

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

**FILED**

APR 18 2014

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00027

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 2, 2014 at 10:08 a.m., at [REDACTED] in Clearwater, Florida.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED] nursing home administrator

**ISSUE**

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services. 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

By notice dated January 30, 2014, the facility informed the petitioner that he was to be discharged from respondent's nursing facility. On February 14, 2014, the petitioner timely requested a hearing to challenge the discharge.

Witness for the petitioner was Annette Perry, district ombudsman manager. Witness for respondent was [REDACTED] social services director. Observing in person were [REDACTED] director of nursing, and Mary Jane Stafford, hearing officer. Observing telephonically was Frances Lima, Agency for Health Care registered nurse. The petitioner did not presented any exhibit into evidence. The respondent presented four exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "4", respectively.

### FINDINGS OF FACT

1. The petitioner applied for Institutional Care Program benefits and was approved effective April 2013. The income he reported to the Department of Children and Families (DCF) ACCESS Program was used in determining his patient responsibility. The respondent is required to charge the resident the amount of patient responsibility, as determined by the DCF ACCESS Program. Each month, the petitioner could retain \$35 from his gross income for personal needs. Initially, the information provided by the DCF ACCESS Program was that the petitioner's patient responsibility was \$910 a month. Effective January 2014, the petitioner's patient responsibility increased to \$924 a month.

2. The facility has provided services to the petitioner. Each month, the facility has given the petitioner a bill for the petitioner's stay at the facility and for the services

provided by the facility to him. Each month the facility billed the petitioner the patient responsibility as stated by DCF.

3. As of January 30, 2014, the petitioner had not made payment to the facility for the amount billed each month. The respondent determined that the petitioner had a balance due to the facility of \$5,005, for which payment arrangements had not been made by the petitioner. The petitioner declined an offer by the respondent to enter into a repayment agreement for the past due balance. The facility sent the petitioner a Notice of Transfer and Discharge. The reason for discharge indicated on the notice was the bill for services at the facility has not been paid after reasonable and appropriate notice to pay.

4. On March 5, 2014, the petitioner made one payment of \$200. As of the April 1, 2014 billing statement, the past due amount was \$6,681.

5. The petitioner asserted he thought Social Security paid the facility for the first three months. The respondent did not receive any payment from Medicare since the petitioner had been in the facility. The petitioner was in another facility prior to [REDACTED]. The petitioner had exhausted all Medicare nursing facility benefits prior to being admitted to [REDACTED] on September 16, 2013.

#### **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. The Code of Federal Regulation limit the reason for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the petitioner was sent notice indicating that he would be discharged from the facility in accordance with of Code of Federal Regulation at 42 C.F.R. § 483.12:

(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...

(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;

8. The Florida Administrative Code at 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, ALW/HCBS or Hospice care.”

9. The DCF ACCESS Program sent a Notice of Case Action informing the petitioner and the facility of the amount of the patient responsibility. By rule, DCF determines patient responsibility. The facility does not have the authority to reduce or waive the patient responsibility. Each month since September 2013, the petitioner has not paid the full patient responsibility payment to the respondent. The respondent did not receive any payment from Medicare for the petitioner. The only payment by the petitioner was \$200 on March 5, 2014. This amount did not pay the balance due.

10. Each month, the respondent has sent the petitioner a monthly billing statement for the amount of patient responsibility. The April 2014 billing statement indicated a past due amount of \$6,681. The hearing officer concludes that the facility has given the petitioner reasonable and appropriate notice of the need to pay for the

petitioner's stay at the facility and reasonable and adequate financial arrangements have not resulted. Based on the evidence presented, the nursing facility has established that 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. 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.

11. 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.

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**

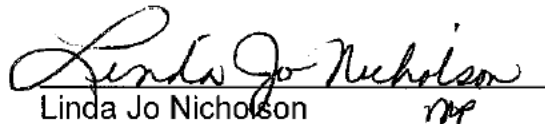
This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The facility may proceed with the discharge, in accordance with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements.

**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 19<sup>th</sup> day of April, 2014,

in Tallahassee, Florida.



Linda Jo Nicholson *LNJ*  
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  
Ms. Patricia Reed Kaufman, Agency for Health Care Administration  
Annette Perry, district ombudsman manager