

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-00210

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned hearing officer on January 27, 2010, at 2:09 p.m., at the respondent's facility, in Florida. The petitioner was present and represented himself. His friends, _____ and _____ were also present. _____ nursing home administrator, represented the respondent. _____ business officer manager, and _____, social services manager, were also present.

ISSUE

At issue is whether or not the facility's proposed action of December 9, 2009 to discharge the petitioner was correct on the basis of his health has improved sufficiently so that he no longer needs the services provided by the respondent and for 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 respondent's skilled nursing facility. He was admitted in early November 2009.
2. Since admission to the facility, the petitioner's cost of care was being paid by Humana AdvantageCare Plan, Inc., the petitioner's Medicare provider. On November 24, 2009, the petitioner received a Notice of Medicare Provider Non-Coverage letter stating his skilled nursing home services would end on November 26, 2009 (Respondent's Exhibit 2).
3. A Detailed Explanation of Non-Coverage, dated November 25, 2009, shows that skilled nursing services would not be covered if they were not medically necessary, and that "Your attending physician has discharged you from daily skilled services because your care has determined to have reached maximum potential at this time. You are discharged as ordered by your attending physician" (Respondent's Exhibit 3). On November 25, 2009, the petitioner appealed the decision to FMQAI. The respondent explained that a doctor's order is not issued until the actual discharge occurs.
4. FMQAI is a quality improvement organization (QIO) that works for Medicare. An FMQAI physician reviewed the petitioner's medical records along with any comments sent to FMQAI from the respondent and the petitioner's physician, and any information that the petitioner may have sent to determine if he still required skilled nursing services. FMQAI's physician agreed with the discontinuation of skilled services for the petitioner. The Respondent's Exhibit 4 contains a letter from FMQAI dated

November 26, 2009, the petitioner's appeal to them, Notification of Patient Appeal Request, a request for documentation, and copies of fax transmittals. The letter states that if skilled services continue on or after November 27, 2009, Humana will not pay for those services. A reconsideration was requested on January 6, 2010.

5. On January 10, 2010, the reconsideration decision was sent to the petitioner. The reconsideration decision was made by a second FMQAI physician and the initial decision to end skilled nursing coverage was upheld (Respondent's Exhibit 5).

6. After the termination of payment by Humana, the petitioner's status was changed to private pay. On December 17, 2009, he was determined eligible for Medicaid with a patient responsibility of \$1068 effective December 2009. He had a Humana co-pay balance for November of \$975. By the end of January 2010, the petitioner had an outstanding balance of \$3,111 (Respondent's Exhibit 6). The petitioner has not redirected his Social Security check to the nursing facility and has not paid his patient responsibility since being approved for Medicaid. A Nursing Home Transfer and Discharge Notice was issued on December 9, 2009 to be effective January 10, 2010 (Respondent's Exhibit 1).

7. In addition to monthly statements given to the petitioner which he asserts he accepted as a courtesy, the Respondent's Exhibit 7, Collection Notes Reports, shows that conversations or attempted ones concerning the collection of an outstanding bill occurred in November and December 2009, and January 2010.

8. The petitioner explains that he has been diligently looking for a place to live. He looks for about an hour a day but has not been able to find an affordable place to live because it is 'high season' now. He admits that he does not want to stay in the

respondent's facility, but he only wants to spend about a third of his Social Security (\$300) on rent. He has applied for HUD housing, he is on waiting lists, and does not want to live in a rooming house or pay \$165 a week rent at the place that was found for him. Someone from social services has worked with him to give him some suggestions and the respondent is willing to make the down payment on an apartment, but the petitioner cannot decide where to live. Discharge planning has not been completed because the petitioner has not yet found an acceptable place.

9. The petitioner is able to walk independently and he goes out in a car into the community. He asserts that he is able to do his activities of daily living. He is very careful not to get up too fast or move too fast. The respondent asserts that since the petitioner can do all of the things he does, it cannot continue to bill Humana for his care.

10. The petitioner expressed concern about the information that was used to determine that he no longer required skilled nursing services. He believes he was rushed in his response and appeal to Humana because he had to meet a very short deadline. The respondent explained that they are only given 48 hours notice by Humana. The respondent explained that his medical records were sent to the reviewer and they are in the unit for his review at any time.

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.

The petitioner has an outstanding balance, owed to the facility for the cost of his care and the facility has notified the petitioner of the balance due for the cost of his care. The petitioner is aware of the balance owed and it is undisputed that he has not diverted his Social Security check to pay his patient responsibility. The respondent issued monthly statements and had conversations or attempted to have conversations with the petitioner concerning the outstanding bill of \$3111.

According to the above controlling 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. The hearing officer concludes that the discharge action based on this reason is in accordance with the federal regulations. The undersigned did not review the second reason listed on the discharge notice for correctness as it was unnecessary, once determined that the non-pay issue met the federal regulations for discharge action.

DECISION

The appeal is denied. The facility met its burden of proof to show the discharge action is in accordance with the controlling federal regulation. The facility may proceed


with the proposed discharge in accordance with applicable Agency for Health Care Administration requirements, once a safe and 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 9th day of February, 2010,

in Tallahassee, Florida.


Margaret Poplin
Hearing Officer
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Copies Furnished To