

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

[REDACTED]

APPEAL NO. 11N-00127

PETITIONER,

Vs.

Administrator

[REDACTED]

FILED

SEP 26, 2011

OFFICE OF APPEAL HEARINGS  
DEPARTMENT OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened at 2:43 p.m. on August 16, 2011 at the [REDACTED] nursing facility in [REDACTED] Florida.

**APPEARANCES**

For the petitioner: [REDACTED], attorney for the petitioner.

For the respondent: [REDACTED], administrator for [REDACTED]. The facility administrator declined legal representation.

**ISSUE**

The respondent had the burden to prove by clear and convincing evidence that the petitioner's discharge in the notice of June 24, 2011 was in accordance with the requirements of 42 C.F.R. § 483.12(a): "(2)(v)The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility."

### **PRELIMINARY STATEMENT**

Appearing as witnesses for the petitioner were [REDACTED] paralegal for [REDACTED], son to the petitioner, and [REDACTED], daughter in law to the petitioner. The petitioner was not present.

### **FINDINGS OF FACT**

1. The petitioner has been a resident at the facility since January 2005. At the time of admission, the petitioner was a private pay resident and the petitioner's son consistently paid the patient's responsibility.

2. The petitioner's son asserts that he had to apply for Medicaid for his mother due to her dwindling bank account, as she did have a large amount of money at one time. Therefore, the petitioner's son and the respondent applied for Medicaid in March 2009 and the application was approved. The facility received Medicaid funds for the petitioner's care for a period of one year and the petitioner's son continued to pay the patient's responsibility.

3. The petitioner's son and the respondent applied for Medicaid around April 2010 to complete the yearly recertification and the application was denied. The respondent asserts that they continued to apply for Medicaid and continued to be denied by the Department of Children and Families (DCF). As the year progressed, the respondent was informed by DCF that the money that was transferred into the revocable trust was disqualifying the petitioner for Medicaid. The respondent asserts that the facility was informed that based on the amount of money that was transferred

into the revocable trust, the petitioner would be disqualified for a period of seven years and that they could not reapply for Medicaid.

4. The petitioner's representative asserts that the petitioner transferred money to an irrevocable trust to a charitable organization and could not get the money back. The petitioner's representative asserts that he now understands that the reason the Medicaid application was denied, is that when the respondent's case manager applied for Medicaid on the petitioner's behalf, the irrevocable trust was mistakenly notated as a revocable trust on the application. Therefore, the Medicaid application was denied by DCF. The petitioner's representative believes that DCF made a mistake and should reopen the case retroactively.

5. The respondent asserts that the petitioner owes the facility \$68,078.15. The petitioner's representative asserts that the petitioner receives \$1320 a month in Social Security benefits and \$168 a month in widow's pension. The petitioner is allowed a \$35 personal needs allowance every month. The respondent asserts that the petitioner's son continues to pay the petitioner's personal liability and that the Medicaid application would need to be approved to bring the account balance to current status. The petitioner's son asserts that he cannot provide adequate care for the petitioner at home because he works and his wife is disabled.

6. The respondent and the petitioner's representative agree that they will work together to reapply for ICP Medicaid benefits on behalf of the petitioner.

**CONCLUSIONS OF LAW**

7. 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 .

8. 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.

9. Based on the evidence presented, the nursing facility has established that petitioner has failed, after reasonable and appropriate notice to pay, for a stay at the facility. This is one of the six reasons provided in federal regulation cited above, for which a nursing facility may involuntarily discharge a resident.

10. 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.

11. Each month, the respondent has sent the petitioner's son a monthly billing statement for the amount of patient responsibility. The respondent has sent the petitioner's son letters of past due notices. The August 9, 2011 billing indicated a past due amount of \$68,078.15. The hearing officer concludes that the facility has given the petitioner and her family reasonable and appropriate notice of the need to pay for the petitioner's stay at the facility. Based upon the above cited authorities, the hearing officer finds that the facility's action to discharge the petitioner is in accordance with Federal Regulations.

12. 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 respondent may proceed with the discharge, as determined by the treating physician and in accordance with applicable 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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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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FINAL ORDER (Cont.)

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Copies Furnished To: [REDACTED], Petitioner

[REDACTED], Respondent

Agency for Health Care Administration Quality Assurance

[REDACTED]