

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

FILED  
FEB 18 2010  
OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 09N-00218

PETITIONER,

Vs.

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on February 2, 2010, at 2:26 p.m., at the Health & Rehab Center, in \_\_\_\_\_, Florida. The petitioner was not present. The petitioner was represented by the \_\_\_\_\_ ombudsman. The respondent was represented by \_\_\_\_\_ administrator.

**ISSUE**

The respondent had the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice of December 22, 2009 is in accordance with the requirements of 42 CFR § 483.12(a) "(2)(v)The resident has failed, after reasonable and appropriate notice to pay for a stay at the facility."

**FINDINGS OF FACT**

1. The petitioner has been residing at the facility since May 29, 2009. The petitioner has incurred expenses for her residence, testing and supplies

while in the facility. The monthly cost of the petitioner's semi-private room was \$6,355 in 2009 and \$6,686 effective January 2010. Each month, the nursing home sent a bill to the petitioner and her family. Through at least November 23, 2009, the facility did not receive any payment from the petitioner or her family. Effective November 2009, the petitioner's Social Security income was directly sent to the petitioner's Resident Trust at the facility. The facility received payments in the amount of \$974 on November 24, 2009, \$25 on November 25, 2009 and \$1009 on December 8, 2009. As of December 17, 2009, the petitioner had a remaining outstanding balance in the amount of \$27,816.32.

2. The petitioner was sent notification on December 22, 2009, advising her of the facility's decision to discharge the petitioner on January 22, 2010. The basis of that discharge was that there had been lack of payment of her bill for services and after reasonable and appropriate notice the financial situation had not been resolved. The notice advised that she would be discharged to

3. As of January 17, 2010, the petitioner had a remaining outstanding balance owed to the facility of \$33,833.91. The nursing home applied for Medicaid for the petitioner. The petitioner's Medicaid was authorized at the end of January 2009. The facility adjusted the petitioner's bill to reflect the amount that would be paid by Medicaid through January 2010 and the amount each month that would be the patient's responsibility to pay. After the adjustments, the petitioner's remaining outstanding balance owed to the facility was \$6,512.66.

### CONCLUSIONS OF LAW

Jurisdiction to conduct this type of hearing is conveyed to the Department by Florida Statutes at 400.0255. Matters that are considered at this type of hearing are the decisions by the facilities to discharge patients. Federal regulations limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the petitioner was sent notice indicating that she would be discharged from the

in accordance with the Code of Federal Regulations at 42 CFR § 483.12(a) "(2)(v)The resident has failed, after reasonable and appropriate notice to pay for a stay at the facility."

The facility has given the petitioner and her family reasonable and appropriate notice of the need to pay for the petitioner's stay at the facility and reasonable and adequate financial arrangement have not resulted. Based upon the above cited authorities, the hearing officer finds that the facility's action to discharge the petitioner is in accordance with federal regulations.

### DECISION

This appeal is denied. The respondent may proceed with the discharge, as determined by the treating physician and 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,

FINAL ORDER (Cont.)

09N-00218

PAGE - 4

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 18<sup>th</sup> day of February, 2010,

in Tallahassee, Florida.



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Hearing Officer  
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