

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

[REDACTED]

APPEAL NO. 10N-0184

PETITIONER,

FILED

Vs.

Jan 31, 2011

Administrator

OFFICE OF APPEAL HEARINGS

[REDACTED]

DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter at [REDACTED] (nursing facility) on December 14, 2010, at 8:42 a.m.

**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**

By Discharge Notice dated October 19, 2010, the respondent notified the petitioner he was to be discharged from the nursing facility effective November 20, 2010, due to non-payment of bill for services.

On November 4, 2010, the petitioner timely requested a hearing to challenge the respondent's action.

The petitioner was not present however was represented by his wife. Present as observers on behalf of the petitioner were: [REDACTED], district manager; [REDACTED] ombudsman; [REDACTED] ombudsman; and [REDACTED], ombudsman from Florida's Long-Term Care Ombudsman Program.

Appearing as a witness for the respondent was [REDACTED] social worker for the facility. [REDACTED] was present as the translator.

Present as observers were [REDACTED] hearing officer from the Office of Appeal Hearings and [REDACTED] long term care supervisor with the Agency for Health Care Administration.

### **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. The petitioner has no legal immigration status in the United States.
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 payment arrangements made after appropriate notification of the charges.

4. By October 1, 2010, the petitioner had incurred two month's worth of charges for the nursing home stay, in the amount of \$15,000. The balance owed to the nursing facility as of the date of the hearing was \$30,038.80.

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 dispute the balance that is owed to the facility, but assert that there is no payer source. No payment has been made to the facility or any possibility of payment through other means was presented.

7. The facility's social worker testified that she had worked with the family in informing exploring eligibility in other government programs and was unable to obtain due to his status in the United States.

8. The respondent informs the hearing officer that the sister facility to which the petitioner will be transferred to provides the same level of care currently received, including medical care.

#### **CONCLUSIONS OF LAW**

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

10. 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.

11. 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."

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

13. As the findings show, the petitioner owed the facility over \$15,000 (charges billed on September 1, 2010 and October 1, 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 \$30,038. This fact is not disputed.

14. 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.

DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
in Tallahassee, Florida.

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