



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661

Joe Manchin III  
Governor

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

June 16, 2010

-----for -----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 24, 2010. Your hearing request was based on the proposal of Trinity Healthcare [REDACTED] to discharge ----- from its nursing facility.

In arriving at a decision, the State Hearing 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.

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 discharge is that the resident's health has improved sufficiently so he or she no longer needs the services provided by the facility. (Code of Federal Regulations §42 CFR 483.12)

Information submitted at the hearing reveals that -----'s health has improved to the extent that she does not require a nursing home level of care.

It is the decision of the State Hearing Officer to **uphold** the proposal of Trinity Healthcare of [REDACTED] to discharge/transfer ----- from its facility.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

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

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-2343**

**Trinity Healthcare** [REDACTED]

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 16, 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. This fair hearing was convened on February 24, 2010 on a timely appeal filed December 22, 2009.

**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:**

-----, Resident's representative, WV DHHR, [REDACTED] County Office

Tennessee May, WV DHHR, [REDACTED] County Office

-----, RN, Pro Careers

-----, RN, Pro Careers

[REDACTED] Social Worker, Trinity Healthcare [REDACTED]

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether Trinity Healthcare of [REDACTED] was correct in its proposal to discharge the Resident from its facility.

**V. APPLICABLE POLICY:**

Code of Federal Regulations §42 CFR 483.12

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

**Nursing Facility Exhibits:**

NF-1 WV DHHR Pre-Admission Screening dated November 23, 2009

NF-2 Pre-Admission Screening and Annual Resident Review (PASARR) dated November 3, 2009

**Resident's Exhibits:**

R-1 WV DHHHR Adult Protective Services Incident Report dated February 12, 2009

R-2 Petition to [REDACTED] County Circuit Court from WV DHHR, [REDACTED] County Office, Adult Protective Services requesting Resident be placed in protective guardianship of DHHR

R-3 Order from [REDACTED] County Circuit Court granting emergency protective guardianship of Resident to WV DHHR, [REDACTED] County Office, Adult Protective Services

R-4 Notice of Mental Hygiene Hearing, dated April 10, 2009

**VII. FINDINGS OF FACT:**

- 1) Nursing Facility's representative testified that Resident was initially admitted into Trinity Healthcare [REDACTED] on February 13, 2009. Upon admission, Resident's pre-admission screening (PAS) only approved her to be in long-term care for three to six months. Nursing Facility's representative testified that at the end of that period of time, the facility submitted a request to see if Resident could continue to be approved for long-term care.
- 2) Nursing Facility's representative testified that a PAS was completed on November 4, 2009, in order to evaluate resident for a more permanent placement. (Exhibit NF-1.) The section of this document labeled, "V. Eligibility Determination," on the Level I section, indicates the need for a Level II determination. On the Level II section, the psychologist has indicated that nursing facility services are not needed for resident and has indicated that his recommended placement was at an "elderly care or assisted living home." The completed PAS, Level I and Level II, was submitted to the facility on November 23, 2009.
- 3) Nursing Facility's representative testified that after the facility received the results of the PASARR evaluation, she contacted Resident's guardian at the WV DHHR, [REDACTED] County office, about other arrangements which possibly could be made on Claimant's behalf. She repeated that the PASARR recommended an elder care home or assisted living program where her medications could be monitored and administered. She stated that attempts were made to

find that type of placement for Resident, but none would accept her due to the nature of her illness and the level of care she required.

- 4) Resident's representative and guardian testified that the WV DHHR Adult Protective Services (APS) unit received a report on February 12, 2009, that Resident was living alone and would not allow her care givers and/or homemakers to enter her apartment. (Exhibit R-1.) She stated that she gained entry to the dwelling with the assistance of Resident's landlord, and found Resident in what appeared to be a delusional state. She testified that she submitted to ██████████ County Circuit Court a petition to have the WV DHHR appointed guardian over Resident. (Exhibit R-2.) The Court issued an order granting WV DHHR's petition. (Exhibit R-3.) She stated the Department placed Resident at Trinity Healthcare ██████████ Resident's representative offered no substantial evidence regarding the PASARR evaluation.
- 5) Resident's representative called as witnesses two nurses from Resident's Case Management agency, Pro Careers. She also called as witness another social worker with WV DHHR, ██████████ Office, APS Unit. Each of these witnesses provided testimony as to the severity Resident's mental illness both before and after she was placed at Trinity Healthcare ██████████ None of these witnesses provided substantial evidence regarding the PASARR evaluation.
- 6) 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.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Regulations that govern the Medicaid Long-Term Care Program state that a resident can be discharged from a nursing facility when her health has improved sufficiently so that she no longer needs the services provided by the facility.

- 2) Evidence submitted by the Nursing Facility indicates that a Level I PAS and a Level II PASARR evaluation were completed and submitted to the facility on November 23, 2009. According to the Level II PASARR, the evaluating psychologist recommended that Resident no longer needed to be in a facility that provided the level of care provided by Trinity Healthcare of [REDACTED]
- 3) The proposal of Trinity Healthcare [REDACTED] to discharge the Resident from its facility is in compliance with federal regulations.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of Trinity Healthcare [REDACTED] to discharge the Resident from its facility.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 16th Day of June, 2010.**

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**Stephen M. Baisden  
State Hearing Officer**