

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2013-30451 IVT

██████████,
Petitioner,

v

██████████,
Respondent.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 333.21773 and MCL 333.21774 upon the Petitioner's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Guardian, represented the Petitioner. ██████████, Business Office Manager, represented the Respondent nursing facility. ██████████, Administrator, and ██████████, Facility Social Worker, appeared as witnesses for the Respondent.

ISSUE

Did the Respondent properly propose the Involuntary Transfer or Discharge of the Petitioner?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner was admitted to the Respondent nursing facility on ██████████, and currently resides there. (Exhibit 5)
2. The Petitioner was considered pending Medicare and Medicaid coverage at the time of his admission. (Business Office Manager Testimony)
3. The Respondent nursing facility has not attempted to seek Medicaid coverage because a denial of Medicare coverage is required before Medicaid will pay. (Business Office Manager Testimony)

4. The Respondent nursing facility has been unable to obtain payment from Medicare because there is no documentation to prove the Petitioner's legal citizenship status. (Business Office Manager Testimony)
5. The Petitioner has an outstanding balance of ██████████ with Respondent nursing facility, which has not been paid for by private pay, Medicare, Medicaid, or any other insurance. (Exhibit 3, page 11; Business Office Manager Testimony)
6. The Petitioner's Guardian has not received monthly statements nor any other notice of the outstanding balance for the Petitioner's nursing facility stay. (Guardian Testimony)
7. On ██████████, the Respondent nursing facility delivered a Notice of Involuntary Transfer or Discharge to the Petitioner and his Guardian indicating "Medicaid non-payment for SNF stay due to Guardian not complying with Medicare status. Resident has alien status and needs more documentation. Over ██████████ of non-payment." as the reason for the involuntary transfer or discharge. (Exhibit 1)
8. On ██████████, the Department of Community Health received the Petitioner's appeal of the proposed Involuntary Transfer or Discharge. (Exhibit 2)
9. On ██████████, a new application for hospital insurance was filed with the Social Security Administration on the Petitioner's behalf. (Exhibit 3, pages 12-18)

CONCLUSIONS OF LAW

The Admission, Transfer and Discharge rights of nursing facility residents are provided in 42 CFR 483.12(a). This regulation provides in pertinent part:

§ 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.
- (5) Timing of the notice.
 - (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred

or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (a)(2)(iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(2)(ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(2)(i) of this section; or

(E) A resident has not resided in the facility for 30 days.

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;

(vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act. (Emphasis added by ALJ).

The state of Michigan has codified the Involuntary Transfer and Discharge provisions of the federal regulations in the Michigan Public Health Code (Code). The Code provides in pertinent part:

(1) A nursing home shall not involuntarily transfer or discharge a patient except for one or more of the

following reasons:

- (a) Medical reasons.
- (b) The patient's welfare.
- (c) The welfare of other patients or nursing home employees.

- (7) (d) **Nonpayment** for the patient's stay, except as prohibited by title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v. *MCL 333.21773(1)* (emphasis added by ALJ).

“Nonpayment” means:

- (a) Failure to collect from the patient or any other source the full amount of the facility charges to a non-Medicaid patient based on a written contract signed on or after that patient's admission to the facility.
- (b) Failure to collect a Medicaid patient's stipulated contribution toward his or his care. *MCL 333. 21702(9)*.

The Respondent introduced documentary evidence that the Petitioner has accrued an outstanding bill of ██████████. (Exhibit 3, page 11) The outstanding bill has not been covered by private pay, Medicare, Medicaid, or other insurance. (Business Office Manager Testimony) The Petitioner was considered pending Medicare and Medicaid coverage at the time of his admission. The Respondent has not attempted to seek Medicaid coverage for the Petitioner's nursing facility stay because a denial of Medicare coverage is required before Medicaid will pay. (Business Office Manager Testimony) It is unclear what steps were taken to apply for Medicare coverage between the Petitioner's ██████████ admission and the ██████████ Notice of Involuntary Transfer or Discharge. The Business Office Manager present at the hearing had only been there for two weeks. (Business Office Manager Testimony) The prior Business Office Manager made a contact note dated ██████████ that the Petitioner's Guardian was called regarding denial papers, but the only documented denial from the Social Security Administration was dated ██████████ and it appears the Respondent nursing facility did not receive a copy of this denial until at least ██████████. (Exhibit 3, page 11; Exhibit 4) The Business Office Manager explained that typically monthly statements are mailed out by the corporate office and a copy would not be in the Petitioner's file. (Business Office Manager Testimony) However, the computer print out submitted does not show the Petitioner's Guardian's address as the legal mailing address for the Petitioner. (Exhibit 5)

The Petitioner's Guardian testified that that the Petitioner has had Medicaid coverage since he was admitted and she believed his nursing facility would be covered based on what she was told at the time of his admission. Further, the Petitioner's Guardian has not been getting the Petitioner's full SSI check and she believed the rest was going to the nursing facility. The Petitioner's Guardian has not received monthly statements nor any other notice of the outstanding balance for the Petitioner's nursing facility stay. The Petitioner's Guardian was not aware of any non-payment issues prior to the Notice of Involuntary Transfer or Discharge. (Guardian Testimony)

While the Respondent established that the Petitioner has an unpaid balance for his nursing facility stay, this alone is not sufficient grounds for an involuntary transfer or discharge. The above cited federal regulation requires that a resident receive reasonable and appropriate notice. The Petitioner can not be involuntarily transferred or discharged for nonpayment unless he has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. The Petitioner can not be said to have received reasonable and appropriate notice of the outstanding balance in the present case because the documentation submitted by the Respondent does not establish that any notice of the outstanding balance was ever sent to the Petitioner's Guardian. Since no notice of the outstanding balance was issued to the Petitioner, non-payment had not occurred at the time the [REDACTED] Notice of Involuntary Transfer or Discharge was issued.

Further, on [REDACTED], a new application for hospital insurance was filed with the Social Security Administration on the Petitioner's behalf. (Exhibit 3, pages 12-18) It is noted that there has not yet been a final determination on this application because it was filed the day prior to these hearing proceedings.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Respondent improperly proposed the Involuntary Transfer or Discharge of the Petitioner.

IT IS THEREFORE ORDERED THAT:

The Respondent's request for Involuntary Transfer or Discharge is DENIED.

/S/

Colleen Lack
Administrative Law Judge

cc:

[REDACTED]


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Date Mailed: 3/8/2013

***** NOTICE *****

The law provides that this Decision and Order may be appealed to the county circuit court.