

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

FILED

DEC 16 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00153

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on November 3, 2009, at 11:15 a.m., in Panama City, Florida. The petitioner was present and represented himself. Testifying on behalf of the petitioner by telephone was his sister, _____ Also testifying on behalf of the petitioner was _____, certified Ombudsman, Florida's Long-Term Care Ombudsman Program. The respondent was represented by _____ Esq., general counsel for Department of Veteran Affairs. Testifying on behalf of the respondent was _____, administrator, _____ and _____ social worker. Observing the proceeding was _____, business office manager, for the nursing facility.

Also present at the hearing as a court reporter was _____

ISSUE

At issue is whether or not the facility's action of September 18, 2009 to discharge the petitioner, was correct on the basis of nonpayment for care and services provided.

The nursing facility bears the burden of proof.

FINDINGS OF FACT

1. The petitioner is a resident of the above respondent nursing home in Panama City, Florida. He has been a resident of the facility under Medicaid. The petitioner's coverage for nursing home care under Medicaid began at least November 2008.

2. The Department of Children and Families made the determination of eligibility and notified the petitioner of his eligibility for Medicaid Institutional Care Program (ICP) benefits. His patient responsibility was \$2,563.85 for November and December 2008 and \$2,699.34 beginning January 2009, and \$2,744 effective November 2009 (Respondent's Exhibit 4). The patient responsibility is the amount of the petitioner's income that he is expected to pay toward his cost of care at the facility. The petitioner is permitted to retain \$35 per month for his personal needs.

3. The petitioner's income was from Social Security disability, Civil Service from U S Post Office and Veteran's benefits. In order to qualify for ICP, the petitioner was required to establish and fund an Irrevocable Medicaid Income Trust. His sister,
was named as the trustee of the irrevocable Medicaid Income trust.

4. The petitioner marked with an "X" and witnessed by a notary public an affidavit on his application for admission to the Veteran's Nursing Home on September 27, 2005.

The affidavit is his agreement to apply for all financial assistance available including Medicaid to pay for his care. It acknowledges his agreement to pay all of his income, regardless of source toward the cost of his care and that he would be required to pay the full amount of his income with the exception of the \$35 personal need allowance to the facility (Respondent's Exhibit 2).

5. Prior to the appeal for this issue, the petitioner was delinquent on payments to the nursing home. A hearing was requested and withdrawn as the parties to this action agreed to "forgive" the debt in an effort to allow the petitioner to remain at the facility. He was to establish Medicaid eligibility through the Department of Children and Families.

6. The petitioner was approved for Medicaid on November 1, 2008. A copy of the payment history was submitted showing the patient responsibility and payments made on his behalf. A partial payment (\$2,078.46) for November 2008 was made toward his patient responsibility of \$2,563.85. The remaining balance for November 2008 was \$485.39 (Respondent's Exhibit 5). There was no payment for December 2008. The arrearage for December 2008 was \$2,563.85. The petitioner was hospitalized during December 2008 or January 2009. His bill for services in January 2009 was prorated for \$860.98 as part of his bill for services was paid by Medicare. The petitioner did not pay his prorated share for January 2009. The petitioner made a partial payment of \$1,635.66 toward his February 2009 bill for \$2,699.34. The arrearage for February was \$1,063.68. No payments were made

toward the patient responsibility for March, May or June 2009. The remaining balance of his bill at the facility was \$13,071.92 as of June 19, 2009.

7. The Irrevocable Medicaid Income Trust was closed on May 26, 2009. There were several withdrawals from the Income Trust made by the trustee, made payable to herself for \$400 (January 6, 2009), \$1,000 (February 2, 2009), \$700 (February 18, 2009), \$200 (March 2, 2009), \$1,000 (April 1, 2009) \$700 (May 4, 2009), \$200 (May 11, 2009) returned for insufficient funds as well as to other payees such as Winn Dixie, CVS Pharmacy, City of Tallahassee, Publix, Sears, Bethel Missionary Baptist church and the Department of Motor Vehicles (Petitioner's Exhibit 3).

8. The respondent filed a report of exploitation against the petitioner's trustee with the Department of Children and Families. The petitioner is having difficulty finding a new trustee to handle an income trust and has requested that his income be directed to the facility. The trustee attested that she had the petitioner's permission to make the withdrawals from the Income Trust Account and that she was charging him up to \$1,200 per month for handling his personal business. After closing the Income Trust Account, the petitioner's income was deposited to a joint checking account the petitioner had with his mother. Additional payments of \$2,670, \$4,266, and \$2,220.56 have been made toward his bill at the facility from the joint account. The bill for services as of the date of the hearing is \$12,757.49.

9. On September 18, 2009, the facility, by Nursing Home Transfer and Discharge Notice, notified the petitioner of its intent to discharge him because the bill for

services at the facility had not been paid, after reasonable and appropriate notice to pay.

8. The location to which the petitioner was to be discharged was listed on the above notice as _____ in Panama City, Florida. The nursing facility has stipulated that it will make arrangements through its social services office to insure the safe and orderly transfer of the petitioner to this facility or to another appropriate living arrangement. The petitioner wishes to remain at his current address.

CONCLUSIONS OF LAW

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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; ...

The Findings of Fact show that the petitioner has an outstanding balance, owed to the facility, for the cost of his care and that the facility has notified the petitioner and the payee of his Trust account of the balance due for the cost of care. The controlling

federal regulations do not address any excusable situations which lead to a balance owed to the facility and therefore are not considered in the ruling.

According to the above 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. While it is unfortunate that the petitioner's trustee did not make payments to the nursing facility either due to exploitation or for other reasons, the controlling authorities indicate that an individual may be discharged from a facility if his bill for services has not been paid. 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. Therefore, the hearing officer concludes that the discharge action is in accordance with the federal regulations.

DECISION

The appeal is denied. The respondent met the burden of proof to show the discharge reason meets the reasons stated in the Federal Regulation. The facility may proceed with the discharge in accordance with applicable Agency for Health Care Administration requirements, when 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.

DONE and ORDERED this 16th day of December, 2009,

in Tallahassee, Florida.



Linda Garton
Hearing Officer
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850-488-1429

Copies Furnished To

Respondent