

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

[REDACTED]

APPEAL NO. 11N-00016

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

_____ /

FILED
April 27, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 2, 2011, at 2:25 p.m., at the [REDACTED] in [REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED], friend of the petitioner

For the Respondent: [REDACTED] business office manager

ISSUE

The respondent will have the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice dated January 18, 2011 is in accordance with the requirements of Code of Federal Regulation 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."

PRELIMINARY STATEMENT

By notice dated January 18, 2011, the facility informed the petitioner that she to be discharged. On February 1, 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 was [REDACTED], social service director. Witness for the petitioner was [REDACTED], ombudsman.

FINDINGS OF FACT

1. The petitioner is a Medicaid eligible individual. The income the petitioner reported to the Department of Children and Families (DCF) ACCESS Program was court ordered alimony from her ex-husband. DCF ACCESS Program approved the petitioner's October 1, 2010 application from Institutional Care Program (ICP) benefits. Based on the gross income the petitioner received, DCF ACCESS processor determined that the petitioner's patient responsibility would be zero in July 2010, \$664.99 in August 2010, \$614.99 in September 2010, \$215 in October 2010, \$498.33 in November 2010 and \$498.33 for December 2010 and on-going. Each month, the petitioner could retain \$35 from her gross income for personal needs.

2. In the Notice of Case Action dated November 10, 2010, the DCF ACCESS processor informed the respondent of the petitioner's patient responsibility for each month. The respondent is required to charge the resident the amount of patient responsibility, as determined by the DCF ACCESS Program.

3. The facility has provided services to the petitioner. Each month since August 2010 on the tenth of each month, the facility has hand-delivered to the petitioner a bill

for the petitioner's stay at the facility and for the services provided by the facility for the petitioner. Each month the facility billed the petitioner the patient responsibility as stated by DCF. Starting August 2010, the petitioner has not paid the facility the amount billed as patient responsibility each month.

4. The respondent determined that as of January 18, 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 18, 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.

5. As of the March 2011 billing statement, the past due amount was \$3,947.55. Since August 2010, the petitioner has not made one payment on her account for her patient responsibility.

6. The petitioner asserted that the ex-husband is not paying the court-ordered alimony. She has no money to pay the respondent. Twice, she has filed for a contempt of court. She offered to pay \$5 a month, but the respondent refused to accept that amount as payment.

7. The respondent cannot change the amount of the patient responsibility. The respondent has given the petitioner the DCF ACCESS notices and the phone number for the petitioner to report the change to DCF. To date, the respondent has not been advised that the petitioner has reported the change or that there was any change to the patient responsibility.

CONCLUSIONS OF LAW

8. The Code of Federal Regulations 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 he would be discharged from the facility in accordance with of Code of Federal Regulation 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”.

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

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

11. 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.”

12. 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.

13. The ACCESS Program sent the facility Notice of Case Action on November 10, 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 since August 2010, the petitioner has not paid the patient responsibility payment to the respondent. The facility has advised the petitioner 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. 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. The sole jurisdiction conveyed to the hearing officer for this discharge hearing is whether or not the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

14. Each month, the respondent has sent the petitioner a monthly billing statement for the amount of patient responsibility. The March 2011 billing indicated a past due amount of \$3,947.55. The hearing officer notes that the petitioner did offer to pay \$5 a month. A payment of \$5 a month is not a reasonable or adequate payment of the patient responsibility. The hearing officer concludes that the facility has given the petitioner 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 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.

Linda Jo Nicholson
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To:

