

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

FILED
FEB 02 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00186

PETITIONER,

Vs.

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on January 22, 2010, at 10:05 a.m., at the facility. The petitioner was not present. Present representing the petitioner was her son,

The respondent was represented by _____, facility administrator. Present as witnesses for the respondent were _____ social worker and _____, business office manager.

ISSUE

At issue is whether or not the facility's action of November 1, 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 is a resident of the above named respondent skilled nursing facility.
2. On November 1, 2009, the facility, by Nursing Home Transfer and Discharge Notice, notified the petitioner of its intent to discharge her because the bill for services at the facility had not been paid, after reasonable and appropriate notice to pay.
3. On November 6, 2009, the petitioner's son requested a hearing because he disagreed with the discharge action. On the hearing request, the son indicated that the facility believed that the petitioner owed \$28,000 for services provided by the facility.
4. Subsequent to the discharge notice, the petitioner was approved for Medicaid through the Institutional Care Program and the facility has received payments for the cost of her care. Additionally, the son has made payments on the petitioner's account and the balance has been significantly reduced.
5. The facility and the son have agreed upon a payment plan and the facility has no intent on discharging the petitioner from the facility as stated in the discharge notice of November 1, 2009. Both parties agreed that the discharge under appeal was now moot.

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 show that the facility and the petitioner's son have agreed on a payment plan to pay for the cost of the petitioner's outstanding bill for the care that the petitioner has received at the facility. Additionally, the findings show that the facility will not discharge the petitioner from the facility as a payment agreement has been reached. Based on the above, it is determined that the discharge issue is now moot. Therefore, the appeal is hereby dismissed.

DECISION

The appeal is denied as the discharge issue is moot.

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.

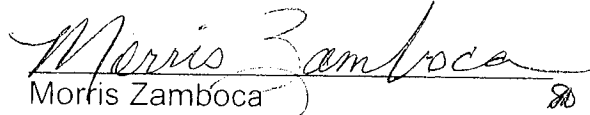
FINAL ORDER (Cont.)

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DONE and ORDERED this 8th day of February, 2010,

in Tallahassee, Florida.



Morris Zamboca

Hearing Officer

Building 5, Room 255

1317 Winewood Boulevard

Tallahassee, FL 32399-0700

850-488-1429

Copies Furnished To