

Feb 26, 2016

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

Office of Appeal Hearings
Dept. of Children and Families

[REDACTED]

APPEAL NO. 15N-00125

PETITIONER,

Vs.

ADMINISTRATOR

[REDACTED]

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on February 4, 2016, at 2:28 p.m., at the [REDACTED] [REDACTED] located in Jacksonville, Florida.

APPEARANCES

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

For the Respondent: [REDACTED] Chief Executive Officer of the facility.

ISSUE

At issue is whether or not the nursing home's action to transfer and discharge the petitioner is an appropriate action based on the federal regulations at 42 C. F. R. § 483.12. The nursing home is seeking to discharge the petitioner because the

petitioner's "bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

The respondent carries the burden of proof by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R.§483.12(a) and Section 400.0255, Florida Statutes (2009).

PRELIMINARY STATEMENT

By notice dated December 11, 2015, the respondent informed the petitioner that the facility was seeking to discharge/transfer her due to nonpayment. On December 17, 2015, the petitioner timely requested a hearing to challenge the discharge/transfer.

Appearing as witnesses for the petitioner was [REDACTED] son to the petitioner.

Appearing as witnesses for the respondent were [REDACTED] Director of Social Services, [REDACTED] Chief Financial Officer, and [REDACTED] Chief Officer.

Appearing as an observer was [REDACTED] board member and facility's attorney.

A letter dated January 19, 2016 from the Agency for Health Care Administration (AHCA) was sent to the undersigned and it stated that the representative(s) did not find the facility in violation of any laws or rules. This was entered as Hearing Officer Exhibit 1.

FINDINGS OF FACT

1. The petitioner, age 84, has been a resident in the facility, between discharges to hospitals and home, since 2005. The petitioner was a self-paying resident until her ICP Medicaid was approved in December 2015 or January 2016. Her patient responsibility is \$3384.89 according to the Notice of Case action dated January 19, 2016.

2. The respondent contends that it issues a monthly billing statement directly to the petitioner and by mail to the petitioner's son. Respondent Exhibit 2 includes billing statements mailed to the petitioner's son for the months of March 2015 through December 2015.

3. The petitioner's son acknowledges receiving the billing statements. The petitioner's son argues that his mother did not understand that she owed the facility anything because she paid a total of \$346,138.08 to the facility with the sale of another piece of property (*Petitioner Exhibit 1, page 1*). The petitioner believes she paid the facility with the sale of her home in New York. The petitioner's son does not understand why the facility waited until the balance reached \$97958.46 to inform him of the balances owed. The petitioner's son contends that the petitioner should be transferred to another facility and not discharged to home, as stated on the Nursing Home Transfer and Discharge Notice.

4. The facility contends that the petitioner's son should have been aware of the increasing balance because he was receiving the monthly billing statements. The facility explained that it believed the petitioner's attorney was assisting in the completion of the petitioner's application for ICP Medicaid and that the attorney was assisting the

petitioner's family in utilizing her assets to pay for her care at the facility. The facility acknowledges receiving payment from the sale of one of the petitioner's two homes; the payment received was applied to her account. The facility contends that it initiated the discharge process when it was discovered in December 2015 that the petitioner's assets were unavailable to pay for her care. The facility explained that it does not intend to discharge the petitioner to an unsafe environment.

5. The petitioner's son wishes for the petitioner to remain in the facility as it is a Jewish facility and will allow his mother to adhere to her kosher diet. The petitioner's son believes discharging his mother from the facility will be detrimental to her well-being. The petitioner's son contends that he has made efforts to work with the facility in an attempt to resolve the issue and that he has offered to work for the facility to repay the balance owed. The petitioner offered to work for the facility in an effort to pay unpaid balance and remain as a resident.

CONCLUSIONS OF LAW

6. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

7. Federal Regulations appearing 42 C.F.R. § 483.12, sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(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;
- (iii) The safety of individuals in the facility is endangered;
- (iv) The health of individuals in the facility would otherwise be endangered;
- (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; or
- (vi) The facility ceases to operate.

8. Based on the evidence presented, the nursing facility has established that the petitioner has failed to pay for her stay at the facility after receiving reasonable and appropriate notice. 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.

9. The petitioner's acknowledges receipt of the monthly billing statements; he offered to work for the facility in an attempt to repay the balance owed. Therefore, the undersigned concludes the facility has followed the above controlling authority to issue reasonable and appropriate notice prior to issuing the discharge notice.

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

11. 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.

12. 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-00125

PAGE -7

DONE and ORDERED this 26 day of February, 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:  Petitioner


Respondent

Mr. Robert Dickson,

Agency for Health Care Administration
