



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

October 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 3, 2006. Your hearing request was based on [REDACTED] proposal to discharge you from its nursing facility.

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.

The state and federal regulations that govern the Medicaid Long-Term Care Program state that the transfer and discharge of an individual includes movement of a resident to a bed outside of the certified facility (area) whether or not that bed is in the same physical plant. Transfer and discharge (policy) does not refer to movement of a resident to a bed within the same certified facility. Among the reasons for which a facility can recommend transfer/discharge is if the determination has been made that the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. The resident's treating physician must document in their clinical record that transfer / discharge is necessary. {WV DHHR Medicaid Policy and Procedure Manual, Chapter 511 & Code of Federal Regulations §42 CFR 483.12}

The information submitted at your hearing reveals that while you have expressed dissatisfaction with services at [REDACTED] there is no evidence to indicate that your welfare is in jeopardy or that the facility has been unable to meet your needs. More importantly, there is no documentation in your clinical record by your treating physician that transfer / discharge is necessary.

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] to discharge/transfer you from the [REDACTED]

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
_____, Esq., Legal Aid of WV
_____, LSW, [REDACTED]

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

_____,
Claimant,

v.

Action Number: 06-BOR-1583

Worthington Manor, Inc.,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 17, 2006 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 October 3, 2006 on a timely appeal filed May 15, 2006.

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
_____, Esq., Legal Aid of WV
_____, Ombudsman
_____, Claimant's son (observing)
Claimant's friend (observing)
Claimant's daughter (observing)

PARTICIPANTS (continued)

[REDACTED]

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

IV. QUESTIONS TO BE DECIDED:

The question to be decided is if [REDACTED] was correct in its proposal to transfer / discharge the Claimant.

V. APPLICABLE POLICY:

WV DHHR Medicaid Policy and Procedure Manual, Chapter 511
Code of Federal Regulations §42 CFR 483.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Worthington Manor Exhibit(s)

WM-1 Notice of Transfer/Discharge, dated 4/18/06

Claimant's Exhibit(s)

- C-1 Physicians Orders (4/4/06 through 5/4/06)
- C-2 Progress Notes (5/10/06 & 5/24/06)
- C-3 [REDACTED] – General Rules for Residents and Sponsors
- C-4 [REDACTED] – Complaint Procedure
- C-5 Claimant's written appeal of discharge/transfer (sent to wrong address)
- C-6 WV DHHR Medicaid Policy and Procedure Manual, Chapter 511, (Transfer and Discharge Policies).

VII. FINDINGS OF FACT:

- 1) On or about April 18, 2006, the Claimant was notified via a Notice of Transfer / Discharge (Exhibit WM-1) that [REDACTED] recommended transfer/discharge to another facility due to (1) "Resident's welfare and needs cannot be met."
- 2) The Claimant filed a written appeal (received by the Bureau of Senior Services on 4/26/06) contesting [REDACTED] proposed discharge / transfer and stated "I feel as though my needs are met here."

- 3) Testimony received from the [REDACTED] administration and staff reveals that the Claimant is difficult to please. The Claimant has expressed dissatisfaction with the activities available to residents, the selection of food from the menu, as well as the seasoning of the food served, and she complains that [REDACTED] staff responds slowly when she calls.
- 4) [REDACTED] representatives presented testimony to indicate that multiple efforts have been made in an attempt to accommodate the Claimant and that the 30-day notice (Exhibit WM-1) was only issued to the Claimant after it was determined that she was still dissatisfied with the level of care and service she is receiving.
- 5) Testimony received from _____, RN, Director of Nursing at [REDACTED] Inc., reveals that while the Claimant has refused medical care in the past, and she has been non-compliant with her diet, as resident, she has that right. There have been episodes when the Claimant has complained about nursing facility staff not responding to her calls in a timely manner, however, there is no evidence to indicate that the Claimant's medical needs are not being met. RN [REDACTED] testified that the Claimant's treating physician is aware of the discharge / transfer recommendation, however, RN [REDACTED] was unable to verify that the Claimant's treating physician has documented in her clinical record that the transfer / discharge is necessary.
- 6) The Claimant testified that her needs are being met and she wants to stay at [REDACTED] until a dialysis center is constructed near a nursing facility in [REDACTED]. She acknowledged that she has had some conflict with the administration and staff at [REDACTED] but indicated that compromises have been made to accommodate her.
- 7) Claimant's Exhibits C-1 (Physician Orders for 4/4/06 to 5/4/06) and C-2 (Progress Notes from 5/10/06 & 5/24/06) were submitted to show that there is no documentation in the Claimant's medical chart by her treating physician to indicate that her needs cannot be met or that transfer / discharge from [REDACTED] is necessary.
- 8) Claimant's Exhibit C-3 (General Rules for Residents and Sponsors) was submitted to show that [REDACTED] encourages residents to discuss problems and provide suggestions. Number #23 states – "The administrator shall discuss any problems concerning the facility, residents, and staff members, financial matters, etc., that you may have. We solicit your recommendation and will assist in any way possible."
- 9) Exhibit C-4 is the current "Complaint Procedure" used by [REDACTED]. The fourth paragraph states – "Every complaint will be impartially considered even though the complaint is voiced by a resident or person who has chronically complained." The Claimant purports that her complaints were not impartially considered and has caused [REDACTED] to initiate discharge / transfer proceedings against her.

- 10) The Code of Federal Regulations, found at § 42 CFR 483.12(a) provides regulatory guidelines regarding admission, transfer and discharge rights for the Medicaid, Long-Term Care Program. This regulation states:
- (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 a stay at the facility.
 - (vi) The facility ceases to operate.
- 11) The Code of Federal Regulations, found at § 42 CFR 483.12(a)(3), notes the required documentation for resident transfer/discharge and states:
- (3)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.
- 12) West Virginia Department of Health and Human Resources, Chapter 511, Medicaid Policy Manual, is consistent with the Federal Regulations in the reasons for which transfer and discharge can be recommended by the facility and states - ***“Documentation must be recorded in the resident's medical record by a physician of the specific reason and/or condition requiring the transfer and/or discharge if due to health and safety issues of the resident or others, the needs of the resident cannot be met or the medical needs of the resident no longer qualify for nursing facility level of services.”***

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the Medicaid Long-Term Care Program state that a resident can be transferred / discharged from a nursing facility when the resident's needs cannot be met by the nursing facility. When a nursing facility recommends transfer / discharge under these circumstances, documentation must be recorded in the resident's medical record by his / her treating physician indicating the specific reason and/or condition that makes the transfer and/or discharge necessary.
- 2) While it is clear that the Claimant has expressed dissatisfaction with services at [REDACTED] there is insufficient evidence to demonstrate that the Claimant's welfare has been jeopardized or that her needs cannot be met in the [REDACTED] facility. More importantly, [REDACTED] failed to verify documentation from the Claimant's treating physician to confirm that transfer / discharge is necessary.
- 3) Whereas the evidence submitted by [REDACTED] fails to meet regulatory requirements, the discharge / transfer recommendation cannot be affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] to discharge/transfer you from the [REDACTED]

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of October 2006.

**Thomas E. Arnett
State Hearing Officer**