



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313

Joe Manchin III  
Governor  
April 23, 2007

Martha Yeager Walker  
Secretary

\_\_\_\_\_, Esq.

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

Case Name: \_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on Ms. \_\_\_\_\_'s hearing held March 21, 2007. The hearing request was based on the Nursing Facility's proposal to discharge Ms. \_\_\_\_\_ from the nursing facility because her needs cannot be met, and the safety of other individuals in the facility is at risk.

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 Nursing Home Care is based on current policy and regulations. Some of these regulations state as follows:

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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate. (42CFR483.12 (a) (2) Transfer and Discharge Rights).

The information submitted at the hearing revealed: (1) The health and safety of individuals in the Nursing Facility are endangered by the Claimant; and (2) The Claimant's needs cannot be met by the Nursing Facility.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to discharge the Claimant from the nursing facility.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Ms. \_\_\_\_\_, MPOA  


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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-488**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 23, 2007 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 scheduled on January 31, 2007 on a timely appeal filed January 2, 2007. The hearing was rescheduled to allow the Nursing Facility to provide documentation for the hearing. The hearing finally convened on March 21, 2007.

It should be noted here that the Claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was held between the parties prior to the hearing.

**II. PROGRAM PURPOSE:**

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

A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State and Local laws and regulations, and with accepted professional standards and principles, which apply to professionals providing services in such a facility.

**III. PARTICIPANTS:**

\_\_\_\_\_, Esq. - \_\_\_\_\_  
\_\_\_\_\_, Sister/Medical Power of Attorney (MPOA)  
\_\_\_\_\_, Claimant's Daughter  
\_\_\_\_\_

[REDACTED]

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is: Did [REDACTED] Center follow established guidelines under 42CFR483.12 (a) Transfer and Discharge Rights, to support Ms. \_\_\_\_\_'s proposed discharge from the facility.

**V. APPLICABLE POLICY:**

42CFR483.12 (a) Transfer and Discharge Rights

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

**Nursing Home's Exhibits:**

- NH-1 Physician's Progress Notes dated 10/05/06
- NH-2 Physician's Progress Notes dated 11/01/06
- NH-3 Physician's Progress Notes dated 12/08/06
- NH-4 Physician's Telephone Orders dated 10/26/06
- NH-5 Nurse's Notes dated 11/14/06 & 11/28/06
- NH-6 Closing Argument

**Claimants' Exhibits:**

- C-1 Physician's Progress Notes dated 11/01/06
- C-2 Physician's Progress Notes dated 12/08/06
- C-3 Discharge Notice dated 12/11/06
- C-4 Closing Argument

**VII. FINDINGS OF FACT:**

- 1) The Skilled Nursing Facility is seeking to discharge the Claimant from the facility because they can no longer meet her needs. The Facility takes patients with various diagnoses and currently has seventy-two residents. The period in question involving the Claimant covers August 10, 2006 through December 11, 2006.

- 2) The Claimant was admitted to the Nursing Facility on August 10, 2006. She was admitted from another Nursing Facility's Alzheimer's Unit, and was not ambulatory.
- 3) Within weeks of the admission, the Claimant became ambulatory and began wandering throughout the Nursing Facility. At the same time, she began to exhibit aggressive behavior toward staff and residents.
- 4) The Nursing Facility documented two incidents between the Claimant, a Resident and Certified Nursing Assistant (CNA) on November 14, 2006 and November 28, 2006, respectively (Exhibit NH-5).
- 5) On November 14, 2006, the Claimant approached a Resident in the TV Room and kicked him in the lower left leg. The second incident occurred on November 28, 2006. The Claimant exhibited aggressive behavior to a CNA by clenching her fist while groaning and walking toward the CNA.
- 6) The Physician's Notes of October 5, 2006 described the Claimant's medical history (Exhibit NH-1).
- 7) Physicians Telephone Orders were taken by a Licensed Practical Nurse on October 26, 2006 (Exhibit NH-4). It stated, "Refer Resident to Alzheimer's Unit [REDACTED] ASAP."
- 8) The Physician's Progress Notes of November 1, 2006 recommended that the Client be referred to [REDACTED] (Exhibit NH-2).
- 9) The Administrator testified that [REDACTED] is a Nursing Facility for Alzheimer patients. The Nursing Facility has worked with the family to place the Claimant in an Alzheimer's Unit. There is currently a waiting list for [REDACTED] and a placement with other facilities, that handle Alzheimer's patients, has been discussed with the family. One in particular was rejected by the family because it was too far for visits.
- 10) The Physician's Progress Notes of December 8, 2006 (Exhibit NH-3) states in part,  
  
Patient continues to exhibit behavior problems. She wanders the facility day and night. Frequently in other resident's rooms. Multiple episodes of aggressive behavior towards staff and fellow residents. Patient is a danger to herself and others. Her safety cannot be guaranteed.
- 11) The Nursing Facility staff testified that the Claimant has never injured anyone.
- 12) The Nursing Facility issued a Notice of Discharge to the Claimant's MPOA on December 11, 2006 (Exhibit C-3). It stated in part,

This letter represents a 30-day notification for (Claimant) to be discharged/transferred from Oak Ridge Center. The Transfer/Discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility and the safety of other individuals in the facility are at risk.

- 13) The Nursing Facility Administrator and Legal Aid Attorney submitted Closing Statements regarding this matter. They are made a part of the record.
- 14) Claimant's Exhibits 1 and 2 are the same as the Nursing Facility Exhibits 2 and 3. Claimant's Exhibit 1 stressed the Claimant's behavior as being stable
- 15) 42CFR483.12 (a) (1-7) Transfer and Discharge Rights 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 (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
    - (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 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.

(7) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

## VIII. CONCLUSIONS OF LAW:

42CFR483.12 (a) (1-7) Transfer and Discharge Rights 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: **The testimony of the Nursing Facility Staff and Physician's recommendations support this fact.**

(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: **Not Applicable.**

(iii) The safety of individuals in the facility is endangered: **Documented by the Nursing Facility and Physician's recommendations.**

(iv) The health of individuals in the facility would otherwise be endangered: **Documented by Physician's recommendations.**

(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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge resident only allowable charges under Medicaid: **Not Applicable** or

(vi) The facility ceases to operate: **Not Applicable.**

(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: **Documentation Provided** and

(ii) A physician when transfer or discharge is necessary under paragraph (a) (2) (iv) of this Section: **Documentation Provided.**

(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. **The Nursing Facility properly notified the Claimant's MPOA.**

(ii) Record the reasons in the resident's clinical record: **Documentation provided in the Physician's Progress Notes**

(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. **Documentation Provided.**

(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: **Documented by a Physician.**

(B) The health of individuals in the facility would be endangered, under paragraph (a) (2) (iv) of this section: **Documented by a Physician.**

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a) (2) (ii) of this section: **Not Applicable.**

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a) (2) (i) of this section: **Documentation Provided** or

(E) A resident has not resided in the facility for 30 days. **Not Applicable.**

(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: **Included.**

(ii) The effective date of transfer or discharge: **Included.**

(iii) The location to which the resident is transferred or discharged: **Not Included.**

(iv) A statement that the resident has the right to appeal the action to the State: **Included.**

(v) The name, address and telephone number of the State long term care ombudsman: **Included.**

(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: **Not Applicable** 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. **Not Applicable.**

(7) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. **Documented in Discharge Notice.**

**IX. DECISION:**

It is the decision of this State Hearing Officer to **UPHOLD** the **PROPOSAL** of the Department in this particular matter.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 23rd Day of April, 2007.**

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**Ray B. Woods, Jr., M.L.S.**  
**State Hearing Officer**