



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 5, 2010

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 27, 2010 for ----- . Your hearing request was based on Heartland [REDACTED] decision to discharge ----- from their facility due to the safety of the staff and residents.

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. Among the reasons for which a facility can recommend transfer/discharge is when the safety of the individuals in the facility is endangered (West Virginia Provider Manual § 511.14 and the Code of Federal Regulations 42 CFR §483.12).

The information submitted at your hearing revealed that ----- has harmed several staff members of Heartland of [REDACTED] and continues to exhibit combative behaviors to the staff.

It is the decision of the State Hearings Officer to **Uphold** the action of Heartland of [REDACTED] to discharge ----- from its facility due to the safety of the staff and residents.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
-----, Administrator

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

-----,

Claimant,

v.

Action Number: 10-BOR-1932

**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 September 27, 2010 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.

II. PROGRAM PURPOSE:

Medicaid Regulations at 42 CFR §483.12 provide for admission, transfer and discharge rights for residents of Nursing Facilities. A facility must permit each resident to remain in the facility and not be transferred or discharged unless at least one of six specified criteria is met. Further, facility may not discharge or transfer a resident until he or she has received proper and timely advance notice of the proposed action including the right to appeal.

III. PARTICIPANTS:

-----, Claimant's Attorney-in-Fact

-----, Witness for Claimant

-----, Administrator of Heartland of [REDACTED]

-----, Director of Social Services, Heartland of [REDACTED]

-----, CNA, Heartland of [REDACTED]

-----, CNA, Heartland of [REDACTED]
-----, CNA, Heartland of [REDACTED]
-----, CNA, Heartland [REDACTED]
-----, CNA, Heartland [REDACTED]
-----, CNA, Heartland [REDACTED]
-----, CNA, Heartland [REDACTED]

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not Heartland of [REDACTED]'s decision to discharge Claimant is correct.

V. APPLICABLE POLICY:

West Virginia [Medicaid] Provider Manuals, Chapter 511.14 (Nursing Facility Services)
Code of Federal Regulations 42 CFR §483.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Facility's Exhibits:

- F-1 Medical Records for [REDACTED] Hospital
- F-2 Nurses' Notes from Heartland of [REDACTED]
- F-3 Care Plan from Heartland [REDACTED]
- F-4 Workers' Compensation Claim Forms

Claimants' Exhibits:

- C-1 Urinalysis Results dated September 1, 2010

VII. FINDINGS OF FACT:

- 1) Claimant was a resident of Heartland of [REDACTED] Nursing Facility until her transfer to [REDACTED] Hospital's behavioral health unit on September 1, 2010. A discharge notice from Heartland [REDACTED] was issued to Claimant's family also on September 1, 2010, advising that Claimant would not be accepted back into the facility after her discharge from the hospital.

- 2) -----, Administrator of Heartland of [REDACTED] testified Claimant is non-compliant with her care and physically and verbally abusive to the staff (F-2). -----stated Claimant has been discharged to the hospital several times for behavior issues since her stay at the facility. -----stated the staff is not trained in psychiatric intervention and Claimant's presence there does not provide a safe environment for the staff or residents.

-----testified Claimant physically assaulted a Certified Nursing Assistant (CNA) on September 1, 2010, requiring her to be off from work for two (2) days (F-4). This incident prompted Claimant's transfer from the nursing facility to the hospital.
- 3) -----, CNA of Heartland, testified that she had been assaulted by Claimant in June 2009. -----stated she was bent over putting Claimant's socks on her feet when Claimant punched her in the side. -----was put on "light duty" by her physician as a result of the incident.

-----stated Claimant could be sweet, but could easily become agitated. -----stated Claimant has tried to hit and bite her on many occasions when assisting her with a shower. -----testified Claimant was verbally abusive to other residents and felt she could harm other residents.
- 4) -----, CNA of Heartland, testified to her interaction with Claimant. -----stated she was washing Claimant in her bed when Claimant grabbed her hair and punched her repeatedly in the head. -----stated she lost some hair trying to get out of Claimant's grasp and broke her glasses. -----was off from work for two (2) days as a result of the incident with a contusion to the head (F-4).
- 5) -----, CNA with Heartland testified that Claimant has mood swings. -----stated she would leave Claimant alone when she was combative and wait for her mood to improve. In doing this, she sometimes did not complete her care for Claimant. -----stated the CNAs adjusted to Claimant's behaviors but they never knew what to expect out of her. -----stated she has been punched by Claimant several times when assisting her in the shower.
- 6) -----, CNA of Heartland, testified that Claimant would throw things, pinch, punch and curse at the staff. -----stated it would sometimes take two (2) people to complete Claimant's daily care, one person to distract her and the other to do the care. -----stated Claimant was unpredictable.
- 7) -----, CNA of Heartland, testified that Claimant has tried to hit her and other staff. -----stated Claimant could be nice but then her mood would change. -----stated Claimant moods seem to be worsening.
- 8) -----, CNA of Heartland, testified that Claimant was combative with the staff when giving her care. -----stated Claimant did not like mornings so she would not

attempt her daily care until after breakfast. -----stated she would leave Claimant alone if she was agitated until she calmed down. -----stated Claimant has hit her and bent her thumb back once.

9) -----, CNA with Heartland, stated Claimant could be mean by pinching and hitting the staff. -----stated there were also occasions when Claimant could be very sweet.

10) -----, Claimant's daughter, did not deny that her mother was combative. ----- testified they could no longer care for her mother at home due to her dementia and resulting aggressiveness. -----stated if her mother's condition was deteriorating, the family should have been given enough notice for them to find an appropriate facility to place her.

-----questioned the alleged emergency situation requiring her mother's transfer to the hospital on September 1, 2010. -----pointed out that Claimant assaulted -----at 8:00 am but was not transferred to the hospital until 6:00 that evening. -----stated the new environment for Claimant at the hospital has been detrimental to her condition.

-----testified Heartland's staff should be able to handle her mother in their care. --- --stated her mother ambulates via wheelchair and requires assistance to transfer into it from her bed. Someone would have to get her mother into the wheelchair before she would even have access to other residents.

-----denied knowledge that her mother's violent outbursts were increasing, blaming poor communication on behalf of the nursing facility.

11) West Virginia Medicaid Provider Manual, Chapter 511.14 (Nursing Facility Services)

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 does not refer to movement of a resident to a bed within the same certified facility.

The facility must permit each resident to remain in the facility, and not be transferred or discharged from the facility unless at least one of the following conditions is met:

- The transfer or discharge is necessary for the resident's welfare since the needs of the resident cannot be met by the facility;
- The transfer or discharge of the resident is appropriate because the health of the resident has improved sufficiently that the individual no longer meets the medical criteria for Medicaid nursing facility services;
- The safety of individuals in the nursing facility is endangered;

- The health of individuals in the nursing facility would otherwise be endangered;
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicaid) a stay at the nursing facility including but not limited to the amount of money determined by the financial eligibility evaluation as co-payment for the provision of services; and/or
- The facility ceases to operate or the residents are identified by the state and/or federal certification agency as in immediate and serious danger due to policies, practices and/or services provided by the nursing facility.

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 service. Documentation of the reason for discharge must also appear in the record of the resident if the facility ceases to operate or must discharge residents due to certification requirements or financial requirements are not met by the resident or his/her representative.

The facility must notify the resident and/or his/her representative both in a written language and verbal language that is understandable to the parties of the intent and reason for transfer or discharge. The same information must be recorded in the resident's clinical record. Except in the case of immediate danger to the resident and/or others as documented, the notice of transfer or discharge must be provided at least thirty (30) days prior to the anticipated move.

Waiver of thirty day requirement may be appropriate if the safety of individuals in the facility would be endangered, the immediate transfer is required by the resident's urgent medical needs, or a resident has not resided in the nursing facility for thirty (30) days.

The written notice must include the reason for the transfer or discharge; the effective date of the transfer or discharge; the location or person(s) to which or whom the resident is transferred or discharged; a statement that the resident has the right to appeal the action to the State; the name, address and telephone number of the State long term care ombudsman; 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 and Bill of Rights Acts; and 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.

- 12) 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.

The Code of Federal Regulations, 42 CFR §483.12(a)(4&6), addressed written notification regarding transfer and discharge and states that notice 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. 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 safety of the individuals in the facility is threatened.
- 2) The testimony and the documentation provided indicate Claimant's aggressive and combative behavior endangers not only the staff of the nursing facility but could potentially harm the residents as well.
- 3) Heartland of [REDACTED]'s discharge of Claimant due to safety concerns is warranted.

IX. DECISION:

It is the decision of the Department to **uphold** the decision of Heartland of [REDACTED] to discharge Claimant from its facility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 5th day of October 2010.

**Kristi Logan
State Hearing Officer
Member, Board of Review**