

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

[REDACTED]

APPEAL NO. 11N-00146

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

FILED

Nov 22 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on November 7, 2011, at 11:20 a.m. in [REDACTED], Florida.

The petitioner was present, but was represented by [REDACTED], District Ombudsman Manager, [REDACTED] (LTCOP).

The respondent was represented by [REDACTED], facility administrator.

ISSUE

The petitioner is appealing the decision to discharge him from the nursing facility due to non-payment of bill for services.

PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated August 4, 2011, the respondent notified the petitioner he was to be discharged from the facility effective September 3, 2011, due to non-payment of bill for services.

On August 4, 2011, the petitioner timely requested a hearing to challenge the respondent's action.

Appearing as witnesses for the petitioner was his wife, [REDACTED] and daughter [REDACTED]. Appearing as witnesses for the respondent were [REDACTED], business office manager and [REDACTED], social services director.

FINDINGS OF FACT

1. The petitioner has been a resident of the facility since January 2011. The petitioner was originally admitted under Medicare. When Medicare payment coverage ended, an application for Institutional Care Program (ICP) Medicaid benefits was filed on March 11, 2011. The petitioner has an outstanding balance of \$1,400 in Medicare co-payment from February 1 through March 4, 2011 (Respondent Composite Exhibit 1).
2. The petitioner was determined eligible for ICP Medicaid effective with the month of application (March 2011), with a monthly obligation of \$1,248 to the facility to be paid from the petitioner's income. Medicaid pays the remaining cost of the petitioner's nursing facility room and board charges.
3. The petitioner's wife is responsible to pay his monthly bills to the facility from her husband's income. As of the day of this hearing, the petitioner's wife has a pending legal request for spousal support through the family circuit court that was filed on October 3, 2011.
4. The respondent has been issuing billing statements to the petitioner for room and board for the petitioner, since he began his stay at the facility indicating the charges and the balance due.

5. The facility did not receive any payment from the petitioner for his responsibility amount until June 6, 2011 when the petitioner's wife signed a promissory note, in which she agreed to pay \$300 monthly to the facility effective July 1, 2011. As of the day of the hearing, the facility has only received a one-time payment of \$900 in June 2011, after appropriate notification of the charges. The business office manager testified that the balance owed to the nursing facility as of the date of the hearing was \$11,570.75 (\$1,248 for November 2011 included).

6. On August 4, 2011, the respondent issued petitioner a discharge notice which explained that it intended to discharge him from the facility effective September 3, 2011, due to nonpayment of the bill for services. The discharge notice listed the wife's residence as the location where the facility intended to discharge the petitioner. The petitioner remains in respondent's facility pending the hearing decision.

7. Neither the petitioner nor the representative dispute the balance that is owed to the facility. The representative asserted that the petitioner's wife is in the process of pursuing spousal support from her husband; and entered a verbal Motion for Continuance pending the outcome of the court case.

8. The issue before the hearing officer is the petitioner's non-payment of services at the facility, and the facility's initiation to discharge him because he has failed to do so. While the development of the spousal support case could eventually affect the petitioner's financial responsibilities, it would have no effect on the issue of an allowable discharge reasons on which a decision must be made.

9. The facility's administrator testified that he had tried working with the wife in exploring possible ways to resolve the issue. He testified that even the petitioner's

social security check has been re-routed to the wife's residence as opposed to the facility.

10. When the petitioner's wife failed to pay his bills, the respondent issue a Discharge Notice to the petitioner. In response, the petitioner timely requested a hearing to challenge the discharge.

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. 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:

This requirement applies to transfers or discharges that are initiated by the facility, not by the resident. Whether or not a resident agrees to the facility's decision, these requirements apply whenever a facility initiates the transfer or discharge. "Transfer" is moving the resident from the facility to another legally responsible institutional setting, while "discharge" is moving the resident to a non-institutional setting when the releasing facility ceases to be responsible for the resident's care...

14. The Ombudsman argued that he understood the position of the facility, but still insisted that the proceeding should have been continued to give the wife the opportunity to better assess her financial obligations to the facility should her spousal support case be approved.

15. Neither the petitioner's wife nor the Ombudsman asserts that the bill has been paid. It is their position that appropriate payment will be made as soon as the spousal support issue is resolved. 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.

16. 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.

17. 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.

18. Based on the above governing authorities, the burden of proof was assigned to the respondent. It is the respondent's duty to establish by a preponderance of the evidence that its action was correct.

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

FINAL ORDER (Cont.)

11N-00146

PAGE -7

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