

**FILED**

MAR 31 2015

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

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DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 15N-00008

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-reference matter on February 10, 2015 at 9:00 a.m., at [REDACTED], Florida.

APPEARANCES

For the petitioner: [REDACTED], pro se

For the respondent: [REDACTED], Nursing Home Administrator

STATEMENT OF ISSUE

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services based on the federal regulations at 42 C.F.R. § 483.12. A Nursing Home Transfer and Discharge Notice was issued on January 8, 2015.

**PRELIMINARY STATEMENT**

The petitioner and the respondent's representative appeared in person.

Witnesses for respondent appearing in person was [REDACTED] Regional Manager-Medicaid Done Right, [REDACTED], nursing home (NH) clinical social worker, [REDACTED] NH manager assistant [REDACTED] NH unit manager, and [REDACTED] [REDACTED] NH business manager. Observing in person was Maritza Ramos-Pratt, ombudsman.

By Discharge Notice dated January 8, 2015, the respondent notified the petitioner that he was to be discharged from the nursing facility effective February 7, 2015, due to non-payment of bill for services.

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

No representative from AHCA was present for the hearing.

The petitioner did not present any exhibits. The respondent presented seven exhibits, which were accepted into evidence and marked as Respondent Composite "1".

**FINDINGS OF FACT**

1. The petitioner entered the facility on December 1, 2014. Medicare paid for the petitioner's stay up to 100 days.
2. The facility has attempted to assist the petitioner with applying for Institutional Care Program (ICP) Medicaid benefits; however, petitioner has failed to provide information on his asset (bank accounts).
3. On January 1, 2015, the respondent sent the petitioner a billing statement for the periods of December 20, 2014 through December 31, 2014 and January 1, 2015

through January 31, 2015. Since January 2015, the petitioner has not made any payments towards his patient responsibility. The billing statement in January 1, 2015 indicated a past due amount of \$9,761.00

4. The respondent provided their business notes documenting the numerous attempts made in trying to collect monies owed to the facility for the petitioner's stay. The respondent also provided the petitioner the January 2015 billing statement notifying him of his outstanding balance. Said billing statement showed the current balance owed to the facility is \$9,761.00.

5. Petitioner did not dispute the facts; petitioner explained he no longer wanted to stay at the facility because he is always in pain. Additionally he explained he would like to stay at the facility and pay the amount owed once he receives the medications he has been requesting. As of the date of this hearing, no payment arrangements have been made.

6. At the hearing, the administrator attempted to offer a payment agreement with the petitioner. However, petitioner reiterated on the record his lack of intention to make any payment arrangement until his pain medications are returned back to him. The administrator explained the medical factor is irrelevant to the outstanding balance to the facility.

7. The notice lists the petitioner's son [REDACTED] address as the optional location to which the petitioner can be discharged too.

8. Petitioner explained there is no power of attorney that controls his income and assets. The next of kin to the petitioner is his son [REDACTED]. According to testimony numerous attempts to contact said son, however there was no response.

Petitioner explained he has not spoken to his son in over three months. The petitioner remains in the facility pending the hearing decision.

### CONCLUSIONS OF LAW

9. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 400.0255(15), Fla. Stat. In accordance with said 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.

10. The Code of Federal Regulation limits the reasons 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 the 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;

11. 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. As of the date of the hearing, the petitioner's balance owed to the facility was \$9,761.00. This fact is not disputed.

12. 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. 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.

13. Establishing 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.

14. 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 31 day of MARCH, 2015,

in Tallahassee, Florida.

  
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 Respondent  
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