

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

FILED

FEB 22 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09N-00211

PETITIONER,

Vs.

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on February 1, 2010, at 9:12 a.m., at the Nursing Home, in I _____, Florida. The petitioner was present, but was represented at the hearing by her son, _____ and her daughter, _____. The respondent was represented at the hearing by _____, assistant administrator. Present as witnesses for the facility were _____, business office manger; _____, director of social services and _____, Medicaid specialist, all from I _____.

ISSUE

The respondent provided notice(s) the petitioner was to be discharged for the following reason: "Your bill for services at the facility has not been paid after reasonable and appropriate notice to pay..." The respondent will have the burden of proof to establish

by clear and convincing evidence that the discharge was in compliance with the requirements of 42 C.F.R. § 483.12 and Fla. Stat. § 400.0255.

FINDINGS OF FACT

1. The facility notified the petitioner on or about December 8, 2009 that she was to be discharged on January 6, 2010. The discharge location provided "Home", which is located at . The petitioner currently resides at

2. Approximately in September 2008, the petitioner was admitted to , where she was one hundred day Medicare pay. The petitioner was private pay after that up until at least July 2009. The petitioner started to have an outstanding bill with the facility as of July 2009. There was an application filed for Medicaid (ICP) benefits with the Department of Children and Families (DCF). The facility began communication with the petitioner's representatives about the outstanding bill situation in September 2009. The petitioner currently has a pending application for ICP benefits by the Department of Children and Families. In the meantime the petitioner has been accruing an outstanding bill with the facility. The petitioner's outstanding bill at the facility as of January 31, 2010, was \$45,000, Respondent Exhibit 1. The facility instituted the Discharge Notice based on this scenario.

CONCLUSIONS OF LAW

The Code of Federal Regulations at 42 C.F.R. § 483.12(a)(2) sets forth reasons for which a resident may be discharged, and states in part:

(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;...

This regulation continues and states in part:

(4) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must- (i) Notify the resident... (6) *Contents of the notice.* The written notice specified in paragraph (a)(4) of this section must include the following:...(iii) The location to which the resident is transferred or discharged...

As shown in the Findings of Fact, the facility notified the petitioner on or about December 8, 2009 that he was to be discharged in on January 6, 2010. The facility had provided a discharge location, which is the petitioner's daughter's home. Currently the petitioner resides at the _____ The discharge reason is: "Your bill for services at the facility has not been paid after reasonable and appropriate notice to pay..."

The petitioner's representative argued that the facility has not been up-front with his family about the bill process and all of a sudden presented a bill and a discharge. The petitioner's representative argued that the petitioner has no money in the bank, as all of her account money has been spent down. The petitioner's representative argued that they, the petitioner's representatives have been cooperating with the facility in regard to the DCF application. She argued that her house is not an appropriate location for discharge.

The respondent argued that the facility has attempted to assist the petitioner with the DCF application, but the outstanding bill with the facility for the petitioner, remains outstanding. The respondent argued that as the petitioner makes her own decisions; the petitioner agreed that the petitioner's daughter's home was the place she wanted to be

discharged to. The respondent argued that the facility, has for some time, been informing the petitioner's representatives of the increasing bill and the possibility of the discharge.

Based on the evidence, the federal regulations and all appropriate authorities set forth in the findings above, the hearing officer concludes that the facility's action to discharge the petitioner is appropriate as the petitioner has failed to, after reasonable and appropriate notice, to pay the his bill at the facility. The facility has met its burden of proof and is in compliance with the appropriate federal regulation noted above for the discharge. The hearing officer does not have jurisdiction of the "appropriateness" of the discharge location.

DECISION

This appeal is denied and the facility's action upheld.

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 22nd day of February 2010,
in Tallahassee, Florida.

Robert Akel
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Hearing Officer
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Copies Furnished To