

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

[REDACTED]

APPEAL NO. 10N-00168

PETITIONER,

Vs.

FILED

Jan 5, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter at the respondent facility on December 3, 2010 at 1:05 pm.

**APPEARANCES**

For the Petitioner: [REDACTED] son.

For the Respondent: [REDACTED], administrator.

**STATEMENT OF ISSUE**

The petitioner is appealing the decision to discharge her from the respondent facility.

### **PRELIMINARY STATEMENT**

By Discharge Notice dated September 17, 2010, the respondent notified the petitioner she was to be discharged from the respondent facility effective October 19, 2010 due to non-payment of bill for services.

On October 7, 2010, the petitioner timely requested a hearing to challenge the respondent's action.

The hearing was conducted on December 3, 2010. The petitioner was present briefly and then exited the proceeding due to poor health. Her son [REDACTED] and the ombudsmen testified on her behalf. Testifying on behalf of the respondent were [REDACTED] business office manager; [REDACTED] social worker; [REDACTED] billing specialist; [REDACTED] Medicaid specialist; and [REDACTED], manager of business office support.

### **FINDINGS OF FACT**

1. The petitioner (age 80) was admitted into the respondent facility on April 20, 2010 for rehabilitation of a leg injury.
2. The monthly charge for facility services is \$6,104.06. The petitioner's payer source at the time of admission was Medicare. Medicare coverage ended on June 28, 2010. The petitioner was converted to private pay on June 29, 2010. On July 2, 2010, the facility applied for Medicaid coverage on the petitioner's behalf with the assistance of the family. The Medicaid application was denied on August 10, 2010 for failure to return information necessary to determine eligibility. The facility did not issue billing statements to the petitioner while the Medicaid application was pending.

The facility began mailing billing statements to the petitioner's home address in August 2010.

3. On September 17, 2010, the respondent issued the petitioner a discharge notice which explained that it intended to discharge her from the facility effective October 19, 2010 due to nonpayment of bill for services. The petitioner requested a hearing on October 7, 2010. She remains in the facility pending the hearing decision.

4. The petitioner's balance due at the time of the hearing was \$46,211.26. Since the petitioner was converted to private pay in June 2010, the family has made payments to the facility: September 16, 2010 in the amount of \$600, October 26, 2010 in the amount of \$594 and November 22, 2010 in the amount of \$594. It is the facility's position that the petitioner should be discharged for nonpayment of services.

5. The petitioner does not dispute the balance owed to the facility. It is the testimony of the petitioner's son [REDACTED] that he and his daughter tried to obtain the verification necessary to secure Medicaid coverage for the petitioner while both worked full time jobs and took care of their own homes. They were ultimately unable to verify the value of all the petitioner's resources in the time allotted and the application for Medicaid was subsequently denied. [REDACTED] denies ever receiving any billing statements from the facility. As previously noted, the billing statements were sent the petitioner's home address; it is the petitioner's other son, [REDACTED] [REDACTED] who lives in her home. The respondent initially testified that billing

statements were also hand delivered to the petitioner in the facility, but later retracted that testimony as there is no evidence of this in the facility billing records. It is the respondent's position that the petitioner did receive the monthly statements because her son, [REDACTED] brings the mail to her at the facility. [REDACTED] did not appear as a witness at the hearing. It is the family's testimony that the petitioner's granddaughter ([REDACTED]) is her power of attorney (POA); the family believes the billing statements should have been sent to the POA. The facility denied any prior knowledge that the petitioner had a POA.

6. The respondent provided evidence of numerous e-mails and telephone conversations with the family during the months of June 2010 through November 2010 regarding the status of the petitioner's Medicaid application and later discharging her from the facility due to no payer source. The petitioner's family stipulates to the aforementioned communications and believes had they been given additional time and more detailed explanations regarding exactly what verification was required to secure Medicaid as the payer source, the discharge action could have been avoided.

7. It is the ombudsmen's position that the discharge notice does not meet the statutory requirements. The notice was not signed by the petitioner and a copy of the notice was not sent to the ombudsmen. The facility administrator acknowledged that she did not ask the petitioner to sign the discharge notice prior to its issuance; she also acknowledged that a copy of the discharge notice was not sent to the

ombudsmen. It is the administrator's position that the discharge notice does, however, adhere to the statutory requirements.

### **CONCLUSIONS OF LAW**

8. The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. §431.200.

9. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing.--, informs at (15) (b) that the facility's burden of proof must be clear and convincing evidence.

10. Federal regulations limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In the instant case, the respondent proposes discharging the petitioner from the facility due to non-payment for services. Federal regulations do permit a discharge for this reason, as set forth at 42 C.F.R. §483.12(a)(2)(v) which states in relevant part, "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 resident only allowable charges under Medicaid..."

11. The petitioner owed the facility in excess of \$46,000; this fact is not disputed. What is at issue is rather she failed, after reasonable and appropriate notice, to pay for her stay at the facility. The petitioner was admitted into the facility in April 2010; Medicare was the payer source at the time of admission. Medicare coverage ended on June 28, 2010. The facility applied for Medicaid on the petitioner's behalf on July 2, 2010. While the Medicaid application was

pending, no billing statements were issued to the petitioner. The Medicaid application was denied on August 10, 2010. The facility began issuing monthly billing statements on August 13, 2010; the billing statements were mailed the petitioner's home address. The facility believes that the son who lives in the home hand delivered the statements to the petitioner in the facility. The son did not appear at the hearing and there was no admission of receipt of the statements from the petitioner.

12. The ombudsman argued the petitioner was harmed by the facility sending the notice to petitioner's home address as opposed to delivering to the petitioner herself or to her power of attorney. The statute at 400.0255 (7) requires that the notice be sent to both the resident and family member or the resident's legal guardian or representative except under emergency situations. This is a procedural due process issue. Procedural due process includes many requirements such as:

- An unbiased tribunal
- Notice of the proposed action and the grounds asserted for it
- Opportunity to present reasons why the proposed action should not be taken
- The right to present evidence, including the right to call witnesses
- The right to know opposing evidence
- The right to cross-examine adverse witnesses
- A decision based exclusively on the evidence presented

- Opportunity to be represented by counsel
- Requirement that the tribunal prepare a record of the evidence presented
- Requirement that the tribunal prepare written findings of fact and reasons for its decision

13. All of these rights were afforded the petitioner. A notice was provided to a family member. Based on that notice, the petitioner's representative requested a hearing. Evidence was presented by both sides and the hearing officer, based on that evidence, can make a proper ruling on the case. There is the allegation the petitioner was harmed by not getting a copy of the notice, with the requested remedy that the undersigned rule for the petitioner in spite of the overwhelming evidence that the petitioner, through her representative, had not paid the nursing facility bill after proper notice. A failure to pay such is grounds for discharge. Following receipt of the notice, the petitioner's representative requested a hearing to protect the petitioner's rights. The family also made payments on September 16, 2010, October 26, 2010 and November 22, 2010. The ombudsman was involved with the hearing process. Therefore, the hearing officer cannot conclude the petitioner was harmed by the notice going to a family member.

14. Any additional concerns about the discharge notice procedure would need to be addressed with the Agency for Health Care Administration as this agency regulates and enforces facility deficiencies.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility may proceed with the proposed discharge in accordance with the Agency for Health Care Administration's applicable rules.



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 \_\_\_\_\_ day of \_\_\_\_\_, 2011,

in Tallahassee, Florida.

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