

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

[REDACTED]

APPEAL NO. 15N-00094

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened two administrative hearings in the above-referenced matter on October 9, 2015 at 1:01 p.m.; and on January 12, 2016 at 10:07 a.m. at the [REDACTED]

**APPEARANCES**

For the Petitioner: [REDACTED] petitioner's wife

For the Respondent: [REDACTED] Executive Director  
[REDACTED] Esq.

**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 August 25, 2015. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. § 483.12.

### **PRELIMINARY STATEMENT**

At both hearings, the petitioner was not present and was represented by [REDACTED] who testified. At the January 2016 hearing, the petitioner submitted one exhibit, which was accepted into evidence and entered as Petitioner's Exhibit "1". At the October 2014 hearing, the respondent was represented by [REDACTED] with [REDACTED] (hereafter "facility" or "Respondent"). At the October 2014 hearing, the respondent presented one witness who testified: [REDACTED] business office Manager with [REDACTED]. At the January 2016 hearing, the respondent was represented by [REDACTED] Esq. At the January 2016 hearing, the respondent presented two witnesses who testified: [REDACTED] Executive Director and [REDACTED] Medicaid Billing Specialist both with [REDACTED]. At the October 2014 hearing, the respondent submitted one exhibit, which was accepted into evidence and entered as Respondent's Exhibit "1". At the January 2016 hearing, the respondent submitted four exhibits, which were accepted into evidence and entered as Respondent's Exhibits "2" – "5".

The record was left opened until January 14, 2016 to allow the petitioner to submit additional evidence. On January 12, 2016, the petitioner submitted the additional evidence, which was entered into evidence as Petitioner's Exhibit 2. The record closed on January 14, 2016.

### **FINDINGS OF FACT**

1. Petitioner entered the facility on July 11, 2014. Medicare paid for the petitioner's stay at the facility, in full, through August 25, 2014.

2. The facility discharged petitioner on August 25, 2014, and readmitted him on August 28, 2014. Petitioner has been a full time resident at the facility since August 28, 2014.

3. Applications for Institutional Care Program (ICP) Medicaid benefits were submitted to the Department of Children and Families on October 9, 2014; December 9, 2014; January 27, 2015; March 24, 2015; May 27, 2015; June 30, 2015; August 24, 2015; and November 30, 2015. All aforementioned ICP Medicaid applications were denied.

4. On June 23, 2015, the Department of Health Division of Disability Determination (hereafter "DDD") determined petitioner disabled effective February 1, 2015. The Medicaid date of application DDD utilized in their determination was May 27, 2015.

5. On August 25, 2015, the facility provided petitioner a Notice of Transfer and Discharge. The reason for discharge was "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay".

6. On December 30, 2015, a Notice of Case Action from the Department of Children and Families was mailed to the facility informing them petitioner's December 1, 2015 Medicaid application was approved and petitioner's patient responsibility would be \$0 per month from December 1, 2015 and ongoing.

7. Effective January 1, 2016, the facility billed petitioner for room and board for the following amounts for the following months:

\$7,595 for October 1, 2014 through October 31, 2014  
\$7,350 for November 1, 2014 through November 30, 2014  
\$7,595 for December 1, 2014 through December 31, 2014  
\$7,595 for January 1, 2015 through January 31, 2015  
\$6,860 for February 1, 2015 through February 28, 2015

\$7,595 for March 1, 2015 through March 31, 2015  
\$4,655 for April 1, 2015 through April 19, 2015  
\$2,829.75 for April 20, 2015 through April 30, 2015  
\$7,974.75 for May 1, 2015 through May 31, 2015  
\$7,717.50 for June 1, 2015 through June 30, 2015  
\$7,974.75 for July 1, 2015 through July 31, 2015  
\$7,974.75 for August 1, 2015 through August 31, 2015  
\$7,717.50 for September 1, 2015 through September 30, 2015  
\$7,974.75 for October 1, 2015 through October 31, 2015  
\$7,717.50 for November 1, 2015 through November 30, 2015

8. Effective January 1, 2016, the facility billed petitioner for other services, such as pharmacy drugs and therapy, for the following amounts for the following months:

\$1,700.37 for October 2014  
\$206.94 for February 2015  
\$555.70 for March 2015  
\$66.49 for October 2015

9. Effective January 1, 2016, the petitioner paid the facility three payments toward his outstanding balance:

\$1,250 on December 27, 2014  
\$1,510 on January 7, 2015  
\$3,000 on November 30, 2015

10. As of January 1, 2016, the petitioner's outstanding balance to the facility was \$113,036.27.

11. The outstanding balance is for the months of October 2014 through November 2015. Petitioner was not billed for the month of September 2014 and Medicaid is paying petitioner's facility bill effective December 1, 2015 and ongoing. The months under issue are from October 2014 through November 2015.

12. Respondent argued the facility is moving forward with the discharge as petitioner owes an outstanding balance and has not made a payment arrangement with the facility to repay the outstanding balance.

13. Petitioner argued he wants to repay the outstanding balance to the facility and is making payments to the facility. He is also working with an attorney to have the Department of Children and Families approve his ICP Medicaid benefits effective October 2014 through November 2015.

### **CONCLUSIONS OF LAW**

14. 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.

15. The Code of Federal Regulations 42 C.F.R. § 483.12 limit 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 as he had not paid his bill for services to the facility for the months of October 2014 through November 2015:

(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 three payments to the facility during the period of December 2014 through November 2015. His three payments totaled \$5,760. The facility billed petitioner his patient responsibility each month for the period of October 2014 through

November 2015. As of January 1, 2016, the petitioner's balance to the facility is \$113,036.27.

17. Petitioner's ICP Medicaid benefits were approved effective December 2015 and ongoing and his attorney is working with the Department of Children and Families to approve his ICP Medicaid benefits effective October 2014. Petitioner has submitted eight applications to the Department of Children and Families for ICP Medicaid benefits since October 9, 2014. Furthermore, DDD determined petitioner disabled effective February 2015.

18. It is unknown when and if petitioner's ICP Medicaid benefits will be approved or the effective date of his ICP Medicaid benefits. As a result it is unknown if petitioner would still owe payments to the facility. Furthermore, petitioner has made three payments toward the outstanding balance and states he will continue to make payments until his attorney resolves all issues with his ICP Medicaid applications effective the month of October 2014.

19. The Department of Health and Human Services, Centers for Medicaid and Medicare Services, State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities states in part:

A resident cannot be transferred for non-payment if he or she has submitted to a third party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

20. Pursuant to the above authority, the aforementioned guidance to the Agency for Health Care Administration surveyors allows the reviewing of a discharge notice due to non-payment to be considered in this appeal. In this instance, petitioner has an

attorney working with the Department of Children and Families to resolve all issues with his ICP Medicaid benefits effective the month of October 2014. Furthermore, petitioner expressed a wish to continue to make payments towards his outstanding balance. Respondent must wait until the Department of Children and Families provides them a denial notice for petitioner's ICP Medicaid benefits for the months of October 2014 through November 2015 before proceeding with this discharge action.

### **DECISION**

The appeal is GRANTED. The facility may not proceed with the discharge at this time. The facility must wait until the Department of Children and Families provides them a denial notice for petitioner's ICP Medicaid benefits for the months of October 2014 through November 2015 before proceeding with this discharge action and must give the petitioner adequate notice of any amounts due after any possible reductions as a result of payments from Medicaid.

**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 day of February, 2016,

in Tallahassee, Florida.

*Mary Jane Stafford*

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Copies Furnished To: [REDACTED] Petitioner

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Respondent  
Ms. Patricia Reed Cauffman  
Agency for Health Care Administration  
[REDACTED]  
[REDACTED]  
[REDACTED]