

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

[REDACTED]

APPEAL NO. 10N-00185

PETITIONER,

Vs.

FILED

Administrator

Jan 26, 2011

[REDACTED]

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 at [REDACTED] (nursing facility) on December 14, 2010, at 10:13 a.m.

APPEARANCES

For the Petitioner: [REDACTED] son and representative.

For the Respondent: [REDACTED], nursing home administrator.

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

By Discharge Notice dated October 19, 2010, the respondent notified the petitioner she 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 present and was represented by her son. 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. Testifying telephonically at his request was [REDACTED], facility physician. Present as an observer was [REDACTED], licensed clinical social worker. [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 (age 92) has been a resident of the facility for over four years. 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 she began her stay four years ago.

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 \$30,523.57.

5. On October 19, 2010, the respondent issued the petitioner a discharge notice which explained that it intended to discharge her 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 been working with the family in informing them that the sister facility, which the petitioner would be discharged to provides the same level of care currently being received by her.

8. The facility's physician, who is also the petitioner's attending physician, stated that even though the petitioner's discharge was an administrative decision; from a medical standpoint, the petitioner is stable to transfer to another facility. He confirms 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. Fla. Stat. § 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 son argues that his mother's health is at issue, as given her age, the change of environment alone could be detrimental to her health causing her to become depressed.

13. The facility/attending physician stated that the petitioner is medically stable to be transferred to another facility offering the same medical care and is not current depressed. He also states that the facility is working with the petitioner and the family, in order to provide her with a smooth transfer.

14. 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 \$30,523.57. This fact is not disputed.

15. 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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