

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

APPEALS OFFICE

57 Howard Avenue

Cranston, Rhode Island 02920

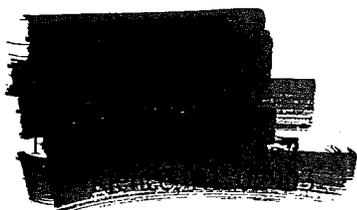
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TDD# (401) 462-3363

Date: December 16, 2014

Date of Hearing: 12/15/14

Docket # 14-267



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

THE DHS POLICY MANUAL: MEDICAL ASSISTANCE

SECTION: 0376.40.10 NF Patient Appeal Rights

SECTION: 0376.40.10.15 Pre-Transfer/Discharge Notice

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: you (the appellant), your Alliance representative, Administrator [REDACTED], Tom Conlon and the Policy Unit.

Present at the hearing were: you, your advocate, two Social Workers, the financial agent and the Administrator of [REDACTED].

ISSUE: Were the proper steps taken to discharge the appellant from the Nursing Facility?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The Nursing Home (NH) Social Worker testified:

- The appellant was involved originally in the home for rehabilitation.
- When her Medicare ran out it was decided that she would need nursing facility care.
- In December 2013 applications for Medicaid were started.
- The appellant became eligible for Medicaid as of December 2013.
- The appellant was given a share amount to pay.
- The appellant's income was Social Security and a pension.
- The appellant did not pay the full share.
- The social worker met with the appellant and her daughter in June of 2014 to discuss payment.
- The appellant paid some of the money owed at that time.
- In July of 2014 the appellant began to pay her full share.
- The appellant and her daughter were told that she owed back payments from December 2013 through July 2014.
- Although the appellant and her daughter were aware of the back payments owed they did not pay the bill.
- On July 1, 2014 the NF sent the appellant a written notice of intent to discharge.
- The appellant filed for Appeal.

The appellant testified:

- She thought she had paid all the money from the beginning.
- She thought she wrote a check every month.
- She does not understand how she owes money.

The LTC Ombudsman Testified:

- When the appellant first found out she owed money her daughter made one payment.
- She did owe thousands in back payments.
- She did not start paying the correct share amount until July 2014.

She is now paying the full share; however she does not have the money for the back payments.

- She feels the NF acted appropriately in this case.

FINDINGS OF FACT:

- The appellant was sent a letter dated July 1, 2014 informing her that in 30 days she would be discharged to another facility.
- The appellant filed a request for hearing received by the Agency on January 14, 2014.
- The appellant still resides at the facility that issued the discharge notice.
- A hearing was scheduled for September 29, 2014.
- The appellant requested a reschedule.
- A hearing was scheduled for October 22, 2014.
- The appellant requested a reschedule.
- A hearing was scheduled for November 13, 2014.
- The appellant requested a reschedule.
- A hearing was scheduled for December 15, 2014.
- The hearing took place on December 15, 2014.

CONCLUSION:

The issue to be decided is whether the appellant was given proper advance notice of transfer/discharge from a Nursing Home facility.

A review of the Agency's policies regarding involuntary transfers/discharges finds that the Nursing Facility (NF) must provide the patient with a DHS-200NF (Notice of Your Transfer and Discharge Rights) and a copy of a DHS-121NF (Request For a Hearing) form at the time that they issue the 30-day pre-discharge or pre-transfer notice.

The Nursing Home (NH) Administrator testified that the appellant was properly notified of her appeals rights and therefore was given proper notice of the facility's intent to discharge her. According to her testimony, she does not remember the incidents leading up to this but she does know the NF sent her a letter and appeal rights.

The Alliance for better Long Term Care ombudsman also testified that when she was notified that the appellant appealed the decision she began working with her and the NF to try to see if the problem could be solved.

The NF provided evidence that she had been notified of rules governing the facility when she was admitted.

The NF provided proof that the appellant did not pay the proper share amount for her care from December 2013 through June 2014. When notified of this the appellant's daughter made one payment towards the amount owed. The appellant receives Social Security income and a pension.

The appellant testified that the NF did have her correct income.

After making the onetime payment and setting up the pension and Social Security to go to the NF no other payments were made towards the monies owed.

The appellant has been advised of the monies owed and was issued a notice of discharge and Appeal rights as required by Policy.

The appellant requested rescheduling of her hearing three times to prepare; however had no evidence as to why the monies were not paid.

A review of Agency Policy reveals that the resident may be involuntarily relocated if the resident has failed, after reasonable and appropriate notice, to pay or have paid by Medicare or Medical Assistance for a stay at the facility.

After a careful review of the policy, as well as the evidence and testimony given, this Appeals Officer finds that the appellant was issued a proper pre-transfer/discharge notice; therefore her request for relief is denied.



Geralyn B. Stanford
Appeals Officer

APPENDIX

0376.40.10 NF Patient Appeal Rights

REV:06/1994

Section 1919 (e) (3) of the Social Security Act requires States to provide appeal hearings for all nursing facility residents who wish to challenge their transfers or discharges. By statute, the appeals process cannot be limited to only Medical Assistance eligible nursing facility residents. Therefore, DHS will conduct administrative hearings for any NF resident who wishes to appeal a transfer or discharge from the facility, whether Medical Assistance or Medicare eligible, or private pay.

0376.40.10.05 *Transfer Discharge Criteria*

REV:06/1994

The basis for the transfer or discharge must be documented in the resident's clinical record by the resident's physician if:

- o The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- o 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;
- o The health of individuals in the facility would otherwise be endangered.

The basis of the transfer or discharge must be documented in the resident's clinical record if the safety of individuals in the facility is endangered.

Each nursing facility must display a notice which identifies the transfer and discharge criteria and informs residents of their appeal rights. The notice should be prominently posted along with the Patient's Bill of Rights.

0376.40.10.10 Documentation Requirements

REV:06/1994

The basis for the transfer or discharge must be documented in the resident's clinical record by the resident's physician if:

- o The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- o 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;
- o The health of individuals in the facility would otherwise be endangered;

The basis for transfer or discharge must be documented in the resident's clinical record if the safety of individuals in the facility is endangered.

Each nursing facility must display a notice which identifies the transfer and discharge criteria and informs residents of their appeal rights. The notice should be prominently posted along with the Patient's Bill of Rights.

0376.40.10.15 Pre-Transfer/Discharge Notice

REV:06/1994

Before effecting a transfer or discharge of a resident, a nursing facility must:

- o Notify the resident (and, if known, an immediate family member or legal representative of the resident) of the transfer or discharge and of the reasons for the move; and,
- o Record the reasons in the resident's clinical record (including any required documentation).

The nursing facility must notify the resident by use of a PRE- TRANSFER or PRE-DISCHARGE NOTICE (DHS-100NF) at least thirty (30) days in advance of the resident's transfer or discharge. At the time the patient receives the Pre-Transfer or Pre-Discharge Notice, s/he receives at the same time a NOTICE OF YOUR TRANSFER AND DISCHARGE RIGHTS (DHS-200NF) and a copy of REQUEST FOR A HEARING (DHS-121NF).

Thirty (30) day advance notice is not required under the following circumstances:

- o In the event of danger to the safety or health of the individuals in the facility;
- o When the resident's health improves sufficiently to allow a more immediate transfer or discharge;
- o Where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs;

- o When the resident has not resided in the facility for a period of at least 30 days.

In the case of such exceptions, notice must be given as many days before the date of the move as is practicable, and include:

- o The right to appeal the transfer or discharge through the administrative appeals process;
- o The name, mailing address, and telephone number of the State long-term care ombudsman.

In the case of residents with developmental disabilities, the pre-transfer or pre-discharge notice must include:

- o The mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals.

The resident must request an appeal within thirty (30) days of the date of the pre-transfer/discharge notice.

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The resident must request an appeal within thirty (30) days of the date of the pre-transfer/discharge notice.

0376.40.05.05 Involuntary Relocation Restrictions

REV:06/2000

The Nursing Home Resident Protection Amendments of 1999 prohibit the transfer or discharge of residents from a nursing facility as a result

of the facility's voluntary withdrawal from participation in the Medicaid Program.

Individuals residing in a nursing facility on the day before the effective date of the facility's withdrawal from MA participation may not be transferred or discharged as a result of the facility's withdrawal. This includes residents receiving MA benefits at the time, as well as individuals who are residents but not yet eligible for MA.

To continue receiving MA payments, the nursing facility must comply with all Title XIX nursing facility requirements related to treating patients residing in the facility in effect at the time of its withdrawal from the program.

Involuntary relocation of a resident patient is permitted when the basis for discharge or transfer is:

- * to meet the resident's welfare and that welfare cannot be met in the facility;
- * the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- * the safety of individuals in the facility is endangered;
- * the health of individuals in the facility would otherwise be endangered;
- * the resident has failed, after reasonable and appropriate notice, to pay (or have paid by Medicare or Medical Assistance) for a stay at the facility; or

* the facility ceases to operate.

0376.40.10.20 Administ Appeals Process

REV:06/1994

The Department of Human Services will conduct administrative hearings for any nursing facility resident who wishes to appeal a transfer or discharge from the facility. The patient or patient's representative may request a hearing by completing Sections I and II of DHS form, REQUEST FOR A HEARING (DHS-121NF). The hearing request form should then be routed promptly to the Department of Human Services, Hearing Office, 600 New London Avenue, Cranston, RI 02920. Upon receipt, the Hearing Office will date stamp the form and send a copy with a letter to the nursing facility instructing the facility to complete Section III and return the form to the Hearing Office within seven (7) days.

The request for a hearing must be submitted within 30 days of the date of the PRE-TRANSFER or PRE-DISCHARGE NOTICE (DHS-100NF). If the request is submitted within 10 days of the date of the PRE-TRANSFER OR PRE-DISCHARGE NOTICE (DHS-100NF), the patient will remain in the facility pending the decision of the Hearing Officer.

The administrative hearing generally will be conducted at the resident's nursing facility unless otherwise requested by the patient or the patient's representative. Official notice of the hearing is sent to all parties involved at least five (5) days prior to the scheduled hearing date.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.