

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

FILED

DEC 07 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

PETITIONER, APPEAL NO. 09N-00148
Vs. CASE NO.

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter on October 22, 2009, at 10:44 a.m., in Winter Haven, Florida. _____, petitioner's wife, appeared and represented the petitioner. _____, district ombudsman manager, and _____, ombudsman, appeared for the petitioner. _____, business office manager, appeared as representative for the facility-respondent. _____, assistant business office manager, _____, director of nursing, and _____, executive director, all appeared as witnesses for the respondent.

ISSUE

At issue is the respondent's action of October 22, 2009, issuing a notice intending to discharge the petitioner for non-payment of services rendered. The respondent bears the burden of proof in this appeal.

FINDINGS OF FACT

1. The petitioner was admitted as a patient to the facility on February 16, 2007.
2. In April 2007, the petitioner applied for Institutional Care Program (ICP) Medicaid. The petitioner received an approval for coverage under this Medicaid program. The petitioner was assigned a patient responsibility amount as part of receiving benefits under this program that he was required to pay to the facility for services rendered.
3. The petitioner's monthly income includes his Social Security (\$1400) and retirement (\$755).
4. The petitioner made the full payment of his patient responsibility required each month until April 2009. The petitioner's patient responsibility from April 2009 through July 2009 was \$2,148.68 per month. Payments were made each month anywhere from \$1,200 to \$1,500 but never for the full patient responsibility amount. The patient responsibility amount decreased to \$1,998.99 effective August 2009 through the current month. Again, payments were received totaling around \$1,300 each month. An approximate monthly shortage of \$687.31 exists for the above-listed months creating an overall deficit balance owed in the amount of \$5,293.09.
5. As a result of the balance owed, the respondent issued a notice, without a date, to the petitioner stating its intent to discharge him to his home due to non-payment of services. The respondent was allowed to correct the

defective notice and issue a new and proper notice, dated with the date of the hearing, October 22, 2009. The effective date of the discharge is November 22, 2009, (per notice). The notice listed the couple's home residence as the discharge location and non-payment again was listed as the reason for the intended discharge.

6. Discharge planning and orientation was discussed.
7. The petitioner appeals.

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.

Regarding transfer and discharge rights from a facility, 42 C.F.R. § 483.12 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-
- (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.
- (6) *Contents of the notice.* The written notice specified in paragraph (a)(4) of this section must include the following:
 - (i) The reason for transfer or discharge;
 - (ii) The effective date of transfer or discharge;
 - (iii) The location to which the resident is transferred or discharged...

The federal regulation cited above requires the facility to comply with notice requirements for discharge and transfer. In reviewing the new notice, the hearing officer finds that the requirements of the law regarding the notice itself have been met.

The petitioner's representative did not dispute the total amount owed but she argued that she believed that the petitioner's patient responsibility amount

was only \$1,311 per month rather than the \$1,998 per month. She did admit receiving notices from the Department of Children and Families (DCF) (the entity in charge of Medicaid eligibility) regarding his ICP Medicaid benefits. She stated that she uses a certain portion of her husband's income to maintain their residence. She is the sole breadwinner in the home due to her husband being in the facility. She did request an itemized statement from the facility regarding services rendered.

The evidence shows that the facility remains unpaid on the balance beginning April 2009 through the date of the hearing. Additional evidence submitted by the facility shows the continual accruing of monthly charges still unpaid. While it is unfortunate that an underlying Medicaid eligibility issue may or may not exist as to patient responsibility amount, the fact of the matter remains that the facility must receive payment for services rendered to its residents. The hearing officer finds that the facility intends to discharge and transfer the patient based on one of the reasons cited in the regulation above. The discharge and transfer must therefore be upheld.

DECISION

The appeal is denied. The respondent's action is affirmed. The respondent may proceed with the discharge as planned.

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,

FINAL ORDER (Cont.)

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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 7th day of December, 2009,

in Tallahassee, Florida.



Jeannette Estes
Hearing Officer
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850-488-1429

Copies Furnished To: _____