

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

[REDACTED]

APPEAL NO. 10N-00181

PETITIONER,

Vs.
Administrator

[REDACTED]

FILED

Jan 19, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 29, 2010, at 9:34 a.m., in [REDACTED] Florida.

APPEARANCES

For the petitioner: [REDACTED]

For the respondent: [REDACTED]

STATEMENT OF ISSUE

The petitioner is appealing the decision to discharge her from the respondent facility. 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 to discharge the petitioner due to nonpayment of services for care.

PRELIMINARY STATEMENT

By Discharge Notice dated October 25, 2010, the respondent notified the petitioner she was to be discharged from the respondent facility effective November 25, 2010 due to non-payment of bill for services. The notice is signed by the nursing home administrator. The notice indicates the petitioner refused to sign it as witnessed by Ms. Shaw.

On October 29, 2010, the petitioner timely requested a hearing to challenge the respondent's action. She is currently residing at the facility pending the outcome of this appeal.

The petitioner was present at the hearing and offered only her testimony.

Present as witnesses and offering testimony for the respondent were [REDACTED]

[REDACTED] accounts receivable specialist/acting business office manager, and [REDACTED]

[REDACTED] director of nursing.

The respondent offered five exhibits into evidence (Respondent's Exhibits 1-5).

The hearing officer offered an exhibit. It is a letter dated November 17, 2010 from the Agency for Health Care Administration indicating the results of a record review and site visit prior to the hearing.

FINDINGS OF FACT

1. The petitioner was admitted to the resident facility on September 8, 2010. She went into long-term care on September 25, 2010. Medicare paid for some of her stay in the beginning but then she went to private pay status.

2. The petitioner declined to apply for Medicaid benefits to pay for her stay and never made full financial disclosure to the respondent for the respondent to be able to assist in the application process.
3. As of January 1, 2011, the outstanding balance would be \$33,909.42. The petitioner is in a private room and the rate increased to \$276 per day effective January 1, 2011, or \$8556 for the month (Respondent's Exhibit 3). The petitioner is billed separately for her medication and she has a \$90 a month charge for oxygen. Prior to being in a private room, the petitioner was in a semi-private room. That daily room rate is \$255 a day effective January 1, 2011.
4. Statements are sent monthly and every two weeks collection letters are sent. The petitioner signed a resident Admission and Financial Agreement (14 page document) on September 14, 2010 agreeing to "...pay the Facility for all services and items that the Facility provides to the Resident, except to the extent that the Resident's care is covered by and paid for by Medicare, Medicaid or another third party payment source, such as private insurance..." (Respondent's Exhibit 5).
5. The Respondent's Exhibit 4, an activity report shows account updates, the generation of Private Pay Letters, delivering bills, notes from conversations with the petitioner's son concerning payment for services, and a record of payment.
6. The petitioner does not dispute owing the facility money for her care. She indicated that her son gets the monthly bills and has made three payments of \$1500; one in each month of September, October, and November 2010.
7. The petitioner indicated she would agree to make a payment arrangement but she does not feel it is fair to bill in advance, nor is it fair that she should have to pay the

bill from the time she contracted C-Diff. infection. She believes that she has been detained two months longer than she needed to be and that the respondent should adjust her bill accordingly. She believes that Medicaid will not take care of her past bill and that the respondent should write her bill off to charity.

8. Discharge planning was not completed because the petitioner would not indicate where she wanted to go. If she wanted to go home, home health services would be in place at the time of discharge. She wants to go home but does not believe that she is strong enough to do that at this time. The respondent offered to look for a facility in the [REDACTED] where her son lives, but the petitioner had not indicated that she wanted to live in that city.

CONCLUSIONS OF LAW

9. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to 42 C.F.R. § 431.200.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

11. The burden of proof was assigned to the respondent. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing.--, informs at (15) (b) that the burden of proof must be clear and convincing evidence.

12. Whether or not the petitioner contracted C-Diff at the facility is not the focus of this appeal. The issue is whether the petitioner has failed to pay for services rendered after appropriate notice to pay.

13. Federal regulations limit the reasons for which a Medicaid or Medicare certified nursing facility may discharge a patient. 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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; ...

14. The petitioner has an outstanding balance owed to the facility for the cost of the petitioner's care. The facility has notified the petitioner and/or her son of the balance due for the cost of the care. The findings show that the son has made three payments on the balance owed to the facility since the petitioner's admission; however, there is still an overdue, outstanding balance.

15. According to the above 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 failed to pay for her stay at the facility, and that reasonable and appropriate notice to pay for such stay has been made. Therefore, the hearing officer concludes that the discharge action is in accordance with the Federal Regulations.

16. Any complaints related to the petitioner's medical treatment or care would be need to be addressed with the Agency for Health Care Administration as they do not fall within the jurisdiction of this hearing officer or the Office of Appeal Hearings.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility met the burden of proof to show the discharge reason meets one of the reasons stated in the Federal Regulation. The facility may proceed with the discharge in accordance with applicable Agency for Health Care Administration requirements, when 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.

FINAL ORDER (Cont.)
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DONE and ORDERED this _____ day of _____, 2011,
in Tallahassee, Florida.

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Copies Furnished To:

[REDACTED]