

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

[REDACTED]

APPEAL NO. 10N-00193

PETITIONER,

Vs.

[REDACTED]

FILED

Feb 3, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened at 1:05 p.m. on January 6, 2011, in the [REDACTED]. The petitioner was not present, but was represented by his daughter, [REDACTED] assisted by [REDACTED], Esq. The respondent was represented by [REDACTED] administrator, with testimony available from [REDACTED], business office manager. [REDACTED] hearing officer, observed.

**ISSUE**

At issue was whether intent to discharge was correct based on nonpayment after reasonable and appropriate notice to pay. The respondent had the burden of proof and the standard of evidence was clear and convincing.

**FINDINGS OF FACT**

1. The petitioner has serious health problems and has been a resident of the

[REDACTED] nursing facility for an extended number of months.

2. During that period, he has used his retirement income of about \$1200 monthly toward his care and room and board costs at the nursing facility. This has not achieved payment in full. He has not been approved for Medicaid or achieved another payment source. By the end of 2010, the balance owing was more than \$40,000 and the petitioner's representatives stipulated to awareness of such. Bills were issued regularly by the respondent but full payment was not achieved.

3. The petitioner is able to feed himself but cannot dress, toilet, transfer, or bathe himself without assistance. He suffers mobility, memory, and comprehension problems. He needs assistance in almost all areas of daily living. He does not have a legal guardian. There is a possibility that his care needs could be met at a less restrictive environment, such as an adult assisted living facility.

4. Prior to entering the nursing facility, he had lived independently in the community. He is no longer renting that dwelling, but his daughter occupies an upstairs part of the same residence. She leases the upstairs and lives there with her children (Petitioner's Exhibit 2). She is employed and is not home much of the day. She has not made provision for the petitioner to join her at that dwelling or volunteered or offered to have the petitioner live in her residence. There is no indication she is willing to have her father join her at the residence.

5. On October 8, 2010, the respondent issued to the petitioner a "Nursing Home Transfer and Discharge Notice" to be effective 30 days later. Discharge location was the daughter's residence. Reason for discharge was "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay...unpaid balance of 23,625.00 thru November will be 30,375..." (Respondent's Exhibit 1).

6. The respondent recognized need for a safe discharge location. The respondent alleged no intent to discharge to an unsafe location and indicated that the location information would be revised if the daughter does not accept the petitioner to her residence.

7. The Agency for Health Care Administration conducted a review of the intended discharge and no violation was found (Hearing Officer's Exhibit 1).

### **CONCLUSIONS OF LAW**

7. Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Florida Statute 400.0255 addresses "Resident transfer or discharge; requirement and procedures; hearing..." with section (15) (b) informing that the burden of proof is one of clear and convincing evidence. Federal regulations limit the reason for which discharge may occur and in this situation, nonpayment is the reason. Additionally relevant to this problem is 42. C.F.R. § 483.12 informing as follows:

Admission, transfer and discharge rights.

(a) Transfer and discharge--

...

(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.

...

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

...

(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;

(iv) A statement that the resident has the right to appeal the action to the State....

These regulations must be followed. Additionally, while the AHCA review is interesting and noteworthy and listed as a finding, it is not controlling for hearing purposes and it would not supersede this final order.

8. A residential care facility would expect payment (or arrangement for payment) in the normal course of business. The facility was not fully paid, for past or future periods, and the petitioner was notified that he owed payments for room, board, and care. Billing for a month ahead in matters of room and board is a customary business practice. There is no dispute that significant nonpayment has occurred. The sole issue before the hearing officer is whether discharge action was correct for allowable reasons under the Code of Federal Regulations.

9. Concerns about discharge location and discharge planning are not matters that can be resolved at this level tribunal. The Code of Federal Regulations do not provide for hearing officers to resolve such problems. Other remedies are available for the petitioner to address discharge location-planning problems. It is recognized that the daughter may not choose to have her father in her residence and that location information may need to be revised for discharge planning purposes. Nevertheless, the intent to discharge is valid due to nonpayment.

10. After careful review, it is concluded that inadequate payment has occurred following reasonable and appropriate notice to pay. On that merit, discharge to a safe

location is appropriate. Despite preferences of the petitioner, and difficulties of the situation, the respondent has met burden of proof. Intent to discharge has been justified.

**DECISION**

The appeal is denied and the respondent's action is affirmed.

**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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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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