

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

[REDACTED]

APPEAL NO. 11N-00172

PETITIONER,

Vs.

FILED

Jan 04 2012

Administrator

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 6, 2011, at 1:00 p.m., at the [REDACTED] Center in [REDACTED], Florida.

APPEARANCES

For the Petitioner: [REDACTED], son to the petitioner.

For the Respondent: [REDACTED] facility administrator.

ISSUE

At issue was whether intent to discharge was correct based on nonpayment after reasonable and appropriate notice to pay.

PRELIMINARY STATEMENT

By notice dated September 26, 2011, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to nonpayment. On October 6, 2011, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as witnesses for the respondent were [REDACTED], financial manager, [REDACTED], admissions director, [REDACTED], director of nursing, and [REDACTED], social services director.

FINDINGS OF FACT

1. The petitioner (age 91) has been a resident at the facility since July 27, 2010. At the time of admission, the petitioner was a private pay (Medicare) resident. The petitioner went into long term care status on September 24, 2010.

2. The petitioner's son applied for Medicaid for the petitioner in August 2010 and was denied due to assets. The petitioner's son reapplied for Medicaid in June 2011 and was approved for ICP Medicaid effective March 1, 2011.

3. The petitioner's Social Security payments were sent to the petitioner's son for the months of September 2010 through August 2011. Effective September 1, 2011, the petitioner's Social Security payments were routed to the nursing facility.

4. On September 23, 2011, the facility mailed the petitioner's son a statement notifying him of the petitioner's outstanding balance in the amount of \$39,585.91. On September 28, 2011, the facility contacted the petitioner's son by email to inform him of the petitioner's outstanding balance owed in private pay and on possible payment arrangements.

5. The petitioner's son asserts that he was concerned about the facility being paid for the petitioner's care but was unaware that he was obligated to send her Social Security payments to the facility. The petitioner's son asserts that the petitioner's money was used to pay her monthly expenses. The respondent asserts that the

petitioner's son was informed at the time of the petitioner's admission to the facility that he was to send the petitioner's Social Security payments directly to the facility.

CONCLUSIONS OF LAW

6. 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.

7. 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.

8. Based on the evidence presented, the nursing facility has established that the 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 (42 C.F.R. § 483.12) for which a nursing facility may involuntarily discharge a resident.

9. 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.

10. The respondent notified the petitioner's son in writing on September 23, 2011 to inform him of the petitioner's unpaid bill. On September 28, 2011, the respondent successfully communicated with the petitioner's son via email about her unpaid bill and attempted to set up payment arrangements. On September 26, 2011, the respondent mailed the son the notice of its intent to discharge the petitioner. The hearing officer concludes that the facility has given the petitioner and her POD's reasonable and appropriate notice to pay for the petitioner's stay at the facility. Based on the cited authorities, the hearing officer concludes that the facility's action to discharge the petitioner is in accordance with Federal Regulations.

11. 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 describe in the Conclusions of Law 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 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.

Paula Ali
Hearing Officer
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FINAL ORDER (Cont.)

11N-00172

PAGE -6

Copies Furnished To: [REDACTED], Petitioner

[REDACTED], Respondent

Agency for Health Care Administration Health Quality Assurance

[REDACTED]