

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

[REDACTED]

APPEAL NO. 10N-0182

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED

Mar 11, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 19, 2011 at 9:10 a.m., in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's wife.

For the Respondent: [REDACTED], nursing home administrator

STATEMENT OF ISSUE

The petitioner is appealing the decision to discharge him from the nursing facility.

PRELIMINARY STATEMENT

The hearing was originally scheduled December 14, 2010, but at the request of the petitioner's representative, was rescheduled for January 19, 2011. By Discharge Notice dated October 19, 2010, the respondent notified the petitioner that he was to be discharged from the nursing facility effective November 20, 2010, due to non-payment of bill for services.

On October 29, 2010, the petitioner timely requested a hearing to challenge the respondent's action.

The petitioner was not present, but was, however, represented by his wife. Present as witnesses for the respondent were [REDACTED], licensed clinical social worker for the nursing facility, and [REDACTED] clinical social worker for the nursing facility. Serving as the translator was [REDACTED].

FINDINGS OF FACT

1. The petitioner has been a resident of the facility since prior to September 2010. There is no payer source (such as Medicare, Medicaid, nor private payments received) for the petitioner.
2. The monthly charge for facility services (room and board alone) is \$7,500. The respondent had not been issuing billing statements to the petitioner for room and board, since he began his stay at the facility.
3. Effective September 1, 2010, the nursing home began issuing billing statements to the petitioner for facility services at their rate of \$7,500 monthly. The facility did not receive payment for their services, nor were payment arrangements made after appropriate notification of the charges.
4. By December 2010, the petitioner had incurred four month's worth of charges for the nursing home stay. A billing statement dated December 13, 2010 (Respondent's Exhibit 1) showed the balance owed to the nursing facility as of that date was \$30,603.63.
5. On October 19, 2010, the respondent issued the petitioner a discharge notice which explained that it intended to discharge him from the facility effective

November 20, 2010, due to nonpayment of the bill for services. The petitioner remains in the facility pending the hearing decision.

6. Neither the petitioner, nor the representative disputes the balance that is owed to the facility. No payment has been made to the facility or any possibility of payment through other means was presented.

7. The respondent stated that the sister facility to which the petitioner will be transferred provides the same level of care currently received, including medical care.

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 this 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."

11. The petitioner's representative states that she is aware of the amount owed, but they are unable to pay.

12. As the findings show, the petitioner owed the facility over \$15,000 (charges billed in September 2010 and October 2010) when the notice of discharge was issued. The petitioner's representative confirmed that no payments have been made. As of the date of the hearing the petitioner's balance was in excess of \$30,603.63. This fact is not disputed.

13. Additionally, the petitioner and the family were properly notified of the nursing facility charges. The Federal regulations state that failure to pay the facility after reasonable and appropriate notice is grounds for discharge. Therefore, the facility's discharge for nonpayment of services is affirmed.

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.

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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