

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

FILED

JAN 22 2010

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00177

PETITIONER,

Vs.

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on December 22, 2009, at 3:30 p.m., at the facility. The petitioner was not present. Present representing the petitioner was his daughter,

The respondent was represented by \_\_\_\_\_, director of business services. Present as a witness for the respondent was \_\_\_\_\_ social services director.

**ISSUE**

At issue is whether or not the facility's action of October 23, 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 was a resident of the above named respondent skilled nursing facility. The petitioner was admitted into the facility on April 9, 2009. The petitioner left the facility on November 23, 2009 and returned to his home where he is living with his wife. The petitioner does not wish to return to the facility.

2. As of November 30, 2009, the petitioner's outstanding bill at the facility was \$4,811.36 for services provided by the facility. The outstanding balance was for services provided by the facility through the date of the petitioner's discharge which were not paid for by Medicaid. The outstanding balance was the total of the petitioner's patient responsibility after Medicaid payments were applied towards the cost of his care.

3. The nursing facility sent statements for payment of the petitioner's cost of care to the petitioner and/or the petitioner's representative. The petitioner's daughter/representative was aware of the amount due to the facility.

4. The petitioner's daughter argued that the petitioner applied for Medicaid to cover the cost of his care at the facility and that the first application was denied. The petitioner submitted another application for Medicaid which was approved and the daughter believes that there is a balance due to the facility. However, she was not sure as to the amount owed to the facility because she had not had an opportunity to confirm the amount of the petitioner's patient responsibility and the final determination of the amount that Medicaid was going to pay. The daughter believed that the petitioner's Medicaid eligibility specialist told his wife not to make any payments to the facility until after his application had been processed. Therefore, payments were not made to the facility.

5. On October 23, 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.

6. The location to which the petitioner was to be discharged was listed on the above notice as a skilled nursing facility that can meet the petitioner's needs or to his home.

### **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. 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 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.

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. Therefore, the Hearing Officer concludes that the nursing facility has met its burden to prove that the petitioner has failed to pay 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**

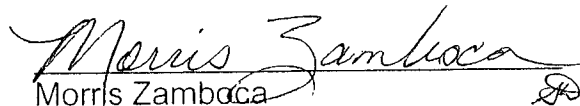
The appeal is denied. The facility met the burden of proof to show the discharge reason meets one of the reasons stated in the Federal Regulation.

**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 22<sup>nd</sup> day of January, 2010,

in Tallahassee, Florida.

  
Morris Zambaca  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
850-488-1429

FINAL ORDER (Cont.)

09N-00177

PAGE - 5

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