

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

[REDACTED]

APPEAL NO. 11N-00102

PETITIONER,

Vs.

CASE NO.

FILED

Administrator

JULY 19, 2011

[REDACTED]

OFFICE OF APPEAL HEARINGS  
DEPARTMENT OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned at 8:35 a.m. on June 9, 2011, at [REDACTED] in [REDACTED], Florida.

**APPEARANCES**

For the Petitioner: [REDACTED] RN Ombudsman

For the Respondent: [REDACTED] Senior Executive Director

**ISSUE**

At issue is the respondent's action to discharge/transfer the petitioner based on nonpayment after reasonable and appropriate notice to pay.

### **PRELIMINARY STATEMENT**

By notice date April 22, 2011, the respondent informed the petitioner that they were seeking to discharge/transfer her from the facility. On April 28, 2011 the petitioner timely requested a hearing to challenge the discharge/transfer.

The petitioner was present for a brief time and exited the proceeding due to becoming emotional. Appearing as witness for the respondent was [REDACTED] director of social service and [REDACTED], assistant business office manager.

### **FINDINGS OF FACT**

1. The petitioner was admitted into the respondent's facility on February 23, 2011 under [REDACTED] a Medicare Insurance. She was admitted for rehabilitation after suffering a stroke.
2. The petitioner had previously been a patient in the facility in 2010. The last discharge date was November 20, 2010.
3. The facilities representative explained the petitioner had a previous balance of \$901 when she was admitted on February 23, 2011. She explained, to date, three payments have been received; \$901 on March 30, 2011, \$20 on April 30, 2011 and \$1,000 on May 23, 2011, with a current balance of \$19,644.16 (Respondent Exhibit 2). She further explained the facility has attempted to resolve/collect the money with the petitioner and her family since February 28, 2011 (Respondent Exhibit 1).
4. On April 22, 2011 the facility issued the petitioner a discharge notice notifying their intent to discharge her effective May 23, 2011, due to nonpayment of bill for services (Respondent Exhibit 7).

5. The petitioner applied for [REDACTED] through Medicaid on April 11, 2011. On May 24, 2011 Medicaid denied her application due to being over the asset limit for the program (Respondent Exhibit 3).

6. The petitioner's representative does not dispute the petitioner owing the money to the facility. She explained the reason Medicaid denied the petitioner's application was due to 50 shares of MetLife insurance and her brother is in the process of cashing in the shares.

7. The petitioner's representative believes the petitioner is in no physical condition to be discharged to her home. She further believes the petitioner is in need of skilled nursing because she is unable to walk and has trouble swallowing.

8. The facility's representative explained the petitioner is no longer receiving skilled nurse services in the facility. [REDACTED], respondent's witness, explained the petitioner's needs are now custodial and cited some of her assistance requirements include getting in and out of bed, getting food and personal hygiene.

#### **CONCLUSIONS OF LAW**

9. The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200.

10. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing.--, informs at (15)(b) that the facility's burden of proof must be clear and convincing evidence.

11. The Code of Federal Regulations at 42 C.F.R. § 483.12 Admission, transfer and discharge rights states in part:

(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....

12. The above cited authority limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. It states the facility must permit each resident to remain in the facility unless the resident has failed, after reasonable and appropriate notice to pay. The Findings of Fact show the facility has attempted to collect the money owed to them since February 28, 2011.

13. After careful review of the cited authority and the evidence presented, the undersigned concludes the respondent has met the burden of proof.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility may proceed with the proposed discharge in accordance 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.

---

Priscilla Peterson  
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: [REDACTED], Petitioner  
[REDACTED], Respondent  
Agency for Health Care Administration  
[REDACTED]