

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

**FILED**

JUN 29 2015

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 15N-00044

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

The undersigned convened an administrative hearing in the above-referenced matter on June 5, 2015 at 10:35 a.m. at the [REDACTED] in Bradenton, Florida.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: [REDACTED] Administrator

**ISSUE**

At issue is the facility's intent to discharge petitioner due to non-payment of a bill for services. A Nursing Home Transfer and Discharge Notice was issued on April 9, 2015. 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**

Petitioner was present and testified. Petitioner submitted no documentary evidence. Respondent was represented by [REDACTED] with the [REDACTED] Nursing Home (hereafter "facility" or "Respondent"). Respondent presented three witnesses who testified: [REDACTED] Director of Social Services; [REDACTED] Business Office Manager; and [REDACTED] Case Manger. Respondent submitted four exhibits, which were accepted into evidence and marked as Respondent's Exhibit "1"- "4". The undersigned submitted one exhibit, which was accepted into evidence and marked as Hearings Officer's Exhibit 1.

Although the record was not left open, on June 5, 2015, the respondent submitted additional documentation, which was accepted and marked as Respondent's Exhibit "5".

**FINDINGS OF FACT**

1. Petitioner entered the facility on September 9, 2014. Medicare paid for the petitioner's stay at the facility, in full, through October 4, 2014.
2. The facility discharged petitioner on October 28, 2014, and readmitted him on October 29, 2014. The facility again discharged petitioner on November 16, 2014, and readmitted him on November 17, 2014.
3. Petitioner has been a full time resident at the facility since November 17, 2014.
4. On January 26, 2015, a Notice of Case Action from the Department of Children and Families was mailed to the facility informing them petitioner's patient responsibility would be \$742.99 per month from October 2014 through December 2014. The notice

further informed the facility patient's responsibility would be \$806 per month from January 2015 and ongoing.

5. On April 9, 2015, the facility provided petitioner a Notice of Transfer and Discharge. The reason for discharge was the bill "your bill for services at the facility has not been paid after reasonable and appropriate notice to pay" (Respondent's Exhibit 1).

6. On April 15, 2015, a Notice of Case Action was mailed to the facility informing them petitioner's patient responsibility would be \$742.99 per month from October 2014 through December 2014. The notice further informed the facility patient's responsibility would be reduced to \$758 per month from January 2015 and ongoing.

7. Effective May 5, 2015, the facility billed petitioner the following amounts for the following months:

\$575.22 for October 4, 2014 through October 28, 2014  
\$71.90 for October 29, 2014 through October 31, 2014  
\$371.50 for November 1, 2014 through November 16, 2014  
\$346.73 for November 17, 2014 through November 30, 2014  
\$742.99 for December 1, 2014 through December 31, 2014  
\$758.00 per month for January 1, 2015 through June 30, 2014

8. Effective May 5, 2015, the petitioner paid the facility two payments toward his outstanding balance:

\$758.00 on January 6, 2015  
\$1,510.00 on March 4, 2015

9. As of May 5, 2015, the petitioner's outstanding balance to the facility was \$3,630.34.

10. As of June 3, 2015, the petitioner's outstanding balance to the facility was \$4,388.34.

11. Petitioner asserted he paid cash to the facility sometime in November 2014. He does not remember the date or the amount, but he remembers he went to the ATM and withdrew money to pay the facility. Petitioner did not submit a receipt of his cash payment to the facility for the month November 2014 into evidence.

12. Respondent asserted that a search of the book containing all cash receipts indicated no evidence of petitioner making any cash payments to the facility in the month November 2014.

13. Petitioner does not understand how he can owe \$4,388.34 to the facility as he believed that Medicare paid the facility for the period of September 9, 2014 through October 31, 2014.

14. Petitioner asserted that after he made the \$1,510.00 payment to the facility, he withdrew \$500.00 believing the balance on his card was correct. However, he further asserted the facility did not timely withdraw the funds; therefore, his bank account was over drafted \$500.00 and he was unable to make any more payments to the facility. Petitioner also asserted he cannot live on \$105.00 per month.

#### **PRINCIPLE OF LAW AND ANALYSIS**

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 § 400.0255(15), Fla. Stat. In accordance with that section, this Order is the final administrative decision of the Department of Children and Families.

16. The Code of Federal Regulation limits 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;

16. Petitioner made two payments to the facility during the period of October 2014 through June 2015. His two payments totaled \$2,268. Although petitioner asserted he made a cash payment to the facility in November 2014, no evidence was submitted to indicated the date and amount of the cash payment. The facility billed petitioner his patient responsibility each month for the period of October 2014 through June 2015. As of June 3, 2015, the petitioner's balance to the facility is \$4,388.34.

17. The hearing officer concludes that the facility has given petitioner reasonable and appropriate notice of the need to pay for his stay at the facility. Furthermore, petitioner has not made to the facility reasonable and adequate financial arrangements to pay his outstanding balance. 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.

18. One step in the discharge process is establishing that the reason for a discharge is lawful. Furthermore, the nursing home must 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 location issues. The hearing officer only considers whether the discharge is for a lawful reason.

11. 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**

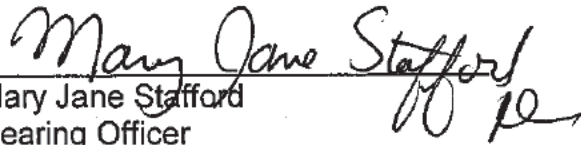
This appeal is DENIED, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The facility may proceed with the discharge action in accordance with the Agency for Health Care Administration's rules and guidelines.

#### **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 29<sup>th</sup> day of June, 2015,

in Tallahassee, Florida.

  
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 Respondent  
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