

Jul 20, 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. 16N-00044

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing was convened on July 1, 2016, at 11:24 a.m.

APPEARANCES

For the Petitioner: The petitioner was not present and was represented by his son and power of [REDACTED]

For the Respondent: Cheryl Fredsall, Facility Administrator for [REDACTED]
[REDACTED]

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 April 27, 2016, the respondent informed the petitioner that the facility was seeking to discharge/transfer him due to nonpayment. On May 2, 2016, the petitioner timely requested a hearing to challenge the discharge/transfer.

The hearing was originally scheduled to convene for an in-person hearing on June 22, 2016 at 11:15 a.m. On June 13, 2016, the petitioner's son contacted the undersigned to request for the hearing to be rescheduled as he was going to be out of town. His request was granted and the hearing was rescheduled to July 1, 2016 at 11:15 a.m.

On June 27, 2016, the petitioner's son contacted the undersigned to request for the hearing to be held by telephone. His request was granted.

Appearing as witnesses for the respondent were Nora Wood, Business Office Manager and Chantel Johnson, Social Services Director.

A letter dated May 23, 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.

Evidence was submitted and entered as the Respondent's Exhibits 1 through 3.

The record was held open until 5:00 p.m. on July 8, 2016 to allow the respondent to provide additional evidence. Evidence was received and entered as the Respondent's Exhibit 4.

The petitioner did not submit any evidence.

The record was closed at 5:00 p.m. on July 8, 2016.

FINDINGS OF FACT

1. The petitioner was admitted into the facility on November 15, 2015; his payor source was Humana until January 12, 2016.

2. On January 11, 2016, the facility contends that it contacted the petitioner's son to inform him that the petitioner's level of care changed and that he would be needing long term care at the facility (*Respondent's Exhibit 4*).

3. The respondent's evidence includes Departmental Notes that indicate on January 12, 2016, the facility's administrator discussed with the petitioner's son to apply for Institutional Care Program (ICP) Medicaid (*Respondent's Exhibit 2, page 1*). The respondent contends that the petitioner owns personal property and that it advised the petitioner's son to contact an attorney to assist with the asset and with applying for ICP Medicaid.

4. The Respondent's Exhibit 2 includes billing statements sent to the petitioner and to the petitioner's son beginning December 31, 2015. As of the date of the hearing, the current balance owed to the facility was \$37530.

5. The respondent contends that it made several attempts to contact the petitioner's son by telephone to discuss balance owed but he refused to accept the phone calls. The respondent contends that the petitioner's son does not hand over the petitioner's Social Security check to pay the facility for its care to the petitioner. The respondent argues that it has not had any communication with the petitioner's son for several months. The respondent's records show that the last payment to the facility was in February 2016.

6. The petitioner's son argues that he received a billing statement for the first time when he learned of the facility's intent to discharge the petitioner from the nursing home. The petitioner's son argues he did not receive the monthly statements because they were mailed to his father's address at [REDACTED]. The petitioner's son explained that his address is [REDACTED]. The petitioner's son explained that he did not answer the facility's phone calls because they were harassing him about his father's property. The petitioner's son also explained that he attends school during the day and was unable to answer the phone calls from the facility.

7. The petitioner's son contends that he will apply for ICP Medicaid and sell his father's property when a survey is completed. The petitioner's son does not feel as if he is responsible for paying his father's bill. The petitioner's son believes he was informed

by Humana that they were still paying for his father's care but was unable to provide evidence to support his statement.

8. The petitioner's son explained that he is paying for his father's bills with the Social Security income his father receives. The petitioner's son contends that he depleted the petitioner's bank accounts in February 2016 and March 2016 to pay the facility.

9. The respondent contends that the billing statements were mailed to the address provided by the petitioner's son upon admission. The respondent contends that its business records do not show any returned billing statements; therefore, it is believed that the petitioner's son checked the mail at the address provided and received the billing statements. The respondent contends that the certified mail (discharge notice) dated April 28, 2016 is the only mail that was returned from [REDACTED]

CONCLUSIONS OF LAW

10. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to 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.

11. 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.

12. Based on the evidence presented, the nursing facility has established that the resident has failed to pay the facility after 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.

13. The petitioner's son argues that he did not receive any billing statements until April 2016. However, the petitioner's son acknowledges paying the facility in February 2016. The petitioner's son also acknowledges that he refused to answer the phone calls from the facility because they were harassing him regarding his father's property. The respondent's business records do not indicate any returned mail prior to April 2016. Therefore, the undersigned concludes that the petitioner's son received reasonable and appropriate notice prior to issuing the discharge notice.

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

15. 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.

16. 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.

DONE and ORDERED this 20 day of July, 2016,

in Tallahassee, Florida.



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