

Feb 01, 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-00107

PETITIONER,

Vs.

CASE NO.

Administrator

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on December 10, 2015 at 1:15 p.m., at [REDACTED] [REDACTED] Florida.

APPEARANCES

For the petitioner: [REDACTED] petitioner's wife

For the respondent: [REDACTED] Nursing Home Administrator

STATEMENT OF ISSUE

At issue is whether the facility's intent to discharge the petitioner due to non-payment of a bill for services based on Federal Regulations found at 42 C.F.R. § 483.12 is correct. A Nursing Home Transfer and Discharge Notice was issued on November 2, 2015. The facility has the burden of proof to establish by clear and convincing evidence that the discharge is appropriate.

PRELIMINARY STATEMENT

The petitioner was not present; however, petitioner's wife represented the petitioner. All parties appeared in person.

Witnesses for the respondent were nursing home (NH) clinical social worker, [REDACTED] NH business manager, [REDACTED] and NH social services director, [REDACTED]

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

By Discharge Notice dated November 2, 2015, the respondent notified the petitioner that he was to be discharged from the nursing facility effective December 2, 2015, due to non-payment of bill for services.

The petitioner did not present any exhibits. The respondent presented one exhibit, which was accepted into evidence and marked as Respondent Exhibit "1". The record closed on December 10, 2015.

FINDINGS OF FACT

1. The petitioner (72) entered the facility on June 18, 2015. On July 31, 2015, the respondent discussed with the petitioner the option of long term care. Medicare part A paid for services rendered until August 31, 2015.
2. Once petitioner's Medicare part A ended, he became a private pay individual who is responsible for the total amount of the facility's bill for services rendered.
3. On August 20, 2015, petitioner applied for Institutional Care Program (ICP) Medicaid benefits with the Department of Children and Families (DCF). Petitioner was pended for assets verification.

4. On September 22, 2015, DCF denied petitioner's application due to not submitting the necessary information to determine eligibility.
5. On November 2, 2015, the respondent issued the petitioner a Nursing Home Transfer and Discharge Notice that indicated petitioner would be discharged from the facility effective December 2, 2015 due to non-payment of bill for services. The discharge location listed was the petitioner's home address: [REDACTED] in [REDACTED]
6. The petitioner's past due balance was \$33,145.08 for the months of September 2015 through December 1, 2015.
7. Mrs. [REDACTED] did not dispute the amount owed to the facility and she acknowledged being aware of the financial obligation to the facility. She explained that she was seeking sponsors (Mrs. [REDACTED] was not specific who she sought sponsorships from) and reapplied for ICP Medicaid benefits on October 3, 2015 by certified mail to DCF, Post Office Box 1770 Ocala, Florida, 34478 and included all necessary documents for the petitioner's ICP Medicaid eligibility to be determined. As of the hearing date, petitioner had not yet received a notification from DCF informing him of the status of his ICP Medicaid application. Furthermore, Mrs. [REDACTED] explained she has made payments towards the patient responsibility. Petitioner was given by the facility a patient responsibility of \$1,510 per month pending the outcome of the Medicaid application on August 20, 2015. Mrs. Setzer paid \$549.91 to the facility on October 30, 2015. To date, the petitioner owes the facility \$33,145.08.
8. The respondent explained the facility has access to DCF's on-line query when a patient submits an application. The respondent explained the last application submitted

to DCF was on August 20, 2015; it could not verify another application had been submitted to DCF on October 3, 2015 as indicated by Mrs. [REDACTED]. Furthermore, the respondent explained that due to not seeing any other application submitted to DCF, the respondent requested documentation from Mrs. [REDACTED] that she had applied again. The respondent attempted to communicate with Mrs. [REDACTED] on the status of the application and to obtain copies to further assist her with the application process, but Mrs. [REDACTED] refused to provide any information. As of the date of the hearing, Mrs. [REDACTED] has not provided any documentation regarding the new application she alleges to have submitted to DCF and has not provided a copy of said application to the respondent.

9. Mrs. [REDACTED] explained family members and her attorney are assisting her with the application process and she did not feel comfortable providing a copy of the application or her household's financial information to the respondent.

10. No documentation was provided at the hearing to show an ICP Medicaid benefits application was pending with DCF for the petitioner.

CONCLUSIONS OF LAW

11. The jurisdiction to conduct this hearing is conveyed to the Department of Children and Families by Federal Regulations appearing at 42 C.F.R. § 431.200. 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.

12. Federal Regulations appearing at 42 C.F.R. § 483.12, Admission, transfer and discharge rights, sets forth the limited reasons a Medicaid or Medicare certified nursing facility may involuntarily discharge a resident and states in part:

- (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--
 - (i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - (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;
 - ...
 - (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...

13. 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.

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. According to the above authority, the facility may not discharge except for certain reasons, one of which 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 \$33,145.08. This fact is not disputed.

16. Petitioner's wife alleged that she had submitted a certified ICP Medicaid application to DCF on October 3, 2015 and that she was seeking benefits to pay for the facility's unpaid charges for the petitioner; however; this is unknown. No evidence was proffered to indicate an application was submitted on October 3, 2015 or that said application is pending.

17. The hearing officer concludes that the facility has given the petitioner reasonable and appropriate notice to pay for the petitioner's stay at the facility. Based on the evidence presented, the nursing facility has established that the petitioner 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. 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

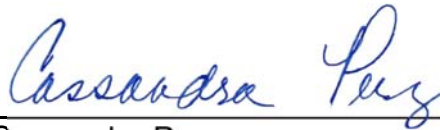
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The facility may proceed with the discharge, in accordance with all applicable Federal Regulations, Florida Statutes, 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 01 day of February, 2016,

in Tallahassee, Florida.



Cassandra Perez
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner

[REDACTED]
Respondent
Ms. Theresa DeCanio
Agency for Health Care Administration
[REDACTED]