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

[redacted]

APPEAL NO. 11N-00203

PETITIONER,

Vs.

ADMINISTRATOR
CROSS TERRACE REHABILITATION CENTER
1351 SAN CHRISTOPHER DRIVE,
DUNEDIN, FL 34698

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on January 20, 2012, at 1:37 p.m., at [redacted], in [redacted], Florida.

APPEARANCES

For the Petitioner: [redacted] the petitioner's son

For the Respondent: [redacted] social services director

ISSUE

The respondent will have the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice dated November 8, 2011 is in accordance with the requirements of Code of Federal Regulation at 42 C.F.R. § 483.12:

> (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…
> (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;

PRELIMINARY STATEMENT

By notice dated November 8, 2011, the facility informed the petitioner that the petitioner was to be discharged. On November 23, 2011, the petitioner timely requested a hearing to challenge the discharge.

The petitioner did not appear. The petitioner's representative appeared by phone. The respondent's representative appeared in person. Witnesses for respondent appearing in person were [redacted], administrator; [redacted] business manager, and [redacted], registered nurse and director of nursing. Witness for the respondent appearing by telephone was [redacted], owner of the facility. Witness for the petitioner appearing in person was [redacted], ombudsman. [redacted], the facility's health care administration director, was observing.

FINDINGS OF FACT

1. The petitioner has been a resident at the facility since March 2011. Her son, [redacted], signed the petitioner into the facility.

2. In March 2011, the petitioner's son, [redacted] contracted with a financial planner, [redacted] with [redacted] to represent the petitioner and apply for Institutional Care Program (ICP) benefits on behalf of the petitioner.

3. The facility was aware that the petitioner had applied for Medicaid. The facility considered the petitioner to be a Medicaid pending resident, instead of a private pay resident. As the facility could only charge the resident allowable charges under

Medicaid, the facility withheld billing the petitioner until the Medicaid application was completed. The facility did not want to overcharge the petitioner.

4. The facility was made aware that the petitioner application for Medicaid was denied. The facility sent the petitioner's son, [redacted] a bill for the petitioner's services at the facility on September 1, 2011. The bill included the room and board charges for April, May, June and July 2011, and the payment by Part B co-insurance for June and July 2011. The outstanding balance as of September 1, 2011 was $28,715.13. In June 2011, the petitioner's Social Security benefits were assigned to the facility.

5. The facility had kept in contact with DCF ACCESS Program regarding the petitioner's ICP case. The petitioner's representative, [redacted], reapplied for ICP benefits for the petitioner on October 5, 2011. The facility was informed that the petitioner's family did not provide DCF ACCESS Program the petitioner's financial information until October 2011. Once the financial information was received, the petitioner was potentially eligible for ICP benefits.

6. On October 27, 2011, the respondent sent the petitioner's son, [redacted], a bill for the petitioner's services at the facility. The bill included the room and board charges for April, May, June, July, and August 2011, the payment by Part B co-insurance for June and July 2011, $5,000 payment applied to the April 2011 balance, $1,000 payment applied to the May 2011 balance, and the patient responsibility amounts for September and October 2011. The outstanding balance as of October 27, 2011 was $34,346.13.

7. The DCF ACCESS processor sent the petitioner's representative, [redacted] a Notice of Case Action on November 18, 2011. The notice informed the petitioner that DCF ACCESS Program approved the petitioner's October 5, 2011 application for ICP benefits. The petitioner was eligible for ICP benefits effective September 2011. The petitioner's patient responsibility was $1,440 for September and October 2011, $1837.97 for November 2011 and $1,440 effective December 2011.

8. The respondent determined that as of November 8, 2011, the petitioner had a balance due to the facility $34,346.13 for which payment arrangements had not been made by the petitioner. The facility sent the petitioner a Notice of Transfer and Discharge on November 8, 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.

9. The petitioner's son, [redacted] asserted as follows. Neither the petitioner nor her family received an invoice from March 2011 until September 2011, a period of six months with no invoice. He opined that it would cause emotional harm to the petitioner and her grandchildren, if the petitioner was discharged from the facility. He does not agree with the location of discharge to the petitioner's son, [redacted].

10. The ombudsman asserted as follows. It is unfortunate that there is a discharge on the basis on non-payment. The facility has taking care of the resident.

11. As of the date of the hearing, the parties have not entered into any repayment agreement.

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 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) 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;

14. The respondent did not bill the petitioner from March 2011 until September 1, 2011. The respondent considered the petitioner to be a pending Medicaid resident. The regulation states that for a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge resident only allowable charges under Medicaid. The facility gave notice to the petitioner to pay the bill in September 2011 it met the criteria for reasonable and appropriate notice.

15. The Florida Administrative Code at § 65A-1.203, Administrative Definitions, states: "(9) Authorized/Designated Representative: An individual authorized to act on behalf of the household in making application for benefits".

16. The ACCESS Program Policy Manual at passage 3240.0115 Designated Representative (MSSI, SFP) defines designated representative: “A designated representative is someone who assumes responsibility for acting on behalf of the individual or assistance group by providing information for the eligibility determination.”

17. The petitioner was not eligible for Medicaid Program benefits until September 2011. The respondent has sent the petitioner two billing statements. The September 1, 2011 billing indicated a past due amount of $28,715.13. The October 27, 2011 billing indicated a past due amount of $34,346.13. From the October 27, 2011 billing through at least January 20, 2012, the petitioner has not paid the balance owed to the facility. 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 on the evidence presented, the nursing facility has established that the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) for her 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

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, in accordance with all applicable federal regulations, Florida Statutes, and 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.

DONE and ORDERED this _____ day of _____, 2012,

in Tallahassee, Florida.

_____
Linda Jo Nicholson
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
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Copies Furnished To: [redacted] Petitioner
[redacted] Respondent
[redacted], Agency for Health Care Administration
[redacted] for the petitioner