharge action.

DECISION

The appeal is GRANTED. The facility may not proceed with the discharge at this time. The facility must wait until the August 26, 2015 ICP Medicaid application has been disposed of and must give the petitioner adequate notice of any amounts due after any possible reductions 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 2 day of November, 2015,

in Tallahassee, Florida.



Mary Jane Stafford
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
[REDACTED] Respondent
Ms. Patricia Reed Cauffman
Agency for Health Care Administration
[REDACTED]