

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

[REDACTED]

APPEAL NO. 11N-00009

PETITIONER,

Vs.

[REDACTED]

FILED
Apr. 18, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 24, 2011, at 2:56 p.m., at the [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED]

ISSUE

The respondent had the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice of January 13, 2011 was in accordance with the requirements of 42 C.F.R. § 483.12(a): "(2)(v)The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility."

PRELIMINARY STATEMENT

By notice dated January 13, 2011, the facility informed the petitioner that she was to be discharged from the facility. On January 20, 2011, the petitioner timely requested a hearing to challenge the discharge.

The petitioner's representative and the respondent's representative appeared in person. The petitioner did not appear. Witness for respondent appearing in person was [REDACTED], business office manager. Witnesses for petitioner appearing in person were [REDACTED] the petitioner's son-in-law, and [REDACTED], the petitioner's daughter.

FINDINGS OF FACT

1. The petitioner entered the facility on October 31, 2008. The October 31, 2008 Admissions Agreement was signed by the petitioner's daughter as power of attorney and the admissions director at the time.

2. At the time of admission, the petitioner the petitioner had Medicare Part A and private insurance. Medicare paid for the first 100 days of the petitioner's stay at the facility. The petitioner was a private pay resident effective November 20, 2008. The private insurance paid a portion of the petition petitioner's stay at the facility through February 7, 2009.

3. Each month, the facility sent the petitioner's daughter a bill for the petitioner stay facility and services provided by the facility for the petitioner. Starting November 20, 2008, the petitioner did not pay the facility the amount billed each month. The facility forwarded to collections \$128 on November 20, 2008, \$3,328 on December 31, 2008, \$4,005 on January 31, 2009, \$1,735.50 on February 28, 2009.

4. The petitioner applied for Institutional Care Program (ICP) benefits with the Department of Children and Families (DCF) ACCESS Program on February 12, 2009. The respondent assisted the petitioner with the ICP application. The petitioner was determined eligible for ICP benefits effective March 2009. Each month, the petitioner could retain \$35 from her gross income for personal needs. The DCF ACCESS processor determined that the petitioner's patient responsibility was \$2810.40 for March and April 2009 and \$1,844.40 for May 2009. In the Notice of Case Action dated April 20, 2009, the DCF ACCESS processor informed the respondent of the petitioner's patient responsibility. The respondent is required to charge the resident the amount of patient responsibility. The petitioner's eligibility for ICP continued through April 2010. In May 2010, the petitioner eligibility continued with a decrease in the petitioner's patient responsibility to \$1,755.41 per month. The DCF ACCESS processor sent the facility a Notice of Case Action on April 16, 2010.

5. Each month, the facility sent the petitioner a bill for the amount of the petitioner's patient responsibility. All bills and letter were sent to the petitioner's daughter for the petitioner. The petitioner paid the full amount of her patient responsibility to the respondent in October 2009, November 2009, December 2009, January 2010 and March 10, 2010.

6. In June 2009, there was discrepancy regarding the petitioner's income from the Veteran's Administration (VA). The respondent urged the petitioner's family to resolve the discrepancy with the VA. The family was working on having the VA benefits terminated.

7. In August 2010, there was an issue with the petitioner's gross income as the Internal Revenue Service (IRS) was garnishing the petitioner's pension. That reduction of income resulting in some of the shortfall each month in the amount the petitioner could pay to the facility of her patient responsibility. The respondent notified the petitioner that the petitioner was to inform ACCESS Program of income changes.

8. In February 2010 and each month from April 2010 through February 2011, the petitioner did not pay her patient responsibility in full. In addition to the monthly billing statements, the respondent sent the petitioner payment past due letters on November 11, 2010 and December 21, 2010. As of January 1, 2011 billing statement, the past due amount was \$4,157.05, not including the amounts already sent to collection. On January 7, 2011, the respondent sent petitioner a payment past due notice letter and a cover letter. The cover letter notified the petitioner that the petitioner had five days to bring the account balance current or a 30 day notice of discharge for non-payment would be issued.

9. The respondent determined that as of January 13, 2011, the petitioner had a balance due to the facility for which payment arrangements had not been made by the petitioner. The facility sent the petitioner a Notice of Transfer and Discharge on January 13, 2011. The reason for discharge indicated on the notice was the bill for services at the facility has not been paid after reasonable and appropriate notice to pay.

10. As of the March 1, 2001 billing statement, the past due amount was \$4,175.05, not including the amounts already sent to collection.

CONCLUSIONS OF LAW

11. Jurisdiction to conduct this type of hearing is conveyed to the Department by Florida Statutes at 400.0255. Matters that are considered at this type of hearing are the decisions by the facilities to discharge a resident.

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

13. In accordance with Florida Administrative Code § 65-2.060(1) the burden of proof was assigned to the respondent.

14. The respondent's position is as follows. The facility only billed for the amount as indicated by DCF as the patient responsibility. The facility cannot continue to send the unpaid portion each month to collection. The petitioner has not paid the balance due to the facility. The respondent's discharge was correct.

15. The petitioner's position is as follows. The petitioner has paid all the funds she received each month to the facility. There were mistakes by VA that were beyond the petitioner's control. There exists a short fall each month as patient responsibility is based on gross income. The petitioner is receiving a net amount of income after deductions and garnishment of both her Social Security and pension. The family is continuing to work on the VA problem. The petitioner has no other funds to pay the facility.

16. The Florida Administrative Code at 65A-1.701 defines patient responsibility: "(23) Patient Responsibility: That portion of an individual's monthly income which the department determines must be considered as available to pay for the individual's institutional care, ALW/HCBS or Hospice care."

17. Florida Administrative Code at Fl. Admin. Code 65-2.046 states:

(1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs. Additionally, in the Food Stamp Program, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The time period begins with the date following: ...

(c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is other than an application decision or a decision to reduce or terminate program benefits.

18. The ACCESS Program sent the facility Notices of Case Action on April 20, 2009 and April 16, 2010 informing the facility of the amount of the patient responsibility. By rule, DCF determines patient responsibility. The facility does not have the authority to reduce the patient responsibility. Each month, the petitioner had a short-fall between her gross income to be paid to the respondent as patient responsibility and the actual net income she receives. The facility advised the petitioner in June 2009 and August 2010 to contact the DCF ACCESS Program regarding the amount of the patient responsibility. The petitioner had a right to appeal the decisions of the DCF ACCESS Program regarding the amount of the patient responsibility. The hearing officer informed the petitioner that any question regarding the amount of the patient responsibility must be addressed with the ACCESS Program and would not be address within this discharge appeal.

19. Federal Regulation limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the petitioner was sent notice indicating that she would be discharged from the facility in accordance with the Code of Federal Regulations at 42 C.F.R. § 483.12(a): "(2)(v) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility." The sole

jurisdiction conveyed to the hearing officer is whether or not the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

20. Each month, the respondent has sent the petitioner a monthly billing statement for the amount of patient responsibility. The respondent has sent the petitioner letters of past due notices. The March 1, 2011 billing indicated a past due amount of \$4,175.05, not including the amounts already sent to collection. The hearing officer concludes that the facility has given the petitioner and her family reasonable and appropriate notice of the need to pay for the petitioner's stay at the facility and reasonable and adequate financial arrangement have not resulted. Based upon the above cited authorities, the hearing officer finds that the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge to an appropriate location as determined by the petitioner's treating physician and in accordance with applicable Agency for Health Care Administration requirements.

DECISION

This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge, as determined by the treating physician and in accordance with applicable Agency for Health Care Administration requirements.

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

FINAL ORDER (Cont.)

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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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Copies Furnished To:

[REDACTED]