

FILED

NOV 18 2009

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00137

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned at 1:32 p.m. on October 27, 2009, at the nursing facility. The petitioner did not attend, but was represented by _____, Esquire. The respondent was represented by _____, administrator, with testimony available from _____, corporate finance office; _____, social service director; and _____, business office manager at the facility.

ISSUE

At issue was whether or not intent to discharge was correct based upon failure to pay for services after reasonable and appropriate notice to pay. The respondent had the burden of proof.

FINDINGS OF FACT

1. The petitioner has many health problems and she receives care at the above named facility. She was admitted to the nursing facility on two separate

occasions during 2008. The most recent admission was November 21, 2008, following hospital care.

2. The petitioner filed Medicaid applications in an effort to obtain assistance. As of hearing date, Medicaid had not been approved.

3. The respondent issued billing statements to the petitioner and her son between September 2008 and the date of hearing. On August 18, 2009, the respondent issued notice of \$45,143.25 balance owed (Respondent's Exhibit 2). The notice was given to the petitioner's son at his home. The petitioner's son spoke with staff from the facility during August 2009. Some payment was made for several thousand dollars.

4. The bill was not paid in full.

5. On August 18, 2009, the respondent issued "Nursing Home Transfer and Discharge Notice" to be effective September 17, 2009. Location for discharge was the son's home in that city. The respondent had not assessed that location prior to the hearing. The respondent was aware that unsafe discharge is not permitted under statutory requirements.

6. As of date of hearing, the amount owed was more than \$50,000.

CONCLUSIONS OF LAW

Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200.

Additionally relevant is § 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--

(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....

Serious payment delinquency exists. Reasonable and appropriate notice to pay has been issued by the respondent. The notice was issued to a local family member, as required by regulation. On the matter of nonpayment and proper notice to an appropriate party, discharge is appropriate.

Physician authorization need not appear on the notice, when the concern is one of payment. The notice must contain a location for the discharge, and of course, the location must be safe, in accord with other regulatory and statutory standards. The respondent was well aware of that safety standard, and it is anticipated compliance with such shall occur. Intent to discharge has been justified as set forth due to insufficient payment for care and services rendered, following reasonable and appropriate notice to pay.

DECISION


The appeal is denied and the respondent's action is affirmed.

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 18th day of November 2009, in

Tallahassee, Florida.



J W Alper
Hearing Officer
Building 5, Room 255
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Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: