

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

FILED

JAN 13 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00160

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter convened on
January 7, 2014 at 10:09 a.m. at the [REDACTED] nursing facility located in [REDACTED]
Florida.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's wife

For the Respondent:

[REDACTED]

Administrator

ISSUE

At issue is the respondent's intent to discharge the petitioner due to non-payment
for services.

PRELIMINARY STATEMENT

Ms. [REDACTED] appeared as both a representative and witness for the respondent. Also present was [REDACTED] Social Worker. Respondent's exhibit "1" and "2" were admitted into evidence.

Petitioner was present for a portion of the hearing. [REDACTED] appeared as both a representative and witness for the petitioner. Also present were [REDACTED] friend and [REDACTED] Regional Ombudsman Manager. Petitioner's exhibit "1" and "2" were admitted into evidence. The exhibits include social security information; physician statements; a letter dated November 13, 2014 from Vanguard Healthcare; and a billing transaction history from Whitehall for assorted dates between January 2014 and November 2014.

Appearing by telephone from the Agency for Health Care Administration (AHCA) was Kathy Geldotto, Registered Nurse Specialist.

A review of respondent's discharge action was completed by AHCA on December 2, 2014. A report of this review was entered into evidence as Hearing Officer's Exhibit "1".

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. On October 22, 2013 petitioner was admitted into Whitehall as Medicare patient. The admission was originally viewed to be for a short term basis.

2. Petitioner's last day as a Medicare patient was January 4, 2014. The family requested the petitioner remain at Whitehall on a long term basis. On January 5, 2014 petitioner became a private pay patient.
3. The private pay balance for January 2014 was approximately \$8835.00. Of this amount, petitioner's son made a payment of \$3283.00 in February 2014. The remaining amount has not been paid.
4. At unspecified time, an application for Institutional Care Program (ICP) Medicaid was submitted on the petitioner's behalf to the Department of Children and Families(DCF) ACCESS Program¹. A person not affiliated with Whitehall provided assistance with the ICP application.
5. In February 2014 petitioner was determined eligible for (ICP) Medicaid.
6. Petitioner remains eligible for ICP Medicaid.
7. Based on petitioner's income, a monthly patient responsibility was calculated by ICP Medicaid staff. The patient responsibility represents the amount petitioner is to pay the nursing facility on a monthly basis.
8. Petitioner's initial ICP patient responsibility was \$579.00 per month. In July 2014 the patient responsibility changed to \$509.00 per month.
9. For the period March 1, 2014 through January 1, 2015, petitioner's wife was sent a monthly billing statement. The balance due appearing on the January 1, 2015 statement was \$11,373.51.
10. Respondent has received no returned mail on the billing statements.

¹ Automated Community Connection to Economic Self Sufficiency

11. Petitioner's representative recalls receipt of some billing statements. She does not understand how the past due amount was determined.

12. Petitioner has not paid the monthly patient responsibility since determined eligible for ICP Medicaid.

13. On November 12, 2014 the respondent issued to the petitioner's wife a Nursing Home Transfer and Discharge Notice. The notice stated the respondent's intent to discharge the petitioner effective December 13, 2014. The rationale for discharge is recorded as "your bill for services at the facility has not been paid after reasonable and appropriate notice to pay."

14. The discharge location is listed as Fort Lauderdale [REDACTED]

15. On November 12, 2014, the Office of Appeal Hearings timely received petitioner's request for a Fair Hearing. Petitioner remains at Whitehall pending the outcome of this proceeding.

16. On November 13, 2014 respondent's parent company, Vanguard Healthcare, sent to petitioner and his wife correspondence which stated, in part:

As you are aware the facility has issued a 30-day discharge to the family of Dr. [REDACTED], based on the lack of payments and lack of cooperation to resolve the account balance. As per our conversation with you today, you will be required to make a payment of \$7500.00 to be paid in full by December 12, 2014. This amount will be applied to the past due balance of \$9248.10, which is the private pay portion of the above balance.

Once this payment of \$7500.00 has been made in full, then the 30-day discharge will be withdrawn. The remaining balance shall be settled by making monthly payments, again yet to be determined.

17. The above payment arrangement was not accepted by petitioner's representative.

18. Petitioner's representative states she thought the \$509.00 was what Medicaid was paying for nursing home care and not aware it represented a patient responsibility.
19. The representative does not understand how the past due amount was calculated.
20. Petitioner's representative asserts neither she nor her husband has the funds to make monthly payments.
21. Respondent asserts the discharge was not signed by a physician. Additionally, relocating to another nursing facility would disorient the petitioner; remove him from his current physical therapist; and the location is too far for the representative to make daily visits.
22. Petitioner was recently hospitalized and was readmitted into Whitehall as a Medicare patient.
23. On November 10, 2014 the Social Security Administration issued to the petitioner a letter which stated, in part: "We have chosen [REDACTED] to be your representative payee. Your payee will receive your payments each month and will use this money for your needs ... We are sending your regular monthly check of \$1912.00 to [REDACTED] around December 3, 2014."
24. Respondent argues the discharge is not for medical reasons. Rather, the discharge is based on non-payment. As such, a physician's signature was not required.

CONCLUSIONS OF LAW

25. 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.

26. Federal Regulations appearing at 42 C.F.R. § 483.12, set forth the reasons a facility may involuntarily discharge a resident and states, in part:

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 [emphasis added]. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; ...

27. The Fla. Admin. Code R. 65A-1.710 sets forth SSI-Related Medicaid Coverage

Groups:

The Department covers all mandatory coverage groups and the following optional coverage groups...

(2) Institutional Care Program (ICP). A coverage group for institutionalized aged, blind or disabled individuals (or couples) who would be eligible for cash assistance except for their institutional status and income as provided in 42 C.F.R. §§ 435.211 and 435.236. Institutional benefits

include institutional provider payment or payment of Medicare coinsurance for skilled nursing facility care.

28. The Fla. Admin. Code R. 65A-1.701 defines patient responsibility: "(23) Patient Responsibility: That portion of an individual's monthly income which the department determines must be considered as available to pay for the individual's institutional care..."

29. The Findings of Fact establish billing notices have been issued by the respondent since at least March 2014. The notice reflects non-payment for both private pay services and for the patient responsibility for those months when services were rendered through the ICP. Regarding these notices, respondent has received no returned mail.

30. It is noted that petitioner's representative acknowledged receipt of at least some billing notices. Additionally, petitioner's exhibit "1" included the letter from Vanguard Healthcare addressing a past due balance.

31. Petitioner's representative questions how the past due amount was calculated. When a past due amount exists, the controlling authorities provide no exemption based on the amount of unpaid balance.

32. The role of a hearing officer is not to determine the amount owed to the nursing facility. Rather, the role is to identify whether a past due amount exists. If a past due amount exists, the hearing officer then evaluates whether applicable discharge guidelines have been followed.

33. The hearing officer concludes a past due balance exists. Respondent has given the petitioner reasonable and appropriate notice of the need for payment. As such, the

respondent has met its evidentiary burden in this matter. Discharging the petitioner for non-payment is one of six allowable discharge reasons found in 42 C.F.R. § 483.12.

34. Matters concerning whether respondent can be the petitioner's social security representative payee when services are funded through Medicare can, if desired, be pursued with the Social Security Administration.

35. Petitioner's position that respondent's discharge notice was not signed by a physician has been considered by the undersigned. 42 C.F.R. § 483.12. (3), however, does not require such a signature when discharge is based on non-payment.

36. 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 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.

37. 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 13th day of January, 2015,
in Tallahassee, Florida.



Frank Houston
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:

██████████ MD, Petitioner
██████████ Respondent
Ms. Arlene Mayo-Davis, AHCA
Loretta Neuman