

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

[REDACTED]

APPEAL NO. 11N-00094

PETITIONER,

Vs.

Administrator

[REDACTED]

FILED

JULY 19, 2011

OFFICE OF APPEAL HEARINGS  
DEPARTMENT OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 1, 2011 at 10:20 a.m. at the [REDACTED] Center in [REDACTED], Florida. The petitioner appeared as an observer and was represented by her granddaughters, [REDACTED] and [REDACTED]. The respondent was represented by the administrator, [REDACTED]. Appearing as witnesses for the respondent were [REDACTED], social services, [REDACTED], Director of Nursing, [REDACTED], [REDACTED], Assistant Director of Nursing, [REDACTED] Admissions Director, [REDACTED], business office manager. [REDACTED], [REDACTED] attorney, appeared as an observer.

### **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 standard of clear and convincing evidence.

### **FINDINGS OF FACT**

1. The petitioner has been a resident of the [REDACTED] Center since June 5, 2010 and has limited income. The petitioner's granddaughters have applied for Institutional Care Program (ICP) Medicaid on her behalf. The petitioner's granddaughters were informed by the Department of Children and Families that a decision would be made, regarding the application, sometime this week.

2. The respondent has issued statements of amounts due (Respondent's Exhibit 2), showing the amount owed as of April 14, 2011 is \$54,588.47. The facility bills a month in advance. The petitioner receives monthly social security benefits in the amount of \$1152. The facility deducts \$35 to provide for the petitioner's personal care needs.

3. On April 15, 2011, the respondent issued the Nursing Home Transfer and Discharge Notice (Respondent's Exhibit 1), which states, "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay." Location for discharge was shown to be the petitioner's granddaughter's (AH) address.

4. On April 25, 2011, the petitioner timely appealed the discharge notice

5. The petitioner's representative asserts that the respondent has provided great care to her grandmother but is concerned with who will care for the petitioner if

discharged. The petitioner's representative asserts that the petitioner's son is deceased and that there is no one in the home available to provide care. The respondent asserts that the petitioner would not be discharged into an unsafe environment.

6. The petitioner's representative asserts that the petitioner's sister is the co-account holder to the petitioner's bank account and that money is withdrawn every month. The petitioner's representative asserts that she was under the impression that the petitioner's Social Security check was going directly to the facility. The respondent asserts that the petitioner's Social Security check is now being sent directly to the facility and that they are awaiting the approval of the ICP Medicaid to help bring the account to a current status.

### **CONCLUSIONS OF LAW**

7. 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 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.

8. A residential nursing care facility would expect payment (or arrangement for payment) in the normal course of business. The facility was not fully paid and the petitioner and her granddaughters were notified that she owed payments for room, board, and care. Billing for a month ahead in matters of room and board is a customary business practice. It is recognized that the petitioner's granddaughter's home may not be an appropriate environment and that location information may need to be revised for discharge purposes. Nevertheless, the intent to discharge is valid due to nonpayment.

9. 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 its 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. The facility is to follow AHCA's rules on proper discharge locations for petitioner.

**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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