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

APPEAL NO. 09N-00094

PETITIONER,

Vs.

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 24, 2009, at 1:08 p.m., at the respondent facility. The petitioner was not present. The petitioner was represented by her niece, Present as a witness for the petitioner was district ombudsman manager, Florida Long-Term Care Ombudsman Program. The respondent was represented by , administrator. Present as witnesses for the respondent were , regional accounts manager and business office manager.

ISSUE

At issue is whether or not the nursing home's May 19, 2009 proposed action discharging the petitioner from the facility is an appropriate action based on the federal regulations found at 42 C.F.R. § 483.12. The nursing home is seeking to discharge the

petitioner because her "bill for services at the facility has not been paid after reasonable and appropriate notice to pay". The nursing home held the burden of proof at the level of clear and convincing.

FINDINGS OF FACT

1. The petitioner (age 86) has been a resident at the respondent nursing facility since March 2005. Total monthly charges for the petitioner's stay in the facility are approximately $6,700. Prior to the action under appeal, the petitioner's principal payer source was Institutional Care Program (ICP) Medicaid. The petitioner's monthly patient responsibility (the amount of the facility charges the petitioner was responsible to pay) was $1751; the remainder was paid by ICP Medicaid. ICP Medicaid was terminated in May 2008. From June 2008 through December 2008, the facility received only the petitioner's $1751 patient responsibility. Subsequent to the Medicaid termination, Medicare Part A paid a portion of the facility charges from January 20, 2009 – May 14, 2009 and then a private insurance contract with Tri-care assumed responsibility for a portion of the facility charges from May 14, 2009 through June 12, 2009 because the petitioner was receiving billable skilled services during this time. On June 13, 2009, the petitioner's status was converted back to private pay at a daily rate of $225.

2. On May 19, 2009, the facility issued a Nursing Home Transfer and Discharge Notice effective June 21, 2009. The Notice shows the reason for transfer as "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay".

3. As of the date of the hearing, the total balance due to the facility was over $40,000. The petitioner's niece does not dispute that the monies are owed to the

facility; she admitted that she received monthly billing statements from the facility; the facility provided copies of the billing statements during the hearing. The facility provided evidence which proves that in addition to mailing the monthly bills, multiple phone calls were made to the niece in an effort to resolve the accumulating charges.

4. The facility explained that an application must be filed annually with the Department of Children and Families (DCF) to determine if the petitioner continues to be eligible for ICP Medicaid. The petitioner's March 2008 ICP review application was not submitted to DCF; her Medicaid benefits were terminated effective June 1, 2008. The petitioner's niece explained that during the time the ICP Medicaid review application was due, her husband suffered a leg injury (fell off a roof); in addition, she was caring for her elderly parents and she did not realize that the petitioner's Medicaid was terminated. She was receiving mail from the facility and DCF, but she did not open the mail, believing that the contents were merely routine facility payment receipts and the yearly DCF reauthorization. It was during a phone conversation with the facility's business office manager in October 2008 that she became aware of the Medicaid termination and the accumulating charges owed to the facility. She plans to re-apply for ICP Medicaid on the petitioner's behalf.

CONCLUSIONS OF LAW

The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Federal Regulations limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the discharge notice indicates the petitioner is to be discharged from the respondent facility based on non-payment.

Federal regulations at 42 C.F.R. §483.12 states in part:

(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.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by--

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

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

(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.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) Timing of the notice. (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section;

(B) The health of individuals in the facility would be endangered,

under paragraph (a)(2)(iv) of this section;

The legal authority cited above explains the reasons for which a Medicaid or Medicare certified nursing facility may discharge a resident.

Florida Statutes 400.0255, Resident transfer or discharge; requirements and procedures; hearings, states in part:

(15)(b) ...The burden of proof must be clear and convincing evidence...

The facility wishes to discharge the petitioner. The legal authority cited above makes it clear that the facility holds the burden of proof at the level of clear and convincing.

The Findings of Fact prove that the petitioner owes a balance to the facility. The Findings of Fact prove that the facility did give reasonable and appropriate notice to pay for the stay at the facility. The facility provided evidence which shows that the petitioner's balance is in excess of $40,000. The petitioner's niece admitted that monies are owed to the facility and that she received the monthly billing statements issued by the facility. She explained that due to other family obligations, she did not timely open the statements.

The above controlling authorities make it clear that after reasonable and appropriate notice, a facility may proceed with discharge actions. Therefore, the undersigned concludes that the facility's proposed discharge action is within the federal guidelines and the action is affirmed.

DECISION

The appeal is denied. The respondent met its burden of proof to show the discharge reason meets the reasons stated in the controlling Federal regulation. The facility may proceed with the discharge 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 18th day of August, 2009,

in Tallahassee, Florida.

Leslie Green
Hearing Officer
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Copies Furnished To: