

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

FILED
DEC 21 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00179

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 15, 2009, at 12:45 p.m., in Tallahassee, Florida. The petitioner was not present but was represented by his son, _____ . The respondent was represented by _____ , director of social services. Testifying on behalf of the respondent was _____ business officer manager.

ISSUE

At issue is whether or not the facility's action of October 15, 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 a nursing home in Tallahassee, Florida. He has been a resident of the facility since at least August 22, 2008 under Medicare and

subsequently as a private pay resident. The petitioner began applying for coverage under Institutional Care Program (ICP) and Medicaid through the Department of Children and Families from at least December 1, 2008. Benefits were denied because information needed to process his application was not provided. Several other applications have been submitted on behalf of the petitioner on April 28, 2009, June 23, 2009, August 14, 2009 and September 28, 2009 but all have been denied.

2. On November 3, 2009, the petitioner's representative filed another application for ICP benefits. The representative believes that application is still pending.

3. The petitioner's Social Security benefits have been going to the resident trust fund and applied toward his bill for services from at least July 2009. The representative made payments of \$1,300 monthly for November 2008 through March 2009. As the petitioner has not yet qualified for ICP and Medicaid benefits he is considered a private pay patient. Private pay bills are at least \$6,448 per month.

4. As of the date of the hearing, the petitioner's outstanding bill was \$74,728.89. The nursing facility sent statements to the petitioner's representative (son) showing the outstanding balance. The representative acknowledged that he has been receiving monthly bills for services.

5. On October 15, 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 “facility or home of resident choice pending acceptance”. The nursing facility indicated that the petitioner has been discharged subsequent to the issuance of the Nursing Home Transfer and Discharge Notice to a hospital because his health has deteriorated. The petitioner has been out of the facility for at least the week prior to the hearing. The representative indicated the petitioner’s Medicare days have lapsed and the hospital is making arrangements for the petitioner to insure the safe and orderly transfer to another appropriate living arrangement.

9. The petitioner was issued the intent to discharge on October 15, 2009. A hearing request was received by the Office of Appeal Hearings on November 5, 2009.

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 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 his son of the balance due for the cost of care. The petitioner's son argued that attempts to qualify for the Institutional Care Program and Medicaid benefits have been unsuccessful. The representative believes there is currently a pending application for these benefits to be determined by the Department of Children and Families. However, 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. 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.

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 21st day of December, 2009,

in Tallahassee, Florida.



Linda Garton

Hearing Officer
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Copies Furnished To