

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

[REDACTED]

APPEAL NO. 11N-00045

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

_____ /

FILED
May 10, 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 April 26, 2011, at 11:30 a.m., in [REDACTED], Florida. The petitioner was present and represented himself. Representing the respondent was [REDACTED] administrator.

ISSUE

At issue is whether or not the nursing home's action to transfer or discharge the petitioner is an appropriate action based on the federal regulations at 42 C.F.R. § 483.12. The respondent is seeking to transfer or discharge the petitioner because his bill for services at the facility has not been paid after reasonable and appropriate notice to pay. The other reason is because the petitioner's health has improved sufficiently so that the services at the facility are no longer needed. The nursing home has the burden of proof.

FINDINGS OF FACT

1. The petitioner is presently a resident of the [REDACTED].
[REDACTED]. His date of admission was February 2011.
2. On February 23, 2011 the facility issued a Nursing Home Transfer and Discharge Notice to the petitioner with an effective transfer date of March 25, 2011. The reasons for transfer or discharge were as noted in the issue.
3. The hearing officer takes notice that when assigning a cause for transfer or discharge as the improvement of the petitioner's health, a doctor's signature is required or a doctor's discharge order is required. Because neither of these was present at the hearing, this reason for discharge is dismissed as inadequate.
4. The petitioner, when admitted, indicated his monthly income from Social Security to be \$900. Actually his Social Security gross income is \$1,491 per month.
5. The petitioner has not been found to be eligible for Institutional Care Program (ICP) Medicaid. If he were his bill would accumulate at the rate of approximately \$1,450 per month. Otherwise his monthly bill is approximately \$8,900.
6. As of the date of this hearing his outstanding bill is approximately \$21,000.
7. The petitioner believes that the discharge to an assisted living facility (ALF) would be unsafe. He notes the ALF would not be able to meet his needs for his activities of daily living (ADL).

8. The respondent explains that the ALF would be able to meet his ADL needs.

9. This hearing officer asked the petitioner why he has not made any payments.

The petitioner explained he was scared that he would not have any money. He had approximately \$1,600 he was keeping.

CONCLUSIONS OF LAW

10. **42 C.F.R. § 483.12 Admission, transfer, and discharge rights** states in part:

(a) Transfer and discharge--

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(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--

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(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.

(5) Timing of the notice. (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

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

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(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;

(v) The name, address and telephone number of the State long term care ombudsman....

11. Pursuant to federal guidelines, the nursing facility issued a Nursing Home Transfer and Discharge Notice to the petitioner February 23, 2011. [REDACTED], administrator, signed this Notice.

12. The Notice, as required, indicated the reason for transfer or discharge as "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay". The effective date of the transfer or discharge was given as March 25, 2011. The location to which the petitioner was to be transferred or discharged was given as [REDACTED] ALF, in [REDACTED] Florida.

13. All requirements have been met by the nursing facility. No payments have been made and no attempt to make payments has been made. There was no indication that the petitioner would be ICP Medicaid eligible.

DECISION

The appeal is denied. Pursuant to 42 C.F.R. § 483.12(7), the "facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility".

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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