

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

[REDACTED]

APPEAL NO. 11N-00038

PETITIONER,

vs.

Administrator

[REDACTED]

RESPONDENT.

FILED

Jun 13, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing on May 13, 2011, at 2:00 p.m., at the respondent nursing facility.

**APPEARANCES**

For the Petitioner: The petitioner's daughter-in-law, [REDACTED], who testified.

For the Respondent: [REDACTED] business manager, who testified.

**ISSUE**

At issue is the correctness of the respondent's action of February 24, 2011 to discharge the petitioner from the facility based on non-payment.

**PRELIMINARY STATEMENT**

By notice dated February 24, 2011, the respondent informed the petitioner's representative that she would be discharged from the nursing facility to her daughter-in-

law's residence on March 26, 2011 due to non-payment. On the same date, the petitioner timely requested appeal of this discharge action. The respondent has the burden of proof.

The petitioner herself did not appear for the hearing, but was represented by her daughter-in-law, [REDACTED] [REDACTED] certified ombudsman, appeared as a witness for the petitioner. [REDACTED] facility administrator, appeared as a witness for the facility. All the parties appeared in person at the respondent facility for the hearing.

### **FINDINGS OF FACT**

1. The petitioner was initially admitted to the respondent nursing facility on April 29, 2009 for rehabilitation. The petitioner remained in the facility for long term care. The petitioner presently resides at the respondent facility, and seeks to remain. The respondent permits the petitioner to remain at the facility pending the outcome of this hearing decision.

2. On July 31, 2009, the petitioner applied for Institutional Care Program and Medicaid (ICP) benefits. The nursing facility assisted the petitioner in this ICP application process. On November 12, 2009, the State of Florida Department of Children and Families (DCF) approved the petitioner to receive ICP benefits beginning May 2009 and ongoing.

3. The DCF notice dated November 12, 2009 establishes patient responsibility amounts owed the nursing facility beginning in May 2009 through December 2009 and ongoing. This notice advises that the petitioner had a patient liability amount of \$1,783 monthly for the months of May and June 2009. In July 2009 and thereafter, the patient liability amount is listed as \$1,784 monthly.

4. Until December 1, 2010, the respondent facility had sent billing notices to the petitioner that she owed a (lower) \$1,119.04 monthly patient liability amount to the facility. The petitioner remained current with the \$1,119.04 monthly billed patient liability amount through the month of November 2010. The facility admits its error in under-billing the petitioner for the patient liability amount in months prior to December 2010.

5. On December 1, 2010, the respondent facility sent the petitioner a billing notice that reflected adjusted and retroactive billing for the previously under-billed patient liability amounts described above. After these adjustments, this billing notice reflects a total billed amount of \$14,366.63 on December 1, 2010.

6. On January 1, 2011, the petitioner was billed \$1,784 as patient liability for the month of January 2011. This \$1,784 patient liability amount was added to the prior balance of \$14,366.63 for a total balance due of \$16,150.63.

7. On January 3, 2011, the DCF terminated the petitioner's ICP benefits effective January 31, 2011. The DCF lists the reason for termination as "we did not receive proof of unearned income necessary to determine eligibility." The petitioner's representative requested a separate administrative hearing (Appeal # 11F-02667) on this DCF action of January 3, 2011.

8. On January 6, 2011, the nursing home facility received three (3) payments from the petitioner of \$1,119.04 each for a total of \$3,357.12. These three (3) payment amounts correspond with the previous under-billed patient liability amounts. In the billing statement dated February 1, 2011, the facility credited these three (3) payment amounts and billed the petitioner for the corrected patient liability amount of \$1,784 for

the month of February 2011. On February 1, 2011, the facility sent a billing notice with a total balance due of \$14,592.51 after charges and adjustments.

9. On February 24, 2011, the respondent facility issued the petitioner a 30-day discharge notice due to non-payment. The notice advises that the discharge action was effective March 26, 2011. The petitioner timely requested a hearing on this discharge action.

10. On March 1, 2011, the facility issued another billing notice. This notice reflects the \$1,784 monthly patient liability amount for the month of March 2011 added to the prior balance and additional miscellaneous charges. The listed total amount due for March 2011 is \$16,474.31.

11. On April 1, 2011, the facility issued another billing notice. This notice reflects the \$1,784 patient liability amount for the month of April 2011. Since ICP benefits were terminated effective January 31, 2011, this billing notice also reflects a billing increase due to the increased rate change to private-pay room and board amounts effective February 2011. With these adjustments and other listed miscellaneous charges, the listed total bill for April 2011 is \$32,133.71.

12. On May 1, 2011, the facility issued another billing notice. This billing notice reflects three (3) payments of \$1,119.04 each, all received on April 22, 2011. These three (3) payment amounts correspond to the prior (lower) patient liability amounts described in Finding of Fact at paragraph number 3. The May 1, 2011, billing notice reflects a monthly private-pay room and board billing rate of \$6,665. The listed total patient liability balance due as of May 1, 2011 is \$35,441.59.

13. In May 2011, the respondent facility re-applied for ICP benefits on the petitioner's behalf. The respondent facility seeks ICP eligibility on petitioner's behalf retroactive to February 2011.

14. Both parties express concerns about the asserted manner or lack of appropriate verbal communication between them concerning billing issues. The State ombudsman believes that this bickering between the parties is not helpful to resolve these concerns. Both the petitioner and the ombudsman seek what they describe as an accurate billing statement.

15. The facility administrator asserts that he would not have initiated this discharge action if the petitioner had paid her corrected patient liability amount of \$1,784 monthly. However, the facility administrator seeks to continue this discharge action since ICP benefits are no longer being approved.

#### **CONCLUSIONS OF LAW**

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

17. Federal Regulations limit the reasons for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the discharge notice indicates the petitioner is to be discharged from the respondent/facility due to non-payment. Federal Regulations permit a patient discharge for this reason, as set forth at 42 C.F.R. 483.12(a)(2)(v), as follows:

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 resident only allowable charges under Medicaid; . . .

18. The language of the above federal regulation permits a nursing facility to discharge a resident for failure to pay for a stay at the facility if the petitioner has received “reasonable and appropriate notice” of the charges. The evidence establishes that the petitioner’s representative has received regular monthly billing statements and petitioner was previously current with payment of her nursing home charges through November 2010. However, the respondent later determined that the petitioner had been under-billed her patient responsibility amount in the ICP Program due to the respondent’s billing error. The billing notices beginning December 2010 reflect the correctly increased patient liability amounts owed to the facility by the petitioner.

19. The billing notices beginning in April 2011 reflect the increased rate adjustment for private-pay residents since petitioner’s ICP benefits were terminated effective January 31, 2011. In sum, the petitioner’s representative is concluded to have received “reasonable and appropriate” notice to pay for her stay at the facility, even though more recent billing notices reflect correctly increased patient liability amounts and an increased private-pay room and board rate.

20. The respondent nursing facility has valid reason to discharge the petitioner based on the accrued unpaid balance of \$35,441.59 as of May 1, 2011. The nursing facility is concluded to have met its burden of proof in this specific discharge action.

### **DECISION**

The appeal is DENIED. The facility has met its burden to discharge the petitioner based on non-payment. Although the respondent facility has met its burden of proof, the facility is not *compelled* to proceed with the discharge action at issue by virtue of this

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order. If the respondent was to determine suitable payment arrangements with the petitioner, the respondent may elect to rescind this discharge action at its discretion.

**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.

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Jim Travis  
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:

