

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00150

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on October 19, 2007, at 9:40 a.m., at the v

The petitioner was present and represented himself at the hearing. Also present on behalf of the petitioner was

respondent was represented at the hearing by [redacted], business office manger, [redacted] o present on behalf of the facility was social service director.

ISSUE

The respondent provided notice(s) the petitioner was to be discharged for the following reason: "Your bill for services at the facility has not been paid after reasonable and appropriate notice to pay..." The respondent will have the burden of proof to establish

by clear and convincing evidence that the discharge was in compliance with the requirements of 42 C.F.R. § 483.12 and Fla. Stat. § 400.0255.

FINDINGS OF FACT

1. The facility notified the petitioner on or about September 1, 2009 that he was to be discharged on October 1, 2009. The discharge location provided “

which is located at _____, Florida. The petitioner currently resides at _____

2. The petitioner recently was cancelled his ICP benefits by the Department of Children and Families. Based on this action, the petitioner had no other funding source for paying for his stay at the facility. The petitioner's outstanding bill at the facility as of October 1, 2009 was \$12,200, Respondent Exhibit 1. The facility instituted the Discharge Notice based on this scenario.

CONCLUSIONS OF LAW

The Code of Federal Regulations at 42 C.F.R. § 483.12(a)(2) sets forth reasons for which a resident may be discharged, and states in part:

(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;...

This regulation continues and states in part:

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

As shown in the Findings of Fact, the facility notified the petitioner on or about September 1, 2009 that he was to be discharged in on October 1, 2009. The facility had provided a discharge location, which is the [redacted]. Currently the petitioner resides [redacted]. The discharge reason is: "Your bill for services at the facility has not been paid after reasonable and appropriate notice to pay..."

The petitioner argued that [redacted] is not an appropriate location of discharge as he was, at one time; told to leave that facility. The petitioner's representative also requested that the facility "find" another "more appropriate" facility to discharge the petitioner.

The respondent explained that there is another discharge location in [redacted] Florida, but the [redacted] is a better location for the petitioner. They also explained that the [redacted] is an appropriate location of discharge. The hearing officer finds both arguments as not relevant to the issue.

Based on the evidence, the federal regulations and all appropriate authorities set forth in the findings above, the hearing officer concludes that the facility's action to discharge the petitioner is appropriate as the petitioner has failed to, after reasonable and appropriate notice, to pay the his bill at the facility. The facility has met its burden of proof and is in compliance with the appropriate federal regulation noted above for the discharge. The hearing officer does not have jurisdiction of the "appropriateness" of the discharge location.

DECISION

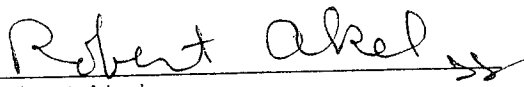
This appeal is denied and the facility's action upheld.

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 24th day of November, 2009,

in Tallahassee, Florida.



Robert Akel
Hearing Officer
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850-488-1429

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