FILED
MAY 15 2007
OFFICE OF APPEAL HEARING
DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 07N-00059

PETITIONER,

Vs.

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened at 3:37 on April 25, 2007 at the nursing facility. The petitioner was not present but was duly represented by her daughter, . The respondent was represented by administrator , with testimony available from: , social services; therapy manager; and by telephone, , financial service manager. The record remained open a few days to receive additional information from the petitioner. Upon receipt, it was labeled Petitioner's Exhibit 2, was shared with the respondent under separate order, and the record was closed.

ISSUE

At issue was whether or not notice of intent to discharge was correct based upon nonpayment following reasonable and appropriate notice to pay. The facility would have the burden of proof.

FINDINGS OF FACT

1. The petitioner has been institutionalized at the nursing care facility due to significant health problems since April 26, 2006.

2. Therapies such as speech therapy and wheelchair instruction occurred and were discontinued by June 26, 2006. Following admission, and while receiving therapies, Medicare coverage existed. As of June 26, 2006, Medicare eligibility stopped.

3. In addition to Medicare, the petitioner had medical insurance, but facility financial staff noted that the contract between facility and insurance carrier precluded their submitting claim for coverage if Medicare coverage (part A) ended, which it had. Therefore, insurance reimbursement did not occur once Medicare coverage ended. During hearing, the daughter requested the facility to submit an insurance claim for additional coverage, but facility staff declined to accommodate that request.

4. Bills for care between late June 2006 and the end of March 2007 were Respondent's Exhibits 4 and 5. These bills were issued to the petitioner's representative. Facility notes about payment problem were Respondent's Exhibit 2. The primary problem was alleged bill nonpayment for services between June 26 and August 1, 2006. Effective after that date, Medicaid coverage occurred. As of March 16, 2007, which was the date of discharge notice, balance owed was "10,146.64" shown in Respondent's Exhibit 1.

5. As of date of hearing, balance owed was $8232.99. Although bills reflected a somewhat higher figure, anticipated Medicaid reimbursement reduced amount owed to the $8232.99 figure, according to testimony of the administrator.

6. Upon receipt of hearing request (Petitioner's Exhibit 1), the Office of Appeal Hearings directed a survey be conducted by the Agency for Health Care Administration (AHCA). That was done on April 3, 2007 with no deficiency found. While the survey might not be controlling for hearing purposes it could be relevant. The document was shared with the parties and labeled Hearing Officer Exhibit 1.

7. Location for intended discharge is to another licensed nursing facility in the same county. The petitioner's representative did not believe the new intended location was as highly rated as She did not want the petitioner to be discharged to the alternative facility and she wanted discharge, if necessary, to be close to her home. staff was willing to assist in locating another facility, but intent to discharge remained.

8. The petitioner does not have funds available with which to pay the bill. There was some dispute about a $1783 check. However, with or without successful payment of that figure, the facility did not wish to rescind discharge intent, based upon contention that a significant unpaid balance remained.

CONCLUSIONS OF LAW

Jurisdictional boundaries to conduct this hearing have been assigned to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. Additionally relevant is § 483.12 informing as follows:

Admission, transfer and discharge rights.

(a) Transfer and discharge--

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same

physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(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...

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. ...

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--
(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
...
(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following: ...
(iii) The location to which the resident is transferred or discharged;
(iv) A statement that the resident has the right to appeal the action to the State;
(v) The name, address and telephone number of the State long term care ombudsman;
...

Findings of fact show the facility repeatedly issued billing statements. Some payments were received in past months, with Medicaid coverage and some insurance coverage as well, and those are noteworthy factors. Moreover, the petitioner is not known to have the personal funds to pay the bill and her representative would prefer her to stay where she is because she believes it a superior placement. However, evidence has firmly established that insufficient payment occurred and past payments did not achieve resolution of the problem. Facility administration does not wish to have care

and placement continued under current financial circumstances. There is no regulation that would require a facility to retain a resident under such circumstances.

Difficulties achieving insurance coverage, anticipation of insurance coverage approval, lack of funds, as well as obstacles encountered by the petitioner do not provide remedy for the problem at hand. Rating of one facility as superior to another does not provide a remedy for this sort of problem so long as the new location is acceptably certified/licensed by the appropriate administrative agencies. Based upon findings, it must be concluded that sufficient payment simply has not occurred. Under regulations, adequate payment for continuing stay at a nursing facility is required. It is concluded that reasonable and appropriate notice to pay occurred and was followed by insufficient payment for services rendered. Despite the unfortunate circumstances and the understandable desire to remain at a facility which has provided good care, discharge to another licensed nursing facility has been justified under regulatory requirements.

DECISION

The appeal is denied. Intent to discharge is upheld.

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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The party 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 15th day of May, 2007, in Tallahassee, Florida.

J W Alper
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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MAY 23 2007
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 07N-00044

PETITIONER,

Vs.

CASE NO.

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was held before the undersigned hearing officer on April 6, 2007, at 1:27 p.m., at the nursing facility. The facility was represented by the business office manager, who also testified. The petitioner was not present, but was represented by his grand-daughter and power of attorney, who also testified. The facility administrator, appeared as a witness for the facility. facility social services director, also appeared as a witness for the facility.

ISSUE

At issue is the correctness of the facility's discharge action of February 16, 2007, to discharge the petitioner based on non-payment. The nursing facility has the burden of proof.

FINDINGS OF FACT

1. The petitioner was admitted to the respondent nursing facility on October 4, 2006. The petitioner's representative grand-daughter and power of attorney, provided care prior to the petitioner's nursing home admission.
2. applied for Institutional Care Program and Medicaid (ICP) Medicaid benefits for the petitioner three times since the petitioner was admitted to the nursing home. Each of these applications was denied. The petitioner was not approved for ICP Medicaid benefits as of the hearing date.
3. In July or August 2006, the petitioner transferred one-half ownership of his home to by quit-claim deed. It is not known whether or not this transfer action may impact potential ICP Medicaid eligibility.
4. The petitioner owes $25,340.24 for facility room and board charges alone, through the period ending March 16, 2007. has received billing statements from the facility advising of amounts due. had not made any payment on the past due balance as of the hearing date. However, proposed a partial settlement of $2,000, and the petitioner's Social Security and Veteran's Administration checks to rescind

the discharge action. The facility did not accept this partial settlement offer.

5. The petitioner's representative was provided notice of the intended discharge action on February 16, 2007. The discharge location is listed as the petitioner's prior residence, which is also the joint residence of [redacted] believes the petitioner can not receive needed care at their joint residence.
6. The petitioner remains a resident of the facility pending the outcome of this instant appeal decision. The petitioner desires to remain at this facility.

CONCLUSIONS OF LAW

The jurisdiction to conduct this hearing is conveyed to the Department by Federal Regulations appearing at 42C.F.R.§431.200. Federal Regulations limit the reasons for which a Medicaid or Medicare certified nursing facility may discharge a patient. In this case, the discharge notice indicates the petitioner is to be discharged from the respondent/facility because of non-payment. Federal Regulations do permit a discharge for this reason, as set forth at 42C.F.R. §483.12(a)(2)(v), as follows:

> "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;.."

The Findings of Fact establish that the petitioner has not been determined eligible for ICP Medicaid benefits. The petitioner had an unpaid past due balance of $25,340.24 for room and board alone, owed to the facility as of March 16, 2007. The facility did not accept the petitioner's offer of partial settlement of this past due balance. Findings further establish that the petitioner's representative grand-daughter received billing statements during the petitioner's stay at the facility. Therefore, it is concluded that the petitioner received "reasonable and appropriate" notice to pay for his stay at the facility, as required in the language of the above federal regulation.

The Code of Federal Regulations at 42 C.F.R.§483.12(a)(6)(iii) requires the content of the discharge notice to include "the location to which the resident is transferred or discharged." Further, paragraph (a)(7) entitled "Orientation for transfer or discharge" shows that the facility "must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility." The facility listed the petitioner's prior community home address as the discharge location, which is also the address of his grand-daughter.

In summary, the respondent nursing facility has valid reason to discharge the petitioner based on non-payment. However, the nursing facility must provide the petitioner sufficient preparation and orientation to a suitable discharge location before proceeding with this discharge action. Therefore, the nursing facility is concluded to have met its burden of proof in this specific discharge action based on non-payment.

DECISION

The appeal is denied. The facility is concluded to have met its burden to discharge the petitioner based on non-payment. However, the respondent facility must provide the petitioner sufficient preparation and orientation to a suitable discharge location before proceeding with this discharge action.

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 23rd day of May, 2007,

in Tallahassee, Florida.

Jim Travis
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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MAY 14 2007
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 07N-00024

PETITIONER,

Vs.

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 25, 2007, at 2:45 p.m., in Miami, Florida. The petitioner was not present but was represented by his wife, . The respondent was represented by tt, executive director, . A continuance was granted on behalf of the petitioner for a hearing previously scheduled on March 28, 2007.

ISSUE

At issue is the January 26, 2007 action by the facility proposing to discharge the petitioner because his health has improved sufficiently so that he no longer needed the services provided by the facility. The respondent has the burden of proof to establish that the discharge action is consistent with the federal regulations.

FINDINGS OF FACT

The petitioner is sixty eight years old and has been a resident of since December 2006. He was diagnosed with Cerebral Vascular Accident (CVA) and dementia. The nursing facility, on January 26, 2007, issued a discharge notice to advising him that he would be discharged on February 26, 2007, as he no longer needed the services of a skilled nursing facility. The discharge location given was l

The testimony and documentation submitted at the hearing indicates that the petitioner is no longer in need of nursing care. The respondent explained that there is no activity of daily living that he cannot perform. The respondent noted that the petitioner ambulates without assistance, feeds himself, dresses himself, bathes himself, follows simple commands and goes to bed when he wants to. In addition the respondent explained that from the medical management perspective the petitioner does not have any medical criteria that require professional monitoring. The respondent acknowledged that he requires supervision for his dementia and for his medication, but asserts that this could be provided by an ALF.

The petitioner's representative feels that her husband needs medical care. She purported that she does not know what is wrong with her husband because nobody has given her any information concerning his medical condition. She explained that she has been unable to speak with her husband's attending physician. The petitioner's representative expressed that she would prefer for him to stay at this facility, but if this is

not possible, she needs extra time to look for another location. The petitioner's representative feels that an ALF is not a proper discharge location for her husband.

CONCLUSIONS OF LAW

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 in accordance with Code of Federal Regulation at 42 C.F.R. § 483.12(a)(2)(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...

The requirements for documentation are set forth in the Code of Federal Regulation at 42 C.F.R. § 483.12(a):

> (3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by-
> (i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section...

The resident's clinical record must be documented and that documentation must be made by the resident's physician when transfer or discharge is necessary when health has improved sufficiently so the resident no longer needs the services provided by the facility. The petitioner is no longer receiving skilled care and the petitioner's treating physician documented the clinical record that the petitioner may be discharged. Based upon the evidence, lack of evidence to the contrary and the above cited authorities,

Center's action to discharge the petitioner was in accordance with Federal Regulations. The petitioner may be discharged

DECISION

This appeal is denied as Center's action to discharge the petitioner was in accordance with Federal Regulations. The facility may proceed with the discharge.

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 14th day of May, 2007, in Tallahassee, Florida.

Alfredo Fernandez

Alfredo Fernandez
Hearing Officer
Building 5, Room 203
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850-488-1429

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MAY 11 2007

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 07N-00039

PETITIONER,

Vs.

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 27, 2007 at 10:15 a.m., at the Jacksonville, Florida. The petitioner was not present. However, he was represented by his brother, at the hearing. The nursing facility was represented by Director of Nursing, , Social Service Director and , LPN Unit Manager.

ISSUE

At issue was the facility's action to transfer the resident to a hospital. The petitioner also wished to appeal the respondent's action not to readmit the petitioner to the facility when he was ready for discharge from the hospital. As will be discussed in

the conclusions of law, this is not an issue that is within the jurisdiction of this hearing officer.

FINDINGS OF FACT

The petitioner was admitted to the nursing home in August 2001. On January 23, 2007, the petitioner was transferred to the hospital based on physician's orders for a medical emergency. There was no evidence submitted that would show the transfer was not a medical emergency.

There was no notice of transfer provided with the transfer to the hospital.

CONCLUSIONS OF LAW

Jurisdiction to conduct this type of hearing is conveyed to the Department by federal regulations appearing 42 C.F.R. §431.200. These regulations limit the reasons for which a Medicaid or Medicare certified nursing facility may discharge a patient. It states in part:

> This subpart--
> (c) Implements sections 1919(f)(3) and 1919(e)(7)(F) of the Act by providing an appeals process for any person who--
> (1) Is subject to a proposed transfer or discharge from a nursing facility...

Additionally 42 C.F.R. §483.12(a)(1) states in part:

> Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not.

These regulations only provide for a hearing of actions to transfer or discharge a resident. The language does not give the hearing officer the authority to review an action of the facility related to its bed hold policy in admitting or readmitting a resident. Concerns relating to a bed hold and admitting or readmitting a resident are beyond the

scope of the hearing officer's jurisdiction and would more properly be addressed to the Agency for Health Care Administration (AHCA) for resolution.

The regulation 42 C.F.R. §483.12, further states in part:

> (a) Transfer and discharge--...
> (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...

The findings show that the petitioner was transferred to a hospital based on physician's orders. The transfer was an allowable transfer under the regulations.

The need for a transfer notice is addressed at 42 C.F.R. §483.12(a) as follows:

> (4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--
> (i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand...
> (5) Timing of the notice.
> (ii) Notice may be made as soon as practicable before transfer or discharge when--
> (A) the safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section;..
> (D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(2)(i) of this section; or...

Although 42 C.F.R. §483.12 requires the facility to issue a notice of transfer at the time of transfer, or as soon as possible thereafter, the transfer was correct under the regulations. The failure to provide the notice of transfer was a harmless error.

DECISION

This appeal is denied as the action to transfer the resident was in accordance with controlling regulations.

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 11th day of May, 2007,

in Tallahassee, Florida.

James Abdur-Rahman
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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DEPT OF CHILDREN & FAMILIES

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

APPEAL NO. 07N-00029

PETITIONER,

Vs.

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 19, 2007, at 9:00 a.m., in Deerfield Beach, Florida. The petitioner was not present. She was represented by her niece . Also present was Gloria Goodman, from the Long Term Ombudsman Council. The respondent was represented by David Wingrove, administrator of the Home. Also present from the facility was s, regional director for health services, , director of social services, director of nursing, and

ISSUE

The petitioner is appealing the facility's action of not giving her the option of returning to the facility after she voluntarily left. The petitioner has the burden of proof.

FINDINGS OF FACT

On January 25, 2007, the petitioner was provided with a notice informing her that she would be transferred from the . because her needs could not be met at that facility. According to the information provided at the hearing, she entered the facility on January 2, 2007, and she has Alzheimer's disease. A preliminary order was done to dismiss the appeal because before the petitioner was transferred from the facility, she voluntarily left on March 3, 2007. The appeal was not dismissed because the petitioner's representative objected to the dismissal, and requested for the hearing to take place.

Included in the evidence is a copy of a page of Nurse's Notes describing that the petitioner's representative voluntarily took her out of the facility with her belongings on March 3, 2007. The petitioner's representative did not disagree with this at the hearing. According to her, the petitioner is in an Assisted Living Facility in West Palm Beach, Florida, and she requested that the facility give her an option of returning to the facility. When asked if it would be ordered for the petitioner to return to the facility, the petitioner's representative's response was that she would talk it over with family members to decide if she would return to the facility.

CONCLUSIONS OF LAW

The jurisdiction to conduct these hearings is conveyed to the Department by Federal Regulations appearing at 42 C.F.R. § 431.200. These hearings differ from most hearings conducted by the Department's hearing staff, as the Department is not party to the proceedings. The matter is a private dispute between two parties and not a

circumstance where the individual's substantial interest has been affected by the Department's action.

The Federal Regulations at 42 C.F.R. § 483.206, states in part:

(b) A resident has appeal rights when he or she is transferred from—
(1) A certified bed into a noncertified bed; and
(2) A bed in a certified entity to a bed in an entity which is certified as a different provider.
(c) A resident has no appeal rights when he or she is moved from one bed in the certified entity to another bed in the same certified entity.

The petitioner received a notice informing her that she was going to transferred from the facility, however she voluntarily left the facility before the transfer took place. According to the petitioner's representative, she is in an Assisted Living Facility, and she requested that the facility give her an option of returning to the facility. When asked if it would be ordered for the petitioner to return to the facility, the petitioner's representative's response was that she would talk it over with family members to decide if she would return to the facility.

A proper appeal is when the petitioner objects to a transfer or discharge, however since the facility did not transfer or discharge the petitioner, it is determined that the criteria to appeal has not been met. The hearing proceeded to allow the parties an opportunity to be heard. A request for the facility to give the petitioner an option of returning after voluntarily leaving, is not an issue that can be appealed, therefore the request for a hearing is denied.

DECISION

This appeal is denied.

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 1st day of May, 2007,

in Tallahassee, Florida.

Stuart Imberman

Stuart Imberman
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
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DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 06F-06700

PETITIONER,

Vs.

CASE NO. 1222007312

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
DISTRICT: 07 Brevard
UNIT: 88981

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 29, 2007, at 9:00 a.m., in Cocoa, Florida. The petitioner passed away in November 2006. His son , was present and was represented by Billy Thomas, Esq. petitioner's ex-wife, was also present. Stacy Robinson, senior attorney, represented the respondent. David Jeczala, economic specialist I, and Bobbie Van Cott, economic specialist supervisor, were witnesses for the respondent.

Four continuances were granted for prior scheduled hearings: three for the petitioner and one for the respondent.

An Order of Prehearing Instructions was issued on December 5, 2006. On March 5, 2007, the undersigned received the respondent's unilateral Response to Order of Prehearing Instructions and Proposed Prehearing Statement. On March 19, 2007,

the undersigned received the Respondent's Amended Response to Order of Prehearing Instructions and Proposed Prehearing Statement. No response was received from the petitioner.

ISSUE

The Department took action on September 18, 2006 to change the Medicaid Institutional Care Program patient responsibility to $1787.22 effective October 2006. The petitioner's son is appealing the action taken by the Department to not include alimony payments as a deduction from his father's patient responsibility. He is seeking reimbursement of approximately $6000 in withheld alimony payments to his mother.

PRELIMINARY STATEMENT

The petitioner's son was the power of attorney for his mother and his father. When the Department determined the petitioner's patient responsibility, it did not allow a deduction for future alimony. The petitioner's representative believes that the Department ignored a court order by forcing his son to choose to not pay his mother's alimony so he could pay his father's patient responsibility to the nursing facility. This is not the venue to seek relief for reimbursement of monies paid to a nursing facility. A challenge of the Department's rule is not appropriate for this venue. A rule challenge could be requested from the Division of Administrative Hearings.

The undersigned has jurisdiction in matters affecting Medicaid eligibility. There are no months of ICP ineligibility or outstanding medical bills to be addressed in this appeal. Mr. [redacted] is the Medicaid recipient and is therefore the sole focus of this appeal. A review of the amount of the petitioner's patient responsibility will be the only issue reviewed in this appeal.

FINDINGS OF FACT

On August 2, 2005, an application for Institutional Care Program (ICP) and Medicaid was submitted on the petitioner's behalf. His marital status was listed as divorced. His income was from Social Security and two additional pensions. His assets were listed as a savings account with a balance of $7373.27, prepaid cremation at [redacted] Funeral Home, and Medicare Supplemental Insurance at United Teacher's Association Insurance Company. In Section G, Expenses, he listed court ordered alimony he paid to his ex-wife of $650 per month (Petitioner's Exhibit 1).

The petitioner's asset values exceeded Program standards for ICP benefits. He prepaid alimony until February 2, 2006, which reduced his assets to allow ICP eligibility.

The petitioner's patient responsibility was adjusted on several occasions either because of a change in income or his Medicare supplemental premium amount. On September 18, 2006, the Department sent a Notice of Case Action informing the petitioner that his ICP patient responsibility was $1787.22 effective October 2006. The new amount was determined because of a change in his income (Respondent's Exhibit 1).

To determine the ICP patient responsibility, the Department considered the petitioner's income of Social Security of $1535, and $178.57 from an American General pension, in addition to $315 he received from Central States Southeast and Southwest Areas Pension Fund. His total gross income was $2028.57. A $35 personal needs allowance and $206.35 for a Medicare supplemental insurance policy was subtracted to leave a patient responsibility of $1787.22 (Respondent's Exhibits 1 and 5). Deductions are allowed for the personal needs allowance and uncovered medical expenses

according to the Respondent's Exhibit 4, an excerpt from the Department's Integrated Public Assistance Policy Manual, passage 2640.0117.

The petitioner's representative believes that if alimony can be used to reduce an asset, it should also be used to reduce a patient responsibility. He believes that if the alimony payments were factored in the patient responsibility, alimony would have been paid after February 2, 2006. He challenges the validity of the rule. He believes that an ex-spouse should have the same rights as a community spouse when determining available income.

CONCLUSIONS OF LAW

Fla. Admin. Code 65-2.056 Basis of Hearings, states:

> The Hearing shall include consideration of:
> (1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance.
> (2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments.
> (3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

Fla. Admin. Code 65A-1.701, Definitions, defines a commuity spouse as:

> (6) Community Spouse: The non-institutionalized legal spouse of an institutionalized person.

Fla. Admin. Code 65A-1.701 defines patient responsibility as:

> (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.

Fla. Admin. Code 65A-1.710, SSI-Related Medicaid Coverage Groups, defines ICP as:

> (2) Institutional Care Program (ICP). A coverage group for institutionalized aged, blind or disabled individuals (or couples) who would be eligible for cash assistance except for their institutional status and income as provided in 42 C.F.R. §§ 435.211 and 435.231 Institutional benefits include institutional provider payment or payment of Medicare coinsurance for skilled nursing facility care.

Fla. Admin, Code 65A-1.713, SSI-Related Medicaid Income Eligibility Criteria, states in part:

> (2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100, et seq., including exclusionary policies regarding Veterans Administration benefits such as VA Aid and Attendance, unreimbursed Medical Expenses, and reduced VA Improved pensions, to determine what counts as income and what is excluded as income with the following exceptions:
> (a) In-kind support and maintenance is not considered in determining income eligibility.
> (b) Exclude total of irregular or infrequent earned income if it does not exceed $30 per calendar quarter.
> (c) Exclude total of irregular or infrequent unearned income if it does not exceed $60 per calendar quarter.
> (d) Income placed into a qualified income trust is not considered when determining if an individual meets the income standard for ICP, institutional Hospice program or HCBS.
> (e) Interest and dividends on countable assets are excluded, except when determining patient responsibility for ICP, HCBS and other institutional programs.

20 C.F.R. §416.1123, How we count unearned income, states in relevant part:

> (a)(2) We also include more than you actually receive if amounts are