

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

FILED

OCT 29 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00101

PETITIONER,

Vs.

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on September 11, 2009, at 10:15 a.m. All parties appeared by phone. The petitioner was not present. The petitioner was represented by her son, \_\_\_\_\_ The respondent was represented by \_\_\_\_\_, executive director of \_\_\_\_\_. Witnesses for the respondent from \_\_\_\_\_ were \_\_\_\_\_, business office manager, and \_\_\_\_\_, assistant business officer manager.

The hearing officer left open the record for the petitioner to respond to the evidence present by the respondent. The petitioner's response with copy to the hearing officer and the nursing home was due no later than September 21, 2009. The hearing officer left the record open for the any closing arguments by the petitioner or respondent until October 1, 2009. The hearing officer received a facsimile from the petitioner on September 21, 2009. The facsimile was the

petitioner's closing arguments and evidence. The evidence was entered as Petitioner Exhibit 1. Due to additional evidence from the petitioner, the hearing officer left the record open until October 23, 2009 for the respondent to respond. On October 19, 2009, the hearing officer received a response from the respondent which was entered into record as Respondent Exhibit 3. The record was closed on October 19, 2009.

### ISSUE

The respondent had the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice of May 26, 2009 was in accordance with the requirements of 42 CFR § 483.12(a):

(2)(v)The resident has failed, after reasonable and appropriate notice to pay for a stay at the nursing home.

### FINDINGS OF FACT

1. The petitioner was admitted to the nursing home on March 29, 2006. The petitioner had been receiving Institutional Care and Medicaid Program benefits. Reapplications were filed on behalf of the petitioner for Institutional Care and Medicaid Program benefits. As of February 28, 2009, the petitioner was no longer eligible for Institutional Care and Medicaid Program benefits. The petitioner's payment status was changed from Medicaid payment to private pay from March 2009 through May 2009. The petitioner was authorized for Institutional Care and Medicaid Program benefits effective June 2009.
2. The nursing home sent billing statements to the petitioner's son for services received by petitioner at the nursing home on May 26, 2009, June 5,

2009, July 8, 2009, August 7, 2009, August 18, 2009 and September 7, 2009.

As of the date of the hearing September 11, 2009, there was an outstanding balance due for services the petitioner had received at the nursing home in the amount of \$17,893.16.

3. Attached to the petitioner's closing argument was a billing statement dated September 16, 2009. It appears from the billing statement that prior to the October 1, 2009 charges, the balance due to the nursing home was zero. As there was no indication on the closing argument that a copy was sent to the nursing home, the hearing officer sent an Order Sharing Evidence with the petitioner's additional evidence to both parties on October 13, 2009.

4. The nursing home responded as follows. The September 16, 2009 bill was in error. A corrected bill was sent to the petitioner and her family. For the period of March 2009 through May 2009 the petitioner was a private pay patient. The petitioner made a payment on October 9, 2009 in the amount of \$1,464.39. The balance due for services the petitioner had received at the nursing home as of October 9, 2009 was \$16,428.77. Neither party indicated a repayment agreement had been arranged.

#### **CONCLUSIONS OF LAW**

The hearing officer has reviewed all the evidence and read the closing arguments of both parties. Jurisdiction to conduct this type of hearing is conveyed to the Department by Florida Statutes at 400.0255. The Florida Statutes at 400.0255 (10)(a) set forth that a resident is entitled to a fair hearing to challenge a nursing home's proposed transfer or discharge. Matters that are

considered at this type of hearing are the decisions by the facilities to discharge patients. Federal regulations limit the reason for which a Medicaid or Medicare certified nursing home facility may discharge a patient. In this case, the petitioner was sent notice indicating that she would be discharged from the nursing home in accordance with the Code of Federal Regulations at 42 CFR § 483.12(a):

(2)(v)The resident has failed, after reasonable and appropriate notice to pay for a stay at the nursing home.

In this venue, the appealable issue for this case is whether or not the resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home. The petitioner is a resident in this nursing home and has received services. Billing statements were sent to the petitioner and her family for each month the nursing home provided services to the petitioner. As of October 9, 2009, there is an unpaid balance due to the nursing home of \$16,428.77 for the period of March 2009 through May 2009. As of the October 9, 2009 reasonable and adequate financial arrangement has not resulted. The hearing officer concludes that the nursing home has given the petitioner and her family reasonable and appropriate notice of the need to pay for expenses incurred for the petitioner's stay at the nursing home.

Based upon the above cited authorities, the hearing officer finds that the nursing home's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge to an appropriate

location as determined by the petitioner's treating physician and in accordance with applicable Agency for Health Care Administration requirements.

**DECISION**

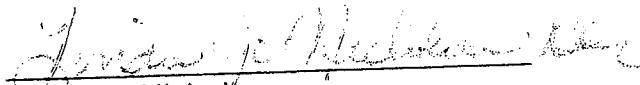
This appeal is denied. The respondent may proceed with the discharge, to an appropriate as determined by the treating physician and in accordance with applicable Agency for Health Care Administration requirements.

**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 29<sup>th</sup> day of October, 2009,

in Tallahassee, Florida.

  
Linda Jo Nicholson  
Hearing Officer  
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Tallahassee, FL 32399-0700  
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