

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 DEPARTMENT OF HUMAN SERVICES
 APPEALS OFFICE
 57 Howard Avenue
 Cranston, Rhode Island 02920
 (401) 462-2132/Fax# (401) 462-0458
 TDD# (401) 462-3363**

Docket # 14-728
 Hearing Date: July 18, 2014 and
 August 25, 2014

Date: September 4, 2014

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 PROVIDER MANUAL: MEDICAL ASSISTANCE
 SECTION : 0376.40.05.05 Involuntary Relocation Restrictions**

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 guardian, Administrator for Bayberry Commons, Joy Thibodeau-Moore the Agency Representative, Bonita D'Abreau Supervisor, and the Policy Unit.

Present at the hearing were: the Appellant's guardian, Administrator for Bayberry Commons, Joy Thibodeau-Moore the Agency Representative, on behalf of the Alliance for Better Long Term Care, Inc., Administrator for Bayberry Commons, and Joy Thibodeau-Moore the Agency Representative.

ISSUE: Is the nursing facility's action to have the patient discharged from the facility allowable due to a lack of payment?

DHS POLICIES:

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

APPEAL RIGHTS:

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

WHILE THE RECORD IN THIS MATTER WAS HELD OPEN TO ALLOW THE APPELLANT/PATIENT ADDITIONAL TIME TO SUBMIT MORE RECORDS, THE APPELLANT FILED ANOTHER APPEAL TO ADDRESS BEING DENIED MEDICAL ASSISTANCE – LONG TERM CARE. THE HEARING WAS RECONVENED ON AUGUST 25, 2014 TO ADDRESS ALL OUTSTANDING ISSUES.

DISCUSSION OF THE EVIDENCE:

The Nursing Facility Representatives testified:

- The Appellant/patient became a resident of Bayberry Commons in 2008 as a private pay patient.
- The Appellant/patient had applied for Medical Assistance, Long Term Care (LTC), several times but due to owning a home and some bank accounts, was found to be over resources and therefore not found eligible for LTC by DHS until July 1, 2012.
- The Appellant had been a private pay patient since the time she entered Bayberry Commons until August 2011. The Appellant had then only paid her applied income from September 2011 thru June 2012. The Appellant currently owes Bayberry Commons \$59,700.00 for the time that the Appellant had only paid her applied income. Due to this outstanding bill and in accordance with 42 CFR §§ 483.12 (a)(20)(v) and (a)(4), Bayberry Commons issued a Notice of Discharge to the Appellant dated April 18, 2014.
- The Administrator for Bayberry Commons stated that the Guardian contacted their facility with regards to an August 22, 2012 denial that she received on September 12, 2012.
- The Administrator called the LTC Supervisor, possibly October 9, 2012 and with the Guardian, they faxed together an Appeal on October 9, 2012 of the August 22, 2012 Notice. The Administrator has record that the Supervisor called back on October 10, 2012 and stated that the Appeal was filed too late.
- The Administrator now believes that maybe the Supervisor may have thought that the denial notice was issued on September 12, 2012, which was actually the day in which the Guardian received the August 22, 2012 denial notice.
- There have been at least two occasions in which the Guardian had dropped off applications for services at the DHS Office and they had been lost/miss placed.

The Agency Representatives testified:

- The Appellant applied for Medical Assistance – LTC in January 2012 and received a denial notice for that service on March 5, 2012. The reason for the denial was that the Appellant had resources in the amount of \$23,299.66 more than the SSI related standard limit of \$4,000.00, per DHS policy § 0354.05. The Appellant was found to be \$19,299.66 in excess of the standard.
- The Appellant filed an Appeal of that decision from March 5, 2012, the Appeal was heard on August 14, 2012 [REDACTED] and a decision was made against the Appellant due to the excess resources.
- The Appellant files again for services in July of 2012 and received a denial notice on August 22, 2012 for being \$4,419.16 over resource. Shortly thereafter, the Appellant did an allowable spend-down and receives a notice of eligibility for LTC on September 5, 2012 retroactive to July 1, 2012.
- The Appellant has received LTC from July 1, 2012 to the present.
- The agency has no record of an Appeal being filed after September 5, 2012. If the Appellant or Guardian did file an Appeal of the August 22, 2012 Notice, that Appeals must be filed within 30 days from the date of the Notice.
- The agency allowed the Appellant to accelerate her spend down by allowing her to pay for burial expenses for her child who has health issues. If the acceleration was not permitted, the Appellant would possible not been found eligible for services until October of 2012 instead of July 2012.

The Appellant's Guardian testified:

- The Guardian filed a second Appeal in this matter with the LTC office on July 22, 2014 due to the DHS August 22, 2012 decision, which was denying eligibility of LTC. The Guardian Appealed due to miscommunication and the misplacement of documents with regards to the August 22, 2012 Notice.
- The Guardian testified that she received the August 22, 2012 eligibility notice on September 12, 2012 and contacted Bayberry Commons as to see what can be done.
- On October 9, 2012, the Guardian with the help of Bayberry Commons faxed a Request for Hearing/Appeal to the LTC Supervisor and the Bayberry Commons has record in their case file that the LTC Supervisor called on October 10, 2012 indicating that the Appeal had been filed out of time.
- The Guarding has no idea what would become of the Appellant if Bayberry Commons discharges the Appellant.
- The Guardian requested for the record to remain open to allow her time to possibly submit additional documentation.

FINDINGS OF FACT:

- The Appellant/patient became a resident of Bayberry Commons in 2008 as a private pay patient.
- The Appellant/patient had applied for Medical Assistance, Long Term Care (LTC), several times but due to owning a home and some bank accounts, was

found to be over resources and therefore not found eligible for LTC by DHS until July 1, 2012.

- The Appellant had been a private pay from the time she entered Bayberry until August 2011. The Appellant had then only paid her applied income from September 2011 thru May 2012. The Appellant owes Bayberry Commons \$59,700.00 for the time that the Appellant had only paid her applied income. Due to this outstanding bill and in accordance with 42 CFR §§ 483.12 (a)(20)(v) and (a)(4) Bayberry Commons issued a Notice of Discharge to the Appellant dated April 18, 2014.
- The Appellant applied for Medical Assistance – LTC in January 2012 and received a denial notice for that service on March 5, 2012. The reason for the denial was that the Appellant had resources in the amount of \$23,299.66 more than the SSI related standard limit of \$4,000.00, per DHS policy § 0354.05. The Appellant was found to be \$19,299.66 in excess of the standard.
- The Appellant filed an Appeal of that decision from March 5, 2012, the Appeal was heard on August 14, 2012, [REDACTED] and a decision was made against the Appellant due to the excess resources.
- The Appellant files again for services in July of 2012 and received a denial notice on August 22, 2012 for being \$4,419.16 over resource. Shortly thereafter, the Appellant did an allowable spend-down and receives a notice of eligibility for LTC on September 5, 2012 retroactive to July 1, 2012.
- The Administrator for Bayberry Commons stated that the Guardian contacted their facility with regards to an August 22, 2012 denial that she received on September 12, 2012.
- The Guardian testified that she received the August 22, 2012 eligibility notice on September 12, 2012 and contacted Bayberry Commons as to see what can be done.
- On October 9, 2012, the Guardian with the help of Bayberry Commons faxed a Request for Hearing/Appeal to the LTC Supervisor and the Bayberry Commons has record in their case file that the LTC Supervisor called on October 10, 2012 indicating that the Appeal had been filed out of time.
- The Administrator called the LTC Supervisor, possibly October 9, 2012 and with the Guardian; they faxed together an Appeal on October 9, 2012. The Administrator has record that the Supervisor called back on October 10, 2012 and stated that the Appeal was filed too late.
- The agency has no record of an Appeal being filed after September 5, 2012. If the Appellant or Guardian did file an Appeal of the August 22, 2012 Notice, that Appeals must be filed within 30 days from the date of the Notice and 5 extra days will be added to account for mailing.
- The Administrator now believes that maybe the Supervisor may have thought that the denial notice was issued on September 12, 2012, not the date that the August 22, 2012 notice was received on.
- The Appellant has received LTC from July 1, 2012 to the present.
- The Guardian filed a second Appeal in this matter with the LTC office on July 22, 2014 due to the DHS August 22, 2012 decision, which was denying eligibility of LTC. The Guardian Appealed due to miscommunication and the misplacement of documents with regards to the August 22, 2012 Notice.

The record of Hearing was held open at the request of the Guardian until August 29, 2014.

CONCLUSION:

The issue to be decided is whether the nursing facility can discharge the patient for lack of payment.

On April 18, 2014, Bayberry Commons issued a letter to the Appellant's Guardian stating that in accordance to 42 CFR §§ 483.12 (a)(20)(v) and (a)(4), Bayberry Commons will be starting discharge proceedings due to the Appellant having an unpaid balance of \$59,700.00.

§ 483.12 Admission, transfer and discharge rights.

(a) Transfer and discharge—

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(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.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by—

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must—

- (i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
- (ii) Record the reasons in the resident's clinical record; and
- (iii) Include in the notice the items described in paragraph (a)(6) of this section.

The Appellant has resided at Bayberry Commons, a nursing and rehabilitation facility since 2008. The Appellant suffers from dementia and a niece has been appointed as a guardian. Due to the Appellant owning her own home and having bank accounts in her name, she was not eligible for Medical Assistance – Long Term Care (LTC) at the time she entered Bayberry Commons and she was deemed a private pay patient. The Appellant used the resources from the sale of her home to pay for her stay until those funds were exhausted by August 2011; at which time the only funds that the Appellant paid for Bayberry Commons' care came from her applied income which wasn't enough to cover the monthly bill.

In January of 2012, the Guardian applies for Medical Assistance –LTC again and receives a Notice of Denial on March 5, 2012. The reasoning behind the denial was that the Appellant was still over resource; she had \$23,299.66 more than the SSI related standard limit of \$4,000.00, as per DHS Policy § 0354.05 and the Appellant was found to be \$19,299.66 in excess of the standard. The Guardian filed an Appeal by behalf of the Appellant for the agency's March 5, 2012 denial of LTC. A Hearing was held on August 14, 2012 [REDACTED] and a decision was issued that the agency calculated the Appellant's resources correctly, applied the policy properly and the Appellant was found to be over resource for LTC.

The Guardian applied for LTC again in July of 2012 and again the agency issued a denial of service notice on August 22, 2012 due to being \$4,419.16 over resources. Sometime in August 2012, after the July 2012 LTC application was filed, the Guardian spent down the resources, making the agency aware of her actions and on September 5, 2012 received a notice of eligibility for LTC retroactive to July 1, 2012.

During the Hearing, the Guardian testified that she received the August 22, 2012 denial notice on September 12, 2012, at which time she called Bayberry Commons to ask what steps should be taken. It was not explained at Hearing as to why it took the Guardian and Bayberry Commons until October 9, 2012 to contact the agency as to filing an appeal. On October 9, 2012, with the advice of the agency, the Guardian and Bayberry Commons faxed a Request for Hearing notice to the agency. Although the agency has no record of receiving this request for Hearing, Bayberry Commons has a note in their case file that on October 10, 2012 the LTC supervisor called stating that the agency received the request for hearing but it was filed too late. To properly file an Appeal of an action in which the agency has taken, the claimant (or the Guardian in this matter) must have requested in writing for a Hearing within thirty (30) days from the date of the Notice.

0110.20 DEFINITION OF AN APPEAL

Rev:03/2007

A written request by a claimant (or his/her authorized representative) stating that s/he wants an opportunity to present his/her case to higher authority may be considered an appeal. The appeal must be filed within:

- Ten (10) days from the date of the notice of action if it pertains to General Public Assistance;
- Ninety (90) days when it concerns SNAP benefits;
- Forty-five (45) days when it involves issues pertaining to the Office of Rehabilitation Services; and
- Thirty (30) days from the date of any child support service.
- Thirty (30) days from the date of the notice when it involves any other DHS program.

The Administrator for Bayberry Commons testified that possibly the LTC supervisor may have thought that the telephone conversation that they had on October 9, 2012 regarding the latest denial, that the denial had issued on September 12, 2012 (which would have made the request for Hearing timely) instead of having been issued on August 22, 2102 and being received on September 12, 2012.

The Guardian, having received Bayberry Common's April 18, 2014 Notice of Discharge filed a Request for Hearing on April 21, 2014. The Request for Hearing notes that the Appellant does not have the funds to pay the balance due (\$59,700.00) Bayberry Commons and that the Appellant did not receive Medicaid earlier (prior to July 2012) due to lack of communication and misplaced paperwork between the agency and Guardian.

From what was testified at the Hearings, there appears that there was a great deal of communication between the agency, Guardian and Bayberry Commons; between the required paperwork for the applications, the filing of the applications, the application decisions and even an Appeal of a decision that had been filed. Plus, telephone calls. The agency found the Appellant eligible for LTC on the first occasion that policy allowed. It appears that the agency worked with the Guardian/Bayberry and provided assistance at every request but there remained a constant issue of the Appellant being over resource. In late August, the Appellant files another application for LTC and the eligibility notice was issued September 5, 2012, granting benefits retro to July 1, 2012. It appears that the Appellant/ Guardian had been given every consideration in this application process, even to the point of allowing some of the excess resources to be used to pay for the Appellant's daughter's burial expenses which normally would have resulted in a penalty; the Appellant's daughter has some health issues. Another option that the Appellant/Guardian could have done to spend the excess resources was to pay Bayberry Commons for some of the expenses that the Appellant was incurring.

With regards to the other issue which caused the Guardian to file another Appeal on July 18, 2014 and which the agency received on August 4, 2014. The Guardian states in her Request for Hearing that she is appealing the August 22, 2012 notice of denial where the Appellant was seeking LTC back to September 2011 which was the result of

misplaced documents and misunderstandings between the parties. The Guardian testified at Hearing that she received the August 22, 2012 denial notice on September 12, 2012 and she then notified Bayberry Common that same day. For some reason which was not explained at Hearing, the Guardian took no action by September 21, 2012, the 30th day after the notice of denial had issued. In fact, the Appellant/Guardian/Bayberry Commons took no action until October 9, 2012, 49 days after the denial notice was issued by the agency. Being 19 days over the 30 day limit to file an Appeal could not be considered a close call.

In summary, Bayberry Commons gave the Appellant and her Guardian proper notice on April 18, 2014 that Bayberry Commons is pursuing the balance owed for care (\$59,700.00) by issuing a Notice of Discharge. Bayberry Commons had provided nursing home care for the Appellant for the time frame of September 2011 through May 2012 when the Appellant was only paying her applied income, which was not enough to cover the expenses. The Appellant had been a private pay patient from the time that she entered Bayberry Commons in 2008 until August 2011; in July 2012 to the present the Appellant has been receiving LTC. The Appellant/Guardian filed a timely Appeal of Bayberry Common's notice of discharge but failed to raise an issue as to Bayberry Common's actions being inaccurate or that the debt is not owed. In fact Bayberry Commons has assisted the Guardian in her filings for LTC and even with the filing of appeals when this case was denial LTC. The question remains as to when the Appellant was only able to pay her applied income to Bayberry and was being denied LTC for over resources, why weren't those funds then used to pay Bayberry Commons for the care of the Appellant?

As for the Guardian's appeal filed on July 22, 2014 with regards to the miscommunication and misplacement of August 22, 2012 denial notice; the Guardian testified that she received the denial on September 12, 2012 which still allowed her nine day to file a timely appeal. Unfortunately, an appeal was not filed until October 9, 2012 regarding the August 22, 2012 notice and in accordance with DHS policy was ruled that it was filed out of time.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the nursing facility can discharge the Appellant for lack of payment. The appellant's request for relief is therefore denied.



Thomas Bucacci
Appeals Officer

APPENDIX

RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

42 CFR § 483.12 Admission, transfer and discharge rights.

(a) Transfer and discharge—

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(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.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by—

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must—

- (i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
- (ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

0354.05 RESOURCE LIMITS

REV:01/2002

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending at least one bank statement (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.). Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file.

The Resource limits for individuals and couples are: CATEGORICALLY

NEEDY RESOURCE LIMITS*

Resource	Individuals	Couples
Real Property and Personal Property for Self-Support	\$2,000	\$3,000
		Property Essential Excluded
Burial Spaces	Excluded	
Life Insurance	\$1,500	\$1,500(each)
Burial Set-Aside	Up to \$1,500 Individual & Spouse (See Limits in Section 0356.45).	
Home and Adjoining Land	Excluded as a resource if living in it.	
Automobile	One is potentially excludable based on use. Otherwise, the FAIR MARKET VALUE up to a threshold of \$4,500 is excluded. (Section 0356.30)	
RSDI Retroactive Payments	Excluded for up to six (6)	

months under provisions in Section 0356.60.

* Note: The Low Income Aged and Disabled Coverage Group (Section 0370.70), entitled to the Categorically Needy scope of services, is subject to the Medically Needy Resource Limit.

MEDICALLY NEEDED RESOURCE LIMITS - ALL GROUPS

RESOURCE	INDIVIDUAL	COUPLE
Basic Limit	\$4,000	\$6,000
Life Insurance	\$4,000 Face Value for each individual. If Face Value(s) exceeds this threshold, evaluate as per Section 0356.20.	
Burial Set-Aside**	Up to \$1,500 each individual (See limits in Section 0356.45).	
Automobile	One is potentially excludable based on use. Otherwise, the FAIR MARKET VALUE up to a threshold of \$4,500 is excluded. (Section 0356.30)	
RSDI Retroactive Payments	Excluded for up to six (6) months under provisions in Section 0356.60.	
Tangible Personal Property (personal valuables, antiques, jewelry, pleasure boats, etc.)	\$5,000 threshold limit per household.	

0110.20 DEFINITION OF AN APPEAL

Rev:03/2007

A written request by a claimant (or his/her authorized representative) stating that s/he wants an opportunity to present his/her case to higher authority may be considered an appeal. The appeal must be filed within:

- Ten (10) days from the date of the notice of action if it pertains to General Public Assistance;
- Ninety (90) days when it concerns SNAP benefits;
- Forty-five (45) days when it involves issues pertaining to the Office of Rehabilitation Services; and
- Thirty (30) days from the date of any child support service.
- Thirty (30) days from the date of the notice when it involves any other DHS program.

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.