

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

[REDACTED]

APPEAL NO. 11N-00027

PETITIONER,  
Vs.

Administrator

[REDACTED]

RESPONDENT.

/

FILED

May 16, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 12, 2011, at 2:15 p.m., at the [REDACTED] [REDACTED] in [REDACTED] Florida. The petitioner was represented by her niece, [REDACTED] (authorized by petitioner). The petitioner and the ombudsman did not appear. The respondent was represented by the administrator, [REDACTED]. Appearing as witnesses for the respondent were [REDACTED], business office manager, and [REDACTED], social services assistant. [REDACTED] intern, appeared as an observer.

**ISSUE**

At issue was whether intent to discharge was correct based on nonpayment after reasonable and appropriate notice to pay. The respondent had the burden of proof at a standard of clear and convincing evidence.

**FINDINGS OF FACT**

1. The Agency for Health Care Administration (AHCA) completed an unannounced visit to the [REDACTED] on March 3, 2011; the facility was found to be in compliance with the regulations at 42 CFR, Part 483, Subpart B-Requirements for Long Term Care.

2. The petitioner has been a resident of the [REDACTED] [REDACTED] and has limited income. The petitioner applied for the state's Medicaid Institutional Care Program (ICP) and was approved effective March 2011. However, the ICP Medicaid was denied for January 2011 and February 2011 because the petitioner's son failed to properly fund the qualifying income trust account.

3. The respondent has issued statements of amounts due (Respondent's Exhibit 3), showing the amount owed as of April 2011 is \$8495. The amount owed including May 2011 is \$11039. The facility bills a month in advance. The facility has tried to get cooperation from both petitioner and her son. Letters have been given to petitioner's son prior to the discharge notice explaining the consequences if the bill was not paid. The business officer manager sent petitioner's son a letter on March 24, 2011 explaining the denial of ICP Medicaid for January and February 2011 with the balance owed included. The resulting payment was a money order for \$5.

4. The petitioner's monthly liability to be paid to the facility is \$2544. In addition, if the petitioner's son fails to properly fund the income trust on a monthly basis, the ICP Medicaid will be terminated, and the petitioner will owe the facility approximately \$5000 rather than \$2500 each month.

5. On February 11, 2011, the respondent issued the Nursing Home Transfer and Discharge Notice (Respondent's Exhibit 1) which states, "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." Location for discharge was shown to be the petitioner's son's address.

6. The petitioner timely appealed the discharge notice (Petitioner's Exhibit 1). The hearing request notes that the "discharge planned to inappropriate environment."

### **CONCLUSIONS OF LAW**

7. Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Florida Statute 400.0255 addresses "Resident transfer or discharge; requirement and procedures; hearing..." with section (15) (b) informing that the burden of proof is one of clear and convincing evidence. Federal regulations limit the reason for which discharge may occur and in this situation, nonpayment is the reason. Additionally relevant is 42. C.F.R. § 483.12 informing as follows:

Admission, transfer and discharge rights.

(a) Transfer and discharge--

...  
(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.  
...

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

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(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

...

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following: ...

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State....

These regulations must be followed.

8. A residential nursing care facility would expect payment (or arrangement for payment) in the normal course of business. The facility was not fully paid and the petitioner and her son were notified that she owed payments for room, board, and care. Billing for a month ahead in matters of room and board is a customary business practice. It is recognized that the petitioner's son's home may not be an appropriate environment and that location information may need to be revised for discharge purposes. Nevertheless, the intent to discharge is valid due to nonpayment.

9. After careful review, it is concluded that inadequate payment has occurred following reasonable and appropriate notice to pay. On that merit, discharge to a safe location is appropriate. The respondent has met its burden of proof. Intent to discharge has been justified as set forth. The notice is upheld.

**DECISION**

The appeal is denied and the respondent's action is affirmed. The facility is to follow AHCA's rules on proper discharge locations for petitioner.

**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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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 \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
in Tallahassee, Florida.

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