

**FILED**

**JUN 09 2014**

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

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DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 14N-00058

PETITIONER,

Vs.  
Administrator

[REDACTED]

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on May 5, 2014 at 9:15 a.m., in Pompano Beach, Florida.

**APPEARANCES**

For the Petitioner: The petitioner was present and represented himself.

For the Respondent: [REDACTED] Nursing Home Administrator (NHA).

**ISSUE**

The petitioner is appealing the respondent's proposed discharge action from its nursing facility. The Nursing Home Transfer and Discharge Notice indicates the discharge location as [REDACTED], located at [REDACTED] West Palm Beach, FL.

The only issue before the hearing officer is whether the discharge was in accordance with federal regulations. Any issues concerning petitioner's allegations of improper protocol of the facility staff, treatment the petitioner received while residing at

the facility and petitioner's concerns about the discharge location are not within the jurisdiction of the hearing officer.

### PRELIMINARY STATEMENT

By Nursing Home Transfer and Discharge Notice dated March 13, 2014, the respondent notified the petitioner he was to be discharged from the facility effective April 11, 2014, due to non-payment of bill for services. During the hearing, the notice was remedied with April 12, 2014 as the effective discharge date.

On March 18, 2014, the petitioner timely requested a hearing to challenge the respondent's action.

Additional testimonies received [REDACTED] Director of Nursing (DON), [REDACTED] Business Office Manager and [REDACTED] Director of Social Services with [REDACTED]

Kathy Deldotto with the Agency for Health Care Administration (AHCA), observed by telephone. At the request of the undersigned, AHCA conducted an on-site inspection of the facility and found no violations.

During the hearing, the petitioner did not provide any evidence for the undersigned to consider. The respondent submitted evidence which was accepted and marked as Respondent's Exhibits "1 through 6" respectively.

### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner has been a resident of the respondent's nursing facility since February 7, 2014. Petitioner was initially admitted under Medicare for temporary skilled

nursing services only. Petitioner is alert and makes his own healthcare decision; he refuses to apply for any long term Medicaid benefits and declines to enter into a payment agreement with the facility.

2. On March 4, 2014, Dr. [REDACTED] ordered the facility to initiate a discharge plan on the petitioner, see Respondent's Exhibit 4. That same day, the facility issued a Notice of Medicare Non-Coverage to the petitioner informing him that his current skilled nursing services will end March 7, 2014. On March 5, 2014, petitioner appealed the termination of services to Florida Medical Quality Assurance, Inc (FMQAI). On March 7, 2014, petitioner's appeal was denied (Respondent's Exhibit 3).

3. Petitioner attained private pay status effective March 8, 2014. The monthly charge for private pay residents is \$6,450 for a 30-day stay and \$6,665 for a 31-day stay, based on a \$215 per diem charge. These charges are usually billed in advance.

4. On March 11 2014, the respondent issued a Statement of Account to the petitioner informing him that since his coverage with Medicare Part A ended on March 7, 2014, and since his Medicare appeal has been denied, he was responsible to for \$5,160 to cover anticipated charges for his stay at the facility from March 8, 2014 through March 31, 2014. Additionally, the statement advised the petitioner to contact the Business office for assistance in "applying for Medicaid ICP benefits" (Respondent's Exhibit 2).

5. The NHA testified that he had tried working with the petitioner to resolve the issue, to no avail. The administrator contends that the facility's requests for payments were mainly ignored and not acknowledged by the petitioner.

6. The petitioner did not dispute the facts presented by the respondent. He acknowledged his refusal to apply for ICP Medicaid and the balance that is owed to the facility, but asserted that he was not given the 100 days of coverage promised to him while being admitted in the facility. The petitioner believes he should not be liable for any charges until after his 100 days expire. Petitioner provided no evidence to support his argument. The undersigned could not find the petitioner was eligible for 100 days of skilled nursing services. Petitioner asserts that applying to ICP would give the facility control over his finances and he is not willing to transfer his Social Security benefits to the facility.

7. The respondent issued a Discharge Notice informing him that it intended to discharge him from the facility effective April 11, 2014, due to nonpayment of the bill for services. During the hearing, the notice was remedied with April 12, 2014 as the effective date (Respondent's Exhibit 1). The petitioner remains in the facility pending the hearing decision.

8. As of the day of this hearing, the balance owed to the facility is \$18,275. Despite his multiple complaints about the services there, petitioner wants to remain at the facility.

9. AHCA, at the request of this hearing officer, reviewed the discharge initiated by the facility through an unannounced visit. On April 23, 2014, it sent a letter stating, "A representative from AHCA completed an unannounced visit at [REDACTED] [REDACTED]. The purpose of the visit was to determine if the facility complied with the requirements of CFR 483.12 in taken action to discharge a

resident. Based on interview and facility documentation, it has been determined that there were no violations."

### CONCLUSIONS OF LAW

10. 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.

11. 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.

(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;

12. 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.

13. In this instant case, petitioner gained private status on March 8, 2014. Since then, he has accrued an outstanding balance of \$18,275 of unpaid bills for services received at the facility. The facility has notified the petitioner of the balance due for the cost of his care on a monthly basis. The petitioner never denied the charges, except to say that he should have been covered for the first 100 days of services. Additionally

petitioner has refused to apply for long-term care Medicaid benefits. The petitioner has not tried to enter into a payment agreement with the facility.

14. Based on the evidence and testimony 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.

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. Petitioner is currently resident in the respondent's facility pending hearing decision and would like to remain there for now. 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 still have concerns about the appropriateness of the discharge location or the discharge planning process, and any other concerns raised at the hearing, not within the jurisdiction of the undersigned, he 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 Conclusion of Law, the petitioner's appeal is denied, as the facility's action to discharge the petitioner is correct and in accordance with Federal Regulations. The facility may proceed with the discharge as discussed in the Conclusions of Law, in accordance with applicable Agency for Health Care Administration requirements.

**NOTICE OF APPEAL**


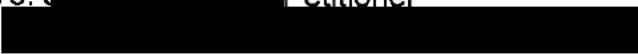
The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the 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 9<sup>th</sup> day of June, 2014,

in Tallahassee, Florida.



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