

State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the State Hearing Officer  
State Board of Review  
2699 Park Avenue, Suite 100  
Huntington, West Virginia 25704  
February 7, 2005

Joe Manchin III  
Governor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 18, 2005. Your hearing request was based on [REDACTED] action to discharge you from the nursing care facility.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility and benefit levels for the Nursing Care Program are determined based on current regulations. One of these regulations is that clear and convincing evidence must be documented by the resident's physician that a transfer or discharge is necessitated by the needs of the resident rather than by an accommodation of the facility's needs and the facility must ensure a safe and orderly transfer or discharge for the resident (Medicaid Program Instruction MA-94-23 5-1-94) and documentation by the resident's physician must be made in the resident's clinical record if the transfer/discharge is due to the facility's inability to meet the resident's needs (Federal Regulations Title 42, Part 483.12(a)(3)(i).

The information which was submitted at the hearing revealed that your move from [REDACTED] qualified as a discharge under federal regulations and you were not afforded the rights of written notice and discharge planning by the facility.

It is the decision of the State Hearing Officer to reverse the action of [REDACTED] to discharge you from the facility.

Sincerely,

Thomas M. Smith  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review

[REDACTED] Administrator, [REDACTED]

[REDACTED] Administrator, [REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 1, 2005 for \_\_\_\_\_.

This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was originally convened on January 18, 2005 on a timely appeal filed November 22, 2004.

It should be noted here that the claimant was discharged from [REDACTED] and now resides in [REDACTED]. It should also be noted that the hearing was convened at [REDACTED].

All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE**

The program entitled Nursing Home Care is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Nursing Home Care is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet TITLE XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

**III. PARTICIPANTS**

1. \_\_\_\_\_, Claimant.
  2. \_\_\_\_\_, Claimant's brother.
  3. \_\_\_\_\_, Claimant's mother.
  4. [REDACTED]
  5. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Presiding at the hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

It should be noted that Mr. \_\_\_\_\_ and Ms. \_\_\_\_\_ were not placed under oath and did not testify and that observers from [REDACTED] were permitted to attend the hearing without objection from any party, including [REDACTED] \_\_\_\_\_, and \_\_\_\_\_.

**IV. QUESTION TO BE DECIDED**

The question to be decided is whether [REDACTED] took the correct action to discharge the claimant from the nursing care facility.

**V. APPLICABLE POLICY**

Medicaid Program Instruction MA-94-23 5-1-94.

Memorandum from [REDACTED] Director, Office of Medical Services 5-5-94 RE: Transfer, Discharge, and Appeal Rights of Nursing Home Residents.

Code of Federal Regulations, Title 42, Parts 483.12 and 483.25.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

None.

**VII. FINDINGS OF FACT**

1. The claimant was a resident of [REDACTED] when she was transferred to a hospital in September, 2004 and was taken to [REDACTED] when she was discharged from the hospital in October, 2004 because [REDACTED] no longer had a bed available as bed hold payments had been stopped by the claimant's father.

2. Mr. [REDACTED] testified that [REDACTED] does not consider the claimant's situation as a discharge as she was in the hospital approximately 30 days and no bed was available and the facility was at 95% and she went from the hospital to [REDACTED]

3. Mr. [REDACTED] testified that conversations were held with the claimant but nothing was provided to her in writing to notify her of discharge from [REDACTED] as she was simply out of their system.

4. Ms. [REDACTED] testified that she wants to go back to [REDACTED] because she was there for a year and a half and has friends there, that she found out from her father that she was not going back to [REDACTED] that no one from [REDACTED] helped her transition to [REDACTED] that she never received anything in writing from [REDACTED] and that she wants to go back to [REDACTED]

5. It should be noted that Ms. [REDACTED] requested an opportunity to provide written arguments and Mr. [REDACTED] stated that he would also provide a written argument and both parties agreed to provide their written arguments by 2-1-05. The State Hearing Officer received the written arguments from [REDACTED] on 1-31-05 and from [REDACTED] on 2-1-05.

**CONCLUSIONS OF LAW**

1. Medicaid Program Instruction MA-94-23 5-1-94 states, in part:

"A resident has the right to remain within the nursing facility unless:

1. A transfer or discharge is necessary to meet physical or health care needs of the resident which cannot be met by the nursing facility.

2. The resident's health has improved sufficiently so that services provided by the facility are no longer needed.

3. The health or safety of individuals in the facility is endangered by the presence of the resident.
4. The resident has failed to make payment (or arrange for payment under Medicare or Medicaid) after reasonable and appropriately written notice.
5. The facility ceases to operate.

Clear and convincing evidence must be documented by the resident's physician in the resident's medical record that a transfer or discharge is necessitated by the needs of the resident rather than by an accommodation of the facility's needs.....The facility must attempt to develop alternative care plans designed to meet the needs of the resident, and the medical record must contain documentation of the results of these alternative care plans.

The facility must immediately consult the resident's physician and provide written notification to the resident and his/her representative in a language and manner so that the resident can understand the reason for the transfer or discharge at least 30 days prior to the effective date of discharge or transfer unless the health or safety of individuals is endangered, the resident's urgent medical needs require immediate transfer or discharge, the health of the resident improves sufficiently to allow more immediate discharge or transfer, or the resident has not been within the facility for thirty (30) days or more.....

The written notice must contain a statement in not less than 12 point type that reads "You have the right to a hearing regarding the nursing home's decision to discharge or transfer you. If you think you should not have to move or leave this facility, you may file a request for a hearing within thirty (30) days after receiving this notice. The nursing home staff must help you complete the request for a hearing if you need assistance. Except in the event of an emergency, if a hearing is requested, you cannot be transferred until thirty (30) days after the date you receive the decision of the state's appointed hearing officer. If the grounds for your discharge or transfer is non-payment, you have the right to pay any amount owed prior to the date of the transfer or discharge. A form to request a hearing and a stamped addressed envelope to the Office of Inspector General is attached." The hearing request form and a postage paid envelope pre-addressed to Office of Inspector General, Board of Review, Capitol Complex, Charleston, WV 25305, must be included in the notice.....

#### Transfer/Discharge Planning

The nursing facility must develop a discharge plan before a resident is voluntarily or involuntarily transferred or discharged..... A facility must provide sufficient preparation and orientation to the resident to ensure a safe and orderly transfer or discharge."

2. Code of Federal Regulations, Title 42, Part 483.12 states, in part:

"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.....

(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.....;

(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 the 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."

## VIII. DECISION

Based upon the evidence and testimony presented, it is the decision of the State Hearing Officer to reverse the action of [REDACTED] to transfer or discharge Ms. \_\_\_\_ from the facility. The testimony provided in the hearing and the written arguments provided subsequent to the hearing show that [REDACTED] did not follow Federal Regulations in the transfer/discharge. Mr. [REDACTED] argued during the hearing that [REDACTED] did not consider the move of Ms. \_\_\_\_ from [REDACTED] to the hospital and then to another nursing facility as a transfer or discharge. Mr. [REDACTED] testified that the claimant nor her representative continued with the bed hold payments through her hospitalization and that the facility was released from its obligation to take Ms. \_\_\_\_ back when she was released from the hospital as there was no bed available. [REDACTED] pointed out in her written arguments that [REDACTED]

██████████ had violated Ms. \_\_\_\_'s rights by not allowing her to return to the facility to the first available bed, by not providing her with written notification of her transfer/discharge, and because ██████████ did not engage in discharge planning with Ms. \_\_\_\_ or her representative. The State Hearing Officer finds that ██████████ did discharge the claimant in violation of federal regulations and that the movement of Ms. \_\_\_\_ to a hospital and then to another nursing facility was a discharge from ██████████. Federal Regulations in 42 CFR 483.12 (a)(1) define a transfer/discharge from a nursing facility as "movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not". Since ██████████ discharged the claimant from the facility without providing her or her representative with written notice and without discharge planning as required by federal regulations, the State Hearing Officer must reverse the action of ██████████ in this case. The facility must make available a bed for the claimant and must assist in the orderly transfer from ██████████. ██████████. In addition, since it is the ruling of the State Hearing Officer that the claimant's discharge was in violation of federal regulations, ██████████ must not consider the claimant to be a new resident as specified in Mr. ██████████ written arguments and she must be afforded the same rights and privileges provided to her before her discharge.

## **XI. RIGHT OF APPEAL**

See Attachment.

## **XII. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.