

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

FILED

DEC 03 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00133

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned hearing officer on October 28, 2009, at 11:35 a.m., at the respondent's facility in Stuart, Florida. The petitioner was not present. He was represented by his father, _____, _____, business office manager, and _____, assistant director of nursing, represented the respondent.

Continuances were granted to the petitioner and to the respondent for prior scheduled hearings.

ISSUE

At issue is whether or not the facility's action of July 30, 2009 to discharge the petitioner was correct on the basis of nonpayment for care and services provided.

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.

FINDINGS OF FACT

1. The petitioner is a resident of the respondent's skilled nursing facility. He was admitted on September 20, 2001.
2. After a payment was made on October 20, 2009, the petitioner had an outstanding bill of \$5746.44 (Respondent's Exhibit 4).
3. The petitioner is obligated to pay the nursing facility \$4126 a month for his care. His father writes the checks from his son's account to pay for his care. The outstanding balance was incurred because only partial payments (just in excess of \$2000 each month) were made in July, August, and September 2009. The petitioner informed the respondent that he would not be making the full payment of \$4126 because his son had to have his teeth removed because of a life threatening infection. The petitioner's father explained that neither he nor his son had any way to pay for the dental care other than to use part of the monies he was supposed to pay the respondent for his care. The dentist who would be extracting his teeth at the hospital had agreed to take partial payments for three months until the bill for his services was paid in full (\$6080). The petitioner's father further explained that there is no payment arrangement now nor can there be one to take care of the outstanding balance because there is no source of income to pay it.
4. On August 26, 2009 and September 18, 2009, letters were sent to the petitioner's father thanking him for his partial payments and reminding him of the outstanding balance (Respondent's Exhibits 2 & 3). He also received monthly statements. The amount owed to the facility is not disputed.

5. On July 30, 2009, the respondent issued a Nursing Home Transfer and Discharge Notice to notify the petitioner of its intent to discharge him because his bill for services at the facility had not been paid after reasonable and appropriate notice to pay (Respondent's Exhibit 1).

6. The discharge location on the notice is the petitioner's father's residence. Discharge planning has not been completed, but the social worker has been looking at other facilities. The petitioner's father expressed that releasing his son to him is not the most desirable way to go, but if it was the only way, he would need 24 hour per day medical care for seven days a week.

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(a) states in relevant 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... (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.

The petitioner has an outstanding balance, owed to the facility, for the cost of his care and the facility has notified the petitioner and/or the representative of the balance due for the cost of his care. The representative is aware of the balance owed.

According to the above controlling authorities, the facility may not discharge except for certain reasons, of which one is when the resident has failed, after reasonable and appropriate notice to pay for the stay at the facility. Therefore, the hearing officer concludes that the nursing facility has met its burden to prove that the petitioner has not appropriately paid for his stay at the facility, and that reasonable and appropriate notice to pay for such stay has been made. The hearing officer concludes that the discharge action is in accordance with the federal regulations

DECISION

The appeal is denied. The facility met the burden of proof to show the discharge action is in accordance with the controlling federal regulation. The facility may proceed with the proposed discharge in accordance with applicable Agency for Health Care Administration requirements, once a safe and appropriate placement is found.

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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 3rd day of December, 2009,

in Tallahassee, Florida.



Margaret Poplin

Hearing Officer

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