

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

[REDACTED]

APPEAL NO. 11N-00120

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FILED
SEP 26, 2011
OFFICE OF APPEAL HEARINGS
DEPARTMENT OF CHILDREN AND FAMILIES

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on July 21, 2011, at 9:00 a.m. in [REDACTED], Florida.

The petitioner was present, but was represented by [REDACTED], [REDACTED]

[REDACTED]

The respondent was represented by [REDACTED] executive director of the facility.

ISSUE

The petitioner is appealing the decision to discharge him from the nursing facility.

PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated June 06, 2011, the respondent notified the petitioner he was to be discharged from the facility effective July 06, 2011, due to non-payment of his bill for services.

On June 14, 2011, the petitioner timely requested a hearing to challenge the respondent's action.

Appearing as a witness for the petitioner was his trustee and brother, [REDACTED]. Appearing as witnesses for the respondent were [REDACTED], fiscal service manager and [REDACTED], social services director. Appearing as an observer was [REDACTED], [REDACTED].

The record was left open through August 5, 2011 as the parties advised the hearing officer that an agreement was still possible. No additional evidence was received from either party. The record was closed.

FINDINGS OF FACT

1. The petitioner has been a resident of the facility since December 2010. The petitioner was originally admitted under Medicare. When Medicare payment was completed, an application for Institutional Care Program (ICP) Medicaid was filed. This application was denied as the petitioner's income exceeded the program income standard.
2. A second application was filed and according to the facility staff, an Income trust was completed on March 31, 2011. Based on this action, the Department approved ICP beginning on or about March with a monthly patient responsibility of \$2,315.06 to be paid to the facility from petitioner's income. Medicaid pays the remaining cost of the petitioner's nursing facility room and board charges (Respondent Composite Exhibit 1).

3. The petitioner's brother, [REDACTED], is his representative and trustee and has accepted the responsibility for paying the petitioner's monthly obligation to the facility from the petitioner's income.

4. The respondent has been issuing billing statements to the petitioner for room and board charges since he began his stay at the facility.

5. On June 6, 2011, the respondent issued a discharge notice which explained that it intended to discharge the petitioner from the facility effective July 6, 2011, due to nonpayment of the bill for services. The discharge notice listed the [REDACTED] nursing facility as the location where the facility intended to discharge the petitioner. The petitioner remains in respondent's facility pending the hearing decision.

6. As of the date of the discharge notice, the facility had not received any monthly payments for the petitioner's patient responsibility or payments for services provided prior to the petitioner being determined eligible for ICP Medicaid. On June 22, 2011, one lump-sum payment was made in the amount of \$10,500. The balance owed after this payment was \$6,941.27.

7. No payment arrangements have been made between the petitioner's representative/trustee and the facility after appropriate notification of the charges.

8. The balance that is owed to the facility is not in dispute. The [REDACTED] [REDACTED] asserted that the trustee (the brother) is the responsible payer source.

9. The facility's fiscal manager testified that she had tried working with the trustee in exploring possible ways to resolve the issue.

10. The trustee, [REDACTED], explained that he has been having trouble merging the petitioner's account into the trust. He admitted that there is money available, but stated he was having issues because the petitioner's disability benefits were suspended from October 2010 through May 2011 and had to be reinstated.

11. [REDACTED] testified that currently, the petitioner's disability account must be merged into the trust account before the facility charges can be satisfied. He has not completed this and has only recently been put on his brother's credit union account to be able to access his brother's accounts. Although there were delays with the receipt of the Social Security payments, those were fixed in May 2011. He stated that there is money in the petitioner's trust, credit union and retirement fund. He did not offer evidence of legal restriction that would prevent him from using the petitioner's funds to pay the petitioner's monthly patient responsibility. [REDACTED] rather asserts that the money is the petitioner's and he has to agree with the funds be moved.

CONCLUSIONS OF LAW

12. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to s. 400.0255(15), Fla. Stat. In accordance with that section, this order is the final administrative decision of the Department of Children and Families. The burden of proof is clear and convincing evidence and is assigned to the respondent.

13. Federal Regulations appearing 42 C.F.R. § 483.12, sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(a)(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--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(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;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(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; or

(vi) The facility ceases to operate.

14. The Department of Health and Human Services, Centers for Medicaid and Medicare, State Operations Manual provides guidance on nursing home Admission, Transfer, and Discharge Rights and states in part:

A resident cannot be transferred for non-payment if he or she has submitted to a third party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

15. The Ombudsman argued that the petitioner has done his part when he completed the necessary paperwork to establish an irrevocable trust account. He argued that the petitioner should not be penalized if the trustee failed to use the petitioner's resources appropriately. This argument fails on these grounds. One, this is the petitioner's money to be used for the petitioner's care. If the trustee is not fulfilling his obligation under the trust agreement, the petitioner must seek to enforce those

obligations. Two, the petitioner's brother/trustee is not a third party payor as envisioned in the State Operations Manual (Medicare, Medicaid or insurance coverage), but rather the person with the responsibility of managing the petitioner's funds. There is no evidence that there are not sufficient funds in the trust or other accounts to pay all of the facility's outstanding costs. While the trust should have sufficient funds to pay the patient responsibility after the petitioner was approved for ICP Medicaid, there was a period of time when the petitioner was a resident of the facility prior to becoming eligible for Medicaid.

16. Neither the petitioner, his representative nor the Ombudsman asserts that the bill has been paid. It is their position that the money is under the trustee's control who must resolve the issues. The Ombudsman asserted that there is no question that the petitioner is enjoying the quality care he is receiving at the facility and would like to remain there.

17. Based on the evidence presented, the nursing facility has established that the petitioner has, after reasonable and appropriate notice, failed to pay for part (patient responsibility) of the cost of his stay at the facility. 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.

18. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the

facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

19. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the petitioner's appeal is denied. The facility has established that discharge is for one of the reasons allowable under federal regulations and may proceed with the discharge as discussed in the Conclusions of Law.

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.

Roosevelt Reveil
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Copies Furnished To: [REDACTED], Petitioner
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[REDACTED]