

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

[REDACTED]

APPEAL NO. 11N-00084

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

FILED

JULY 11, 2011

OFFICE OF APPEAL HEARINGS
DEPARTMENT OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on May 19, 2011, at 3:50 p.m., at [REDACTED] at [REDACTED], in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED], the petitioner's husband

For the Respondent: [REDACTED], administrator

ISSUE

The respondent will have the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice dated April 7, 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 April 7, 2011, the facility informed the petitioner that she was to be discharged. On April 12, 2011, the petitioner timely requested a hearing to challenge the discharge.

The petitioner's husband and the respondent's representative appeared in person. Witnesses for respondent appearing in person were [REDACTED], business consultant, and [REDACTED], social services director.

FINDINGS OF FACT

1. The petitioner has been a resident at the facility since May 1, 2010. The petitioner applied for public assistance to pay for her stay at the facility on June 30, 2010. The income the petitioner reported to the Department of Children and Families (DCF) ACCESS Program was used in determining the petitioner's patient responsibility.

2. In the Notice of Case Action dated July 29, 2010, the petitioner was approved for Hospice Services effective July 2010. As July 2010 was a protected month, the petitioner did not owe any patient responsibility to the respondent for the month of July 2010. The DCF ACCESS processor informed the respondent of the petitioner's patient responsibility for each month and the petitioner was to apply \$1,108.88 to her bill at the facility each month for her cost of care starting August 2010.

3. In the Notice of Case Action dated March 22, 2011, the petitioner's ICP benefits were approved effective September 21, 2010. The DCF ACCESS processor informed the respondent of the petitioner's patient responsibility for each month and the petitioner was to apply \$1,086.88 to her bill at the facility each month for her cost of care.

4. The facility has provided services to the petitioner. As the petitioner is a Medicaid eligible individual, the respondent is required to charge the resident the amount of patient responsibility, as determined by the DCF ACCESS Program. Each month since August 2010, the facility has given 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, except for October 2010, January 2011 and February 2011 when in those months the petitioner did not reside in the facility the full 30 days.

5. In addition to the monthly billing, the respondent sent the petitioner letters on February 25, March 12, and March 26, 2011. The letters informed the petitioner of the balance due and the need to arrange for payment.

6. The respondent documented attempts to call the petitioner's husband to arrange payment. On March 28, 2011, the respondent and the petitioner's husband discussed the balance due. The petitioner's husband refused to make payment. He told the respondent that he needed the money to live on and to pay household bills. The petitioner's husband asserted that he is filing bankruptcy.

7. Since August 2010, the petitioner has not made one payment to the respondent on her account for services provided for and billed by the respondent. The respondent determined that as of April 7, 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 April 7, 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. As of the May 2011 billing statement, the past due amount was \$11,012.22.

CONCLUSIONS OF LAW

8. 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 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. The ACCESS Program sent the petitioner and the facility Notices of Case Action informing the petitioner and 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 or any payment to the respondent.

13. Each month, the respondent has sent the petitioner a monthly billing statement for the amount of patient responsibility. The May 2011 billing indicated a past

due amount of \$11,012.22. 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 facility 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.

FINAL ORDER (Cont.)

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DONE and ORDERED this _____ day of _____, 2011,
in Tallahassee, Florida.

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Copies Furnished To: [REDACTED], Petitioner
[REDACTED], Respondent
[REDACTED], Agency for Health Care Administration
[REDACTED], for the petitioner