



Rhode Island Executive Office of Health and Human Services  
Appeals Office, 57 Howard Ave., LP Building, 2<sup>nd</sup> Floor, Cranston, RI 02920  
Phone: 401-462-6827 / Fax: 401-462-0458

May 5, 2015

Hearing Date 05-4-15

Docket # 14-1757

### 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:

**RI Executive Office of Health and Human Services**

MEDICAID CODE OF ADMINISTRATIVE RULES

SECTION: 0376.40.10 NF Patient Appeal Rights

SECTION: 0376.40.10.15 Pre-Transfer/Discharge Notice

The facts of your case, the Agency Rules and Regulations, 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: your sister, your Alliance representative, Administrator [REDACTED] and Tom Conlon.

Present at the hearing were: your sister, your advocate, your nephew, the head of financial services of [REDACTED] the social worker and Susan Marandola.

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

**EOHHS Rules and Regulations:** Please see the attached APPENDIX for pertinent excerpts from the Executive Office of Health and Human Services Medicaid Code of Administrative Rules

**APPEAL RIGHTS:**

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

## **DISCUSSION OF THE EVIDENCE:**

### **The Nursing Home's Financial Serveries representatives testified:**

- The appellant is being asked to vacate for non- payment of rent and services.
- The facility sent out certified letters on December 15, 2014.
- The appellant has an unpaid balance of \$62,240.00.
- Her family has made some attempts to bring her account up to date; however it has remained seriously overdue.
- The Nursing Home tried to help the POA (Power of Attorney) to get access to the appellant's account so that she could continue to pay her bill.
- The facility has tried to work with the family to get this balance paid off.

### **The LTC Ombudsman testified:**

- The appellant's POA was aware of her financial situation.
- A discharge letter was sent.
- A Pre-transfer, Pre-discharge Notices was sent.

### **The appellant's Nephew and sister testified:**

- They have been aware that the balance was seriously overdue.
- They are having problems accessing one of her accounts.
- There have also been personal and health problems in their family that held up working on accessing the appellant's account.
- The account does show assets and therefore when they applied for Medicaid they were denied due to excess resources also.
- They want to pay the Nursing Home and continue to try to gain access to the appellant's account.
- They did receive the formal letter from the nursing home and the Pre-notice of discharge form in December 2014.

## FINDINGS OF FACT:

- The appellant's POA was sent a letter dated December 15, 2014 informing her that in 30 days, if the Nursing Home did not receive the unpaid amount of \$62,240.00 her sister would be discharged.
- The appellant's POA was also sent a pre-discharge Notice dated December 15, 2014.
- The appellant filed a request for hearing received by the Agency on January 13, 2015.
- The appellant still resides at the facility that issued the discharge notice.
- A hearing was scheduled for February 24, 2015 and was rescheduled per the appellant's request.
- A hearing was scheduled for March 18, 2015 and was rescheduled because the POA was not available.
- The hearing took place on May 4, 2015.

## CONCLUSION:

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

A review of the Agency's rules and regulations 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) financial representative 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 testimony, the Nursing Home sent all proper paper work except the appeal form. They did send appeal rights. Since the appellant's POA did file a timely Appeal they did have request for appeal form and were not harmed by getting it from DHS.

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

The NF provided proof that the appellant had an outstanding balance of \$62,240.00 as of the date of hearing. The Nursing Home tried to help the POA get access to the appellant's funds.

The appellant's POA testified that they did not dispute the amount owed to the facility; however they disputed their ability to access the appellant's funds.

The appellant's POA had been paying the appellant's fees out of a brokerage account; however due to the fact that this money is tied up in Real Estate investments the POA cannot get access. The family continues to try to gain access to funds.

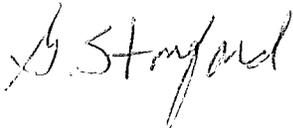
The appellant has been advised of the monies owed and was issued a notice of Discharge and Appeal Rights as required by Policy.

The appellant's POA requested rescheduling of the hearing three times to prepare; however had no evidence of the ability to access the funds and pay the outstanding balance owed to the Nursing Home.

The POA has made an application for Medicaid; however they have the same problem of resources regarding Medicaid.

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 rules and regulations, as well as the evidence and testimony given, this Appeals Officer finds that the appellant was issued a proper pre-transfer/discharge notice and has an unpaid balance of \$64,240.00: 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:

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The basis or 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 Executive Office of Health and 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.