

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

[REDACTED]

APPEAL NO. 11N-00019

PETITIONER,

Vs.

ADMINISTRATOR [REDACTED]

[REDACTED]

FILED

May 11, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened at 1:35 p.m. on March 23, 2011, in the [REDACTED] [REDACTED] Florida. The petitioner was present on his own behalf and was assisted by his friend, [REDACTED]. The respondent was represented by the administrator, [REDACTED], with testimony available from the business office manager, [REDACTED] and [REDACTED] regional field analyst, [REDACTED].

**ISSUE**

At issue was whether intent to discharge was correct based on nonpayment after reasonable and appropriate notice to pay. The respondent had the burden of proof at a standard of clear and convincing evidence.

**FINDINGS OF FACT**

1. The petitioner has serious health problems and has been a resident of [REDACTED] [REDACTED] for an extended time. He has limited income.
2. Until the summer of 2010, some of the cost of care was provided through the state's Medicaid Institutional Care Program (ICP). Last summer some assets were discovered and ICP was discontinued. Over the years, the petitioner's signature had changed and that prevented liquidation and full development of the asset information.
3. New ICP applications have been filed, but at the point of hearing, ICP eligibility had not been authorized (Respondent's Exhibit 3).
4. The respondent has issued statements of amounts due (Respondent's Exhibit 2) and the parties agree the amount owed is at least \$5,000. The facility bills a month in advance.
5. The petitioner has been paying the facility all his income (less a \$35 personal needs allowance) and has used assets toward the cost of care. He pays the respondent at least \$1,870 per month. If Medicaid is authorized, the total amount owed may be lower, but at point of hearing, a balance of at least "\$5,961.79..." remained.
6. On February 2, 2011, the respondent issued Nursing Home Transfer and Discharge Notice (Respondent's Exhibit 1) saying "bill for services at this facility has not been paid after reasonable and appropriate notice to pay..." The notice particularly describes "no payer for September 2010-current." Location for discharge was shown as his friend's address.

7. The petitioner timely appealed the discharge notice (Petitioner's Exhibit 1). The hearing request describes profound health and mobility problems and notes that a proper location for discharge should be "lined up."

### **CONCLUSIONS OF LAW**

8. Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Florida Statute 400.0255 addresses "Resident transfer or discharge; requirement and procedures; hearing..." with section (15) (b) informing that the burden of proof is one of clear and convincing evidence. Federal regulations limit the reason for which discharge may occur and in this situation, nonpayment is the reason. Additionally relevant to this problem is 42. C.F.R. § 483.12 informing as follows:

Admission, transfer and discharge rights.

(a) Transfer and discharge--

...

(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless-- ...

(v) 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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid.

...

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

...

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following: ...

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State....

These regulations must be followed.

9. A residential nursing care facility would expect payment (or arrangement for payment) in the normal course of business. The facility was not fully paid, for past or future periods, and the petitioner was notified that he owed payments for room, board, and care. Billing for a month ahead in matters of room and board is a customary business practice. It is recognized that the friend may not be able to accommodate in the friend's home and that location information may need to be revised for discharge purposes. Discharge to unsafe location would not be appropriate. Nevertheless, the intent to discharge is valid due to nonpayment.

10. After careful review, it is concluded that inadequate payment has occurred following reasonable and appropriate notice to pay. On that merit, discharge to a safe location is appropriate. Despite preferences of the petitioner, and difficulties of the situation, the respondent has met burden of proof. Intent to discharge has been justified as set forth. The notice is upheld.

### **DECISION**

The appeal is denied and the respondent's action is affirmed.

### **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

FINAL ORDER (Cont.)

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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]