

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

FILED

MAR 02 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14N-0164

[REDACTED]
PETITIONER,

vs.

ADMINISTRATOR
[REDACTED]

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing in the above-referenced matter convened on January 9th, 2015 at approximately 2:15 p.m. at the above-mentioned facility.

ISSUE

The petitioner is appealing the decision to discharge her from the nursing facility.

APPEARANCES

For the Petitioner: The petitioner was not present at the hearing, but was represented by her son [REDACTED]

For the Respondent: [REDACTED], Administrator of the facility.

PRELIMINARY STATEMENT

Present as witnesses for the respondent were: [REDACTED], Risk Manager; [REDACTED] of the Billing Operations office, and [REDACTED] Social Worker.

The petitioner submitted into evidence Petitioner's Composite Exhibit 1.

The respondent submitted into evidence Respondent's Exhibits 1 through Composite 4.

By way of Nursing Home Transfer and Discharge Notice dated November 10th, 2014, the respondent notified the petitioner that she was to be discharged from the facility effective December 10th, 2014, due to non-payment of her bills for services. On November 18th, 2014, the petitioner requested a hearing to challenge the respondent's action, and the request is timely filed.

FINDINGS OF FACT

1. The petitioner has been a resident of respondent's facility since approximately January 27th, 2014. Upon admission to the facility, the first 21 days (which amounted to January and February 2014) of the petitioner's stay were covered by Medicare co-payments.

2. On April 28th, 2014, the petitioner was notified by the Department of Children and Families (DCF) that her application for Medicaid benefits dated March 11th, 2014 had been approved effective March 2014. Based on the petitioner's income, Social Security in the monthly amount of \$2171, the petitioner's monthly obligation to the facility would be \$2,136. (See Respondent's Composite Exhibit 4, second page.) The petitioner's monthly obligation decreased to \$2,067 effective July 2014. (See Respondent's Composite Exhibit 4, third page.)

3. The petitioner's monthly obligation of \$2,136 was to be paid from her Social Security check. The Social Security Administration had another (undisclosed) member of the petitioner's family as the registered payee of the petitioner's funds.

4. The facility did not receive payments for the months of March 2014, April 2014, and May 2014. The facility received a full month's payment (\$2,136) in June 2014, and again, no payment in July 2014. The facility received \$2,172 in August 2014; \$2,172 in September 2014; \$2,166 in October 2014; \$2,169 in November 2014, and \$2,169 in December 2014. As of December 22nd, 2014, the outstanding balance owed by the petitioner to facility was \$7,962. (See Respondent's Exhibit 2.)

5. Upon suspicion of misuse of the petitioner's Social Security funds, the petitioner's son made arrangements with SSA to make himself the payee of the petitioner's Social Security income effective June 2014. For reasons not clear at the hearing, the original family member became payee effective July 2014, and again, no payment was made to the facility. Effective August 2014, the family member was again, removed as payee. Since action was taken to remove the original payee, monthly payments have been made (in most months, more than the monthly obligation); however, the outstanding balance described above remains. (See Respondent's Exhibit 2.)

6. The respondent did not submit into evidence any monthly bills or statements indicating the accruals of the past due balances. The respondent stated that the petitioner's son was verbally made aware of the past due balances.

7. The petitioner's son stated that SSA agreed to investigate the allegations of misuse of funds, and if proven to be true, SSA would reimburse the facility in the past-

due amount. In an effort to facilitate SSA's investigation, the petitioner's son needed to provide SSA with a detailed statement from the facility indicating the months of non-payments.

8. On August 7th, 2014, the petitioner's son sent to an employee of the facility's finance department an electronic mail stating, in part, "Good morning, can you please provide a current statement for [REDACTED]" [Sic.] (See Petitioner's Composite Exhibit, 4th page.) The petitioner alleged that he did not receive any response to this request.

9. On October 29th, 2014, the petitioner's son sent to the facility an electronic mail stating, in part, "Please send a statement for [REDACTED] I am forwarding to [S]ocial [S]ecurity." (See Petitioner's Composite Exhibit 1, 5th page.)

10. On November 14th, 2014, the petitioner's son sent an electronic mail to the facility's director of admissions that states, in part, "Per our conversation, this is my e-mail. Please have a statement for me." (See Petitioner's Composite Exhibit 1, 6th page.)

11. At the hearing, the respondent explained that the employee of the finance department to whom the petitioner's e-mails had been addressed is no longer with the facility, and therefore, the respondent was unable to address the lack of response to the petitioner's correspondence. The respondent agreed to have an updated statement detailing the missing payments available for the petitioner within the week following the hearing.

12. The respondent submitted into evidence a statement dated November 30th, 2014 indicating a balance of \$16,061.00, comprised of a past due balance of \$13,994 in past due payments, plus payment for December 2014, payable no later than December 10th, 2014.

13. The respondent explained that it would withhold any action to discharge the petitioner from the facility if the petitioner's son were willing to sign a promissory note to pay the facility a minimum of \$500 per month toward the outstanding balance. The petitioner's son declined this option, contending that this arrangement would pose a hardship for him. The petitioner's son also reiterated that SSA had indicated that it would reimburse the facility for the months of non-payment once the above-mentioned allegations of misuse of funds could be proven. Therefore, the petitioner should not be held responsible for the outstanding balance.

14. The petitioner remains in respondent's facility pending the hearing decision.

CONCLUSIONS OF LAW

15. 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. Statutes.

16. Florida Statute 400.0255, Resident transfer or discharge; requirement and procedures; hearing, informs at (15)(b) that the facility's burden of proof must be clear and convincing evidence.

17. Federal Regulations appearing at 42 C.F.R. § 483.12, set 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.

18. The totality of the evidence demonstrates that neither the petitioner nor her representative (her son) was given reasonable and appropriate notice to pay, as the only bill for services that was submitted into evidence was dated November 30th, 2014, which is 20 days beyond date the discharge notice was issued. Consequently, the nursing facility has failed to establish by a standard of clear and convincing evidence that the petitioner has, after reasonable and appropriate notice, failed to pay his share of the costs. Therefore, the hearing officer does not uphold the respondent's intention to discharge the petitioner at this time.

DECISION

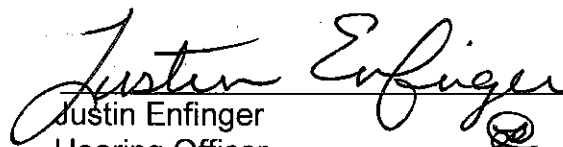
Based upon the foregoing Findings of Fact and Conclusion of Law, the petitioner's appeal is GRANTED. The facility may not proceed with this current Discharge Notice.

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 2nd day of March, 2015,

in Tallahassee, Florida.



Justin Enfinger
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