



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 26, 2005

[REDACTED]

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 19, 2005. Your hearing request was based on [REDACTED]'s proposal to discharge you from the facility and on denial of medical eligibility for nursing home care.

In arriving at a decision, the State Hearings 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 for the Long Term Care program is based on current policy and regulations. Some of these regulations state as follows: Discharge is appropriate if the resident no longer needs the services provided by the facility or if the safety of individuals in the facility is endangered (Medicaid Regulations Section 580.2 and Federal Regulations Section 42- 483.12).

The information which was submitted at your hearing revealed that [REDACTED] followed proper procedure in discharge policies as outlined in Federal Regulations and you were properly determined not to be in need of nursing home care by the Level II evaluation.

It is the decision of the State Hearings Officer to uphold the proposal of the long-term care facility [REDACTED] to discharge you from the nursing facility and to uphold the action of the Department to determine that you do not require nursing home care. See Section IX.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Emily Keefer, Bureau for Medical Services
[REDACTED]

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Claimant,

v. **Action Number:** _____

Department of Health & Human Resources,

Respondents,

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 19, 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 convened on July 19, 2005 on timely appeals filed January 21, 2005 on the issue of nursing home discharge and April 25, 2005 on the issue of denial of medical eligibility. It should be noted that the hearing was originally scheduled on March 4, 2005, March 16, 2005, and May 25, 2005 but was rescheduled twice on behalf of the claimant and finally at the request of the Department.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

It 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. _____

3. [REDACTED]

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

IV. QUESTIONS TO BE DECIDED:

The questions to be decided are whether [REDACTED] was correct in their decision to discharge the claimant from the long-term care facility due to her refusal to participate in therapy services and whether the Department was correct to deny medical eligibility for nursing home care.

V. APPLICABLE POLICY:

Federal Regulations CFR § 42-483.12

Medicaid Regulations Sections 508.2, 508.3, 509, 509.1, 509.2.

Medicaid Program Instruction MA-03-16 titled Pre-Admission Screening and Resident Review Level II Evaluations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Respondent's Exhibits:

- D-1 Pre-admission screening (PAS) dated 1-27-05 (8 pages).
- D-2 Level II PASARR Evaluation 3-17-05 (4 pages).
- D-3 Medical documentation faxed from [REDACTED] to [REDACTED] (9 pages).
- D-4 PAS Deficit Review (3 pages).
- D-5 Plan of Care Kardex (2 pages).
- D-6 Memorandum from [REDACTED] Ph. D 4-11-05 (3 pages).
- D-7 Denial letter to claimant 4-14-05 (3 pages).
- D-8 Medicaid regulations (6 pages).
- D-9 Notice of Transfer or Discharge 1-5-05 (2 pages).
- D-10 Discharge Plan of Care (3 pages).
- D-11 Social Service Progress Notes.

VII. FINDINGS OF FACT:

- 1) The claimant was a resident of [REDACTED] when a discharge notice was given to her on 1-5-05 due to failure to accept and participate in rehabilitation services (Exhibit #D-9).

- 2) The claimant requested a hearing on 1-21-05 and [REDACTED] and requested a new PAS-2000 which was completed by [REDACTED] D. O. on 1-27-05 (Exhibit #D-1) and the PAS-2000 was originally denied by WVMH on 1-31-05 but was then approved pending Level II evaluation.
- 3) Level II PASAAR evaluation was completed by [REDACTED] M.A, Supervised Psychologist, and [REDACTED] M. A., Licensed Psychologist on 3-17-05 and determined that the claimant did not require 24 hour level of care or supervision in a nursing facility (Exhibit #D-2).
- 4) The Social Worker, Ms. [REDACTED] forwarded information about the case to the Bureau for Medical Services for further evaluation after the claimant requested a new PAS-2000 and Ms. [REDACTED] and [REDACTED] Ph. D, Psychologist Consultant, visited [REDACTED] and Dr. [REDACTED] met with and evaluated the claimant and determined that the claimant did not meet the criteria for 24 hour nursing facility level of care as she did not have the required five (5) deficits to be eligible for nursing home care (Exhibit #D-6).
- 5) Notification of denial of medical eligibility was issued on 4-14-05 (Exhibit #D-7) and the claimant requested a hearing on that issue on 4-25-05.
- 6) Ms. [REDACTED] testified that the claimant met the criteria for a deficit in the areas of bathing, dressing, and walking but that deficits were not determined for the areas of walking and medication administration as determined on the PAS-2000 completed on 1-27-05 and that the claimant did not meet medical eligibility criteria for nursing home care.
- 7) Dr. [REDACTED] testified that she met with the claimant on 4-6-05, that there was a question about self-administering medications, that the documentation showed that the claimant bathed and dressed independently, that she could walk and feed herself, that she toilets independently, and that she completed her report on 4-11-05.
- 8) The claimant testified that she cannot wake up to go to the bathroom due to the time her medication is being given and that she wets herself, that she is 50% blind in one eye, that it is hard to keep up with her medications, that she is starting to walk again, that she can change her clothes but needs the CNA to help sometimes, that the CNA washes her back and legs when she bathes.
- 9) Ms. [REDACTED] testified that when the claimant arrived at the nursing facility, the PAS-2000 indicated that three (3) months of therapy was needed, that the claimant became non-compliant with therapy and was verbally informed of discharge on 1-4-05 and in writing on 1-5-05 (the notice shows 04), that the effective date of transfer was to be 2-3-05, that another PAS-2000 was completed at her request, that the Ombudsman stepped in when it was denied and then Ms. [REDACTED] looked at it, that the claimant's refusal to participate in therapy is the reason she was being discharged, that she discussed going to several high rises with the claimant but stopped discharge planning when a hearing was requested, that as of 1-14-05 they have had no therapy services available for two (2) months.

- 10) Ms. ██████ testified that she did not see the claimant walking, that she does not think she can dress or bathe herself, and that she has headaches and seizures.
- 11). Ms. ██████ testified that the claimant is supervised for bathing, that she does need help getting socks on, that she can walk by herself, that she needs no help with grooming, that she has seen her walk from the bed to the bathroom, that she uses a walker outside the room, that the claimant has had to change clothes due to urinary incontinence but not very often, and that she does not need assistance with eating.
- 12) Federal Regulations CFR §42-483.12 Admission, transfer and discharge rights

(1) 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 a stay at the facility.
- (vi) The facility ceases to operate.

- 13) Medicaid Regulations Section 509.2 states, in part:

If the Level I evaluation found the possible presence of MI and/or MR/DD, further evaluation of the individual must be completed to obtain a definitive diagnosis and the need for specialized services for the mental health condition. This evaluation is identified as a Level II evaluation and must be done by an individual identified by the Bureau as a Level II evaluator. All Level II evaluators are either licensed psychologists or board certified psychiatrists.

It is the responsibility of the referring entity to arrange for an evaluation (Level II). This evaluation must be completed, including a report of the mental health status and whether specialized services are needed, within 7-9 days following the referral.

- 14) Medicaid Program Instruction MA-03-16 dated 3-31-03 states, in part:

Federal Regulations mandate that an individual with a diagnosis of a major mental illness, mental retardation and/or related condition must be evaluated for appropriateness of a nursing facility placement. This evaluation is identified as Pre-Admission Screening and Resident Review (PASRR) Level II evaluation. This

evaluation should be completed prior to the admission of the individual to the nursing facility. PASRR Level II evaluators have been trained to assess not only the mental status of each applicant, but also the nursing (physical) needs. If the physical needs are less than identified on the PAS-2000 the Level II evaluator may deny nursing facility placement. These denials are monitored by the Bureau to assure the appropriateness of placement.

VIII. CONCLUSIONS OF LAW:

- 1) Federal regulations provide that a certified facility can discharge a resident if they no longer need services provided in their facility. The claimant's refusal to participate in the therapy for which she was admitted originally shows that she no longer needed the services provided in the facility at the time the discharge notice was issued. In addition, a Level II determination was made that the claimant did not require skilled nursing services as she did not require 24 hour level of care or supervision and did not meet the criteria for skilled nursing services. The claimant was properly notified of proposed discharge on 1-5-05 effective 2-3-05 and arrangements for a location for the claimant were discussed but halted when the claimant requested a hearing.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action to discharge the claimant from [REDACTED] and to determine through the Level II evaluation that the claimant did not require skilled nursing services. [REDACTED] will arrange for a location for the claimant to be discharged to and the claimant will be allowed to remain in the nursing facility until an appropriate location for discharge has been arranged.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of July 2005.

**Thomas M. Smith
State Hearing Officer**