

3. As part of its regulation of such facilities DAD has adopted regulations governing, inter alia, the discharge of residents from nursing homes (see infra). Under those regulations individuals subject to a discharge may contest their transfer by filing a request for hearing before the Human Services Board pursuant to 3 V.S.A. § 3091(a). (See also 33 V.S.A. § 7118.)

4. Mertens House is strictly a private pay facility. It does not accept Medicaid. The petitioner's children were aware of this when they placed the petitioner in the facility. It appears that they initially were able to pay for the petitioner's care through the earnings and gains of a stock portfolio held by the petitioner.

5. The petitioner's son maintains that Mertens House told him when his mother moved in that an endowment fund was available to pay her costs if she should run out of money. Mertens House denies this allegation, and maintains that the fund in question is only available to individuals who lived in Woodstock before they moved into their facility.

6. At some point earlier this year the petitioner allegedly ran out of money and stopped paying her bill in full to Mertens House. The home notified her that it was discharging her for nonpayment of fees. The petitioner's

children appealed this decision to DAD. On June 28, 2001, DAD notified them that it was upholding the home's decision in that discharge for nonpayment of fees is consistent with state regulations. On July 27, 2001 the petitioner, through her son, appealed this decision to the Human Services Board.

7. DAD filed a Motion to Dismiss in the matter on October 11, 2001. The petitioner filed a written response on October 29, 2001. A telephone status conference was held on October 30, 2001, at which time the parties agreed that the petitioner would have until November 16, 2001 to file an additional written argument.¹ To date petitioner has filed nothing further.

8. The petitioner's son maintains that forcing the petitioner to move "could result in her death". The only evidence submitted on this issue, however, is a brief statement from the petitioner's treating physician stating: "I personally believe, as is the case with most patients with dementia, that a move from her current living situation could potentially aggravate her underlying dementia and worsen her disorientation and behavioral symptoms."

9. The gist of the petitioner's son's argument is that Mertens House "misled" him as to the availability of the

endowment fund to pay for the petitioner's care when she ran out of money, and that, as a result, DAD should not allow Mertens House to discharge the petitioner for nonpayment of fees.

ORDER

The Department's decision is affirmed.

REASONS

Section 3.14(b) of the Vermont Licensing and Operating Rules for Nursing Homes provides, in part, as follows:

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility, unless. . .(4) the resident has failed, after reasonable and appropriate notice, to pay for a stay in the facility. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident only allowable charges under Medicaid.

There is no dispute in this matter that the petitioner has not paid her bill at Mertens House for many months. The petitioner's argument is that the Department (and the Board) should essentially take her side in her allegation that Mertens House misled her at the time of her admission as to the availability of an endowment fund to pay her costs. DAD

¹ An attorney for Mertens House also participated in the status conference.

takes the position that this is a dispute strictly between the petitioner and Mertens House. It maintains that because there is no question that the petitioner has not paid her fees to the home, the home has acted in accord with the above regulation, and that any further dispute regarding payment of fees is beyond the Department's authority to regulate and the Board's jurisdiction to resolve.

Certainly as a general matter, the Board has no jurisdiction over any licensee of the Department involving a dispute with a resident. (See Fair Hearing No. 16,035.) Moreover, there is no indication in either the statute or the regulations that as part of its regulatory function DAD is required to resolve billing disputes between nursing homes and residents. Indeed, the petitioner in this case does not allege that Mertens House is acting in violation of any state regulation that the Department has failed to enforce.

This is not to say that the petitioner in this case may not have a basis for injunctive relief from a court against Mertens House. It is simply to hold that when a nursing home's actions are not shown to be inconsistent with state regulations, those actions are beyond the scope of the Department's authority to regulate and the Board's jurisdiction to review.

In light of the above it must be concluded that DAD's decision in this matter was in accord with its regulations; and, therefore, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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