

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

FILED

APR 09 2014

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00004

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter convened on March 6, 2014 at 2:10 p.m. at the [REDACTED] facility located in Orange Park, Florida.

APPEARANCES

For the Petitioner: The petitioner was not present and was represented by his daughter, [REDACTED]

For the Respondent: [REDACTED] executive director.

ISSUE

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on December 27, 2013 with an effective date of January 27, 2014.

The facility has the burden of proof to establish by clear and convincing evidence that the discharges are appropriate under federal regulations found in 42 C.F.R. §483.12.

PRELIMINARY STATEMENT

The hearing was originally scheduled for February 27, 2014 at 11:00 a.m. On February 27, 2014, the petitioner's daughter contacted the undersigned and explained that she needed to reschedule because she was ill and unable to attend the hearing. The petitioner's daughter's request was granted and the hearing was rescheduled to March 6, 2014 at 2:00 p.m.

Appearing as witnesses for the respondent were Ingrid Devine, social services director and Shanton Roberts, business office manager.

Appearing telephonically as a witness for the Agency for Health Care Administration was Kelley Foster, registered nurse.

On March 7, 2014, the undersigned received a letter dated March 4, 2014 from the Agency for Health Care Administration (AHCA) which indicated that AHCA did not find the facility in violation of any laws or rules. This was entered as Hearing Officer Exhibit 1.

FINDINGS OF FACT

1. The petitioner has been a resident of the respondent's facility since July 12, 2013 as a "Medicaid Pending" patient. On or around November 12, 2013, the facility applied for ICP Medicaid on behalf of the petitioner. The petitioner receives Veteran's Administration benefits in the amount of \$125.24, Social Security income in the amount

of \$920, and DFAS pension in the amount of \$1533. The facility is directly receiving the petitioner's VA benefits and Social Security income but is not receiving the pension. On December 12, 2013, the facility received notification that the ICP Medicaid application was denied due to his income exceeding the income limit.

2. The facility filed another ICP Medicaid application on December 12, 2013 but it was also denied on January 7, 2014 due to the petitioner's income exceeding the income limit. The facility's business manager believes that the petitioner's daughter would have to set up and deposit approximately \$552 into a Qualified Income Trust account in order for the petitioner to become eligible for ICP Medicaid.

3. The facility hand delivers a monthly billing statement to the petitioner in the facility as he is his own responsible party. He is alert and oriented. He recognizes the balance and amount due and gets upset about it. Petitioner's daughter indicated he most likely forgets about it within a couple of hours; he thinks her daughter is her sister.

4. The facility mailed a billing statement dated March 1, 2014 to [REDACTED] Saint Augustine, Florida 32092 as this is petitioner's previous mailing address.

5. The petitioner's daughter denies receiving any billing statements at her post office box and explained that she is the only one who checks the mail at the post office. The petitioner's daughter did not understand that she was able to pay on her father's account until now. The petitioner's daughter also denies receiving notifications from the Department that her father was denied ICP Medicaid. The facility verified the daughter's post office box and sent a billing statement to that address in March 2014

and confirmed with DCF that this is the daughter's mailing address to ensure she was getting the letters in reference to his ICP Medicaid.

6. The petitioner's daughter funded the QIT account in December 2013 when she opened the account. She also funded the account in February 2014 and March 2014. The petitioner's daughter did not fund the account in January 2014.

7. The facility will submit another application to apply for ICP Medicaid and provide the Department with the verification of the funding of the QIT account. Since the QIT was not funded for November or January, the facility believes the petitioner will never gain ICP eligibility for those months. Therefore, an outstanding balance will remain.

CONCLUSIONS OF LAW

8. 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. In this case, the discharge notice indicates the petitioner is to be discharged from the respondent/facility based on non-payment.

9. Federal Regulations at 42 C.F.R. § 483.12(a) states in relevant part:

(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; ...

10. According to the above authority, the facility may not discharge except for certain reasons, of which one is when the resident has failed, after reasonable and appropriate notice to pay for the stay at the facility.

11. The petitioner has an outstanding balance, owed to the facility, for the cost of his care. The facility has notified the petitioner of the balance due for the cost of his care on a monthly basis.

12. Petitioner's daughter argued she did not receive the billing statements. The Findings show that petitioner is his own responsible party and he is alert and oriented. Therefore, the undersigned concludes the facility has followed the above controlling authority to issue reasonable and appropriate notice prior to issuing the discharge notice.

13. There have been two ICP Medicaid denials due to not properly funding the Qualified Income Trust to allow ICP eligibility on income. Petitioner's daughter is now aware of the outstanding balance and the need to complete all necessary paperwork to allow DCF to complete the ICP Medicaid application. There is a possibility of ICP eligibility for December 2013 and February 2014 ongoing; that determination is up to the DCF. However, there remains an outstanding balance owed to the facility for petitioner's care for November 2013 and January 2014.

14. Based on the findings and the federal and state controlling authorities, the undersigned concludes the facility's discharge is proper.

15. 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.

16. 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

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The facility may proceed with the discharge action in accordance with the Agency for Health Care Administration's rules and guidelines.

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 9th day of April, 2014,

in Tallahassee, Florida.

Paula Ali

Paula Ali
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: [REDACTED] Petitioner

[REDACTED], Respondent

Mr. Robert Dickson,
Agency for Health Care Administration
CHRISTY ROSS