

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

[REDACTED]

APPEAL NO. 11N-00114

PETITIONER,

Vs.

[REDACTED]

FILED
Oct 05, 2011
OFFICE OF APPEAL HEARINGS
DEPARTMENT OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened at 2:55 p.m. on September 14, 2011 at the nursing facility. The petitioner did not attend, but she was represented by her daughter, [REDACTED]. The petitioner's son, [REDACTED] observed. The respondent was represented by [REDACTED], administrator, with [REDACTED] business office manager, present to testify.

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 clear and convincing evidentiary standard.

FINDINGS OF FACT

1. The petitioner became a resident of the nursing facility on February 24, 2011, due to declining health.

2. When she entered the nursing facility, her daughter signed a contract affirming that daily charge for services was \$202 (Respondent's Exhibit 4). The petitioner's personal income did not cover that cost, so Medicaid application was initiated.

3. The petitioner's monthly income was far less than the cost of care and residence. However, her income exceeded the state's Medicaid – ICP (Institutional Care Program) income standard. Petitioner's Exhibit 1, page 5, shows the March 23, 2011 Institutional Care Program (ICP) application as denied due to "income is too high." The petitioner realized that and understood she could establish an income trust to reduce income. If trust was properly created, approved and funded, then Medicaid ICP could be authorized.

4. The petitioner engaged counsel and began that process. Delays were encountered. The income trust plan and funding was not completely successful until May 2011. ICP eligibility began effective May 2011.

5. In the meantime, however, much of the petitioner's funds were not used to pay the facility. Her daughter explained she was concerned about having to reimburse the source of those funds at a later point and she believed she should not pay the facility with that money.

6. When the Department of Children and Families authorized ICP (Respondent's Exhibit 2) the Department officially notified the petitioner of the following financial considerations: gross countable income was \$2,212, personal needs allowance was \$35, and the petitioner was required to pay the facility \$2,177 per month effective May 2011. The petitioner did not pay that required amount to the facility. She paid the facility \$737 monthly.

7. On May 27, 2011, the respondent issued a Nursing Home Transfer and Discharge Notice to the petitioner. It said she would be discharged the following month to a private residence. It said "bill for services has not been paid after reasonable and appropriate notice to pay..." (Respondent's Exhibit 1).

8. The petitioner timely appealed (Petitioner's Exhibit 1).

9. After issuing the discharge notice, the respondent determined discharge to private residence is not appropriate. The respondent plans to facilitate a safe discharge to a skilled facility.

10. On August 24, 2011, the respondent issued a billing statement (Respondent's Exhibit 5). It showed that instead of paying the \$2,177 monthly as required by DCF approval notice, the petitioner had been paying \$737 monthly since May 2011.

11. The balance due as of August 24, 2011 was \$7,935.40 according to the statement. There was no payment correction plan in place as of date of hearing.

12. As part of the discharge hearing process, the undersigned directed an Agency for Health Care Administration (AHCA) review be conducted. No violation was found (Hearing Officer's Exhibit 1). The review is not controlling for hearing purposes, but it can be relevant or useful.

13. As of date of hearing, petitioner remained at the nursing facility. The amount owed was at least \$7000.

CONCLUSIONS OF LAW

14. 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. Based on evidence as presented, the respondent established that nonpayment was the reason for discharge. This is one of the six reasons provided in federal regulation 42 C.F.R § 483.12 for which a nursing facility may involuntarily discharge a resident.

15. Establishing the reason for discharge is justified is just one step of the discharge process, however. The facility must also provide discharge planning, which includes identifying an appropriate transfer or discharge location, as well as preparing

the resident for a safe and orderly transfer from the facility. The hearing officer cannot and has not addressed either of these concerns. Discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration (AHCA) requirements. If the petitioner has concerns about the appropriateness of the discharge planning process, then the resident may contact the AHCA health care facility complaint line at 888-419-3456.

16. As to the merits of this specific problem, a residential nursing care facility expects payment (or viable arrangement for payment) in the normal course of business. In this case, beginning May, 2011, Medicaid payment has been achieved. A \$2,177 personal share of responsibility was also required each month since approval. The Medicaid payments should have been supplemented by full payment of the \$2177 monthly. However, the petitioner has paid only \$737 per month since May 2011. This has not satisfied the facility.

17. Balance owed was least \$7,000 and notice of such was issued. While it is possible that a payment of \$737 was not posted to the account as paid, there has been no arrangement to pay the balance due. The amount owed is significant. Reasonable and appropriate notice to pay was issued.

18. The petitioner was notified that she needed to pay for room, board, and care. A contract was signed showing the daily charge was \$202 and that the facility expected payment for service rendered. Explanation of nonpayment due to confusion or concern about having to pay back the money to the income stream source does not mitigate the problem of nonpayment. Both before and after ICP Medicaid approvals, insufficient payment for service occurred.

19. 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. 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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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.

J W Alper
Hearing Officer
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Copies Furnished To: [REDACTED], Petitioner
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[REDACTED]