



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 20, 2005

\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 5, 2005. Your hearing request was based on the [REDACTED] nursing facility's proposal to discharge your brother.

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.

The information, which was submitted at your hearing, revealed that [REDACTED] is accurately following discharge policies as outlined in Federal Regulations.

It is the decision of the State Hearings Officer to uphold the actions of the long-term care facility to continue discharge procedures.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED]

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

\_\_\_\_\_  
By \_\_\_\_\_,

**Claimant,**

v. **Action Number:** \_\_\_\_\_

**Heartland of Martinsburg,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 5, 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 5, 2005 on a timely appeal, filed May 26, 2005.

**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:**

Claimant's witnesses:  
\_\_\_\_\_, claimant and sister of client  
\_\_\_\_\_, claimant's niece  
\_\_\_\_\_, claimant's cousin  
\_\_\_\_\_, claimant's neighbor

Respondent's witnesses:

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether [REDACTED] was correct in their decision to discharge Mr. \_\_\_\_\_ from the long-term care facility.

**V. APPLICABLE POLICY:**

Federal Regulations CFR § 42-483.12

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Respondent's Exhibits:**

D-1 Pre-admission screening dated April 19, 2005

**Claimants' Exhibits:**

C-1 Hearing request received May 26, 2005

**VII. FINDINGS OF FACT:**

- 1) Mr. \_\_\_\_\_ has been residing at [REDACTED] long-term care facility in excess of one year. He is a mentally handicapped 75 year old.
- 2) For the past several months, Mr. \_\_\_\_\_ has been exhibiting aggressive behaviors and has been threatening staff as well as other residence with his cane.
- 3) Attempts were made by [REDACTED] to find a more appropriate placement for Mr. \_\_\_\_\_, which might be adequately prepared to deal with his psychiatric needs. A new pre-admission screening, PAS, was completed and it determined that Mr. \_\_\_\_\_ does not qualify medically for nursing facility care.
- 4) A level II psychological evaluation would have needed to follow an approved PAS to pursue placement in a Psychiatric Long Term Care facility in the state of WV. Since the PAS determined that that Mr. \_\_\_\_\_ does not require the level of care provided in a long-term care facility, a psychological evaluation was not completed.
- 5) [REDACTED] researched facilities in surrounding states and was not successful in locating a placement outside of West Virginia.

- 6) Mr. \_\_\_\_\_'s family testified that they believe his hostile behavior in the facility is due to his belief that he should not be there. They also indicate that he may not require the care provided in a long-term care facility and that he may function well in an apartment of his own with monitoring of his medication.
- 7) The family does not wish for Mr. \_\_\_\_\_ to be transferred outside of the [REDACTED] area.
- 8) Mr. \_\_\_\_\_ is a recipient of SSI and could benefit from area services offered to recipients of SSI.
- 9) **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.

### 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.
- 2) Federal regulations further provide that, if the safety of others in the facility is endangered, then discharge or transfer is appropriate.

### IX. DECISION:

It has been documented that Mr. \_\_\_\_\_ does not need the nursing services provided in a long-term care facility. Testimony supports that Mr. \_\_\_\_\_ is exhibiting aggressive behaviors towards staff and other residence of the facility. I rule to **uphold** the proposed actions of [REDACTED] to process the discharge of Mr. \_\_\_\_\_ from their facility.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 20th Day of July 2005.**

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**Sharon K. Yoho  
State Hearing Officer**