

FILED

Jan 14, 2016

Office of Appeal Hearings
Dept. of Children and Families

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

[REDACTED]

APPEAL NO. 15N-00102

PETITIONER,

Vs.

Administrator

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter convened on December 3, 2015 at 2:16 p.m. at the [REDACTED] Center, located in Green Cove Springs, Florida.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: [REDACTED] executive director.

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 October 22, 2015 with an effective date of November 21, 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

Appearing as witnesses for the respondent were [REDACTED] business office manager, [REDACTED] director of clinical services, and [REDACTED] social services director.

FINDINGS OF FACT

1. The petitioner, 68, has been a resident of the respondent's facility since March 23, 2015. In June 2015, the petitioner was approved for ICP Medicaid with a patient responsibility in the amount of \$1429.
2. The facility has been issuing monthly statements on the 15th or 20th of each month since the petitioner's admission to inform of balances owed. The respondent explained that its system did not allow the printing of the monthly statements issued to the petitioner. The respondent's evidence includes the "Activity Report" where the business office documents any type of communication which took place between the petitioner and the facility from May 19, 2015 through November 17, 2015.
3. On June 9, 2015, the "Activity Report" notates that the "Resident is refusing to pay." On August 26, 2015, the report indicates a phone call was made to the son regarding the petitioner's balance owed to the facility; a voicemail was left according to the notes. On August 26, 2015, the notes indicate that the petitioner's son returned the phone call and that the son stated the petitioner is aware of the balance and that he is

not responsible for payment. The respondent contends that the petitioner's son informed the facility that the petitioner is paying for an apartment within the community.

4. The "Activity Report" shows that on October 2, 2015, a phone call was made to the petitioner regarding the balance owed to the facility but she refused to pay. The notes dated October 22, 2015 states that a phone call was made to the petitioner and that she refuses to pay.

5. The respondent contends that nothing has been paid on the petitioner's account since her admission and that the current balance owed is \$7604.34.

6. The petitioner does not dispute that she owes money to the facility. The petitioner acknowledges that she has been receiving the monthly statements. The petitioner argues that she informed an employee with the facility that she can make monthly payments but her message was not relayed to the administrator. The petitioner contends that she would like to move back to the home where she used to live but is unsure of its suitability.

CONCLUSIONS OF LAW

7. 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. Stat. In accordance with that section this order is the final administrative decision of the Department of Children and Families. In this case, the discharge notice indicates the petitioner is to be discharged from the respondent/facility based on non-payment.

8. Federal Regulations at 42 C.F.R. § 483.12(a) states in relevant part:

(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; ...

9. According to the above federal 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.

10. The petitioner has an outstanding balance owed to the facility for the cost of her care. The facility has notified the petitioner's power of attorney of the balance due for the cost of the petitioner's care on a monthly basis.

12. The petitioner acknowledges receipt of the monthly billing statements; she met with the staff to discuss a monthly payment plan. Therefore, the undersigned concludes the facility has followed the above controlling authority to issue reasonable and appropriate notice prior to issuing the discharge notice.

13. Based on the findings and the federal and state controlling authorities, the undersigned concludes the facility's discharge is proper.

14. Establishing that 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.

15. 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

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. 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.

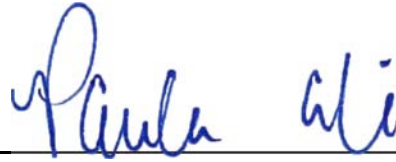
FINAL ORDER (Cont.)

15N-00102

PAGE -6

DONE and ORDERED this 14 day of January, 2016,

in Tallahassee, Florida.



Paula Ali

Hearing Officer

Building 5, Room 255

1317 Winewood Boulevard

Tallahassee, FL 32399-0700

Office: 850-488-1429

Fax: 850-487-0662

Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner

[REDACTED] Respondent

Mr. Robert Dickson, AHCA