



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

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

February 12, 2010

RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your client's hearing held February 8, 2010. Your client's hearing request was based on The Heritage, Inc.'s proposal to discharge her from its long-term care 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.

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 resident has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility. The Code of Federal Regulations provides notification requirements and states that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. (Code of Federal Regulations §42 CFR 483.12)

Information submitted at your client's hearing reveals that the transfer/discharge procedure implemented by The Heritage, Inc. is in compliance with the Code of Federal Regulations.

It is the decision of the State Hearing Officer to **uphold** The Heritage, Inc.'s proposal to discharge your client from its facility based on non-payment.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
-----, Administrator, The Heritage, Inc.

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

Justina Hart,

Claimant,

v.

Action Number: 09-BOR-2405

The Heritage, 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 February 12, 2010 for Justina Hart. 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 telephonically on February 8, 2010 on a timely appeal filed December 10, 2009 and received by the Hearing Officer on December 27, 2009.

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 granddaughter and Power of Attorney

-----, Claimant's attorney

-----, Administrator, The Heritage, Inc.

-----, Operations Manager, The Heritage, Inc.

-----, Regional Manager of Operations and Sales, Sunwest Management, Inc.

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether The Heritage, Inc. is correct in its proposal to involuntarily discharge the Claimant from its facility.

V. APPLICABLE POLICY:

Code of Federal Regulations Section 42 CFR 483.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Nursing Facility Exhibits:

- NF-1 Letters to -----from WVDHHR dated December 19, 2008, May 1, 2009 and August 26, 2009
- NF-2 Electronic mail correspondence from -----to -----dated November 18, 2009
- NF-3 Account statements from The Heritage, Inc.
- NF-4 Notice of Transfer or Discharge dated November 30, 2009 and associated documentation
- NF-5 Admissions Agreement dated April 24, 2004

Claimant's Exhibits:

- C-1 Letter to Sunwest Management, Inc. from -----, dated September 16, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant has been a resident of The Heritage, Inc. nursing facility in [REDACTED] since April 2004 and was previously a recipient of Long-Term Care Medicaid services through the West Virginia Department of Health and Human Resources, hereinafter WVDHHR.
- 2) Witnesses for the nursing facility testified that the Claimant's Long-Term Care Medicaid case was scheduled for redetermination by the WVDHHR in December 2008. The redetermination was not completed and the Claimant's Medicaid benefits were terminated effective December 31, 2008, as reflected in Exhibit NF-1, a December 19, 2008 Notice of Decision to -----from WVDHHR.
- 3) The Claimant's granddaughter/Power of Attorney completed a new application for Long-Term Care Medicaid in March 2009, however that application was denied due to excessive assets, as reflected in a May 1, 2009 Notice of Decision (NF-1) to -----from WVDHHR. The Claimant's representative reapplied for Long-Term Care Medicaid again in August 2009, however, that application was also denied due to excessive assets, as noted in an August 26, 2009 Notice of Decision (NF-1) from WVDHHR.
- 4) The nursing facility representatives contended that, while the Claimant's granddaughter/Power of Attorney has made \$18,555 in private payments to the nursing facility since January 2009,

the Claimant owes a remaining balance of \$48,520.58 to The Heritage, Inc. for that period. This information is documented in Exhibit NF-3, account statements.

- 5) The nursing facility representatives provided Exhibit NF-2, an electronic mail transmission from [REDACTED] a Regional Long-Term Care Ombudsman, to -----of The Heritage, dated November 18, 2009, which states:

I have not heard anything from [REDACTED] Granddaughter. Maybe you have. I spoke to DHHR (Kim) and she said they instructed ----- [sic] of what she had to do to comply. I left ----- [sic] a message, with no response. The only issue is, the bank account is over the limit each month. ----- [sic] stated to me on a previous phone call that she was working on this and would re-apply for Medicaid. Since this is the only issue it should be a simple fix, however it's in ----- [sic] hands now. If at this time ----- [sic] has not re-applied then your facility should follow your procedure and maybe it will make ----- [sic] do something.

- 6) The nursing facility sent a Notification of Transfer/Discharge (NF-4) to the Claimant dated November 30, 2009 based on non-payment. The notice indicates that the Claimant's discharge would be effective December 30, 2009 unless full payment of \$35,734.32 (the amount owed at the time of the notice) was received.
- 7) The WVDHHR Board of Review received a fair hearing request from the Claimant on December 10, 2009 concerning the proposed transfer/discharge and the Claimant has remained a resident of the nursing facility pending a hearing decision.
- 8) The Heritage representatives indicated that they do not wish to discharge the Claimant and are willing to make payment arrangements, however, the Claimant cannot remain at the facility if the charges are not paid. -----, Regional Manager of Operations and Sales for Sunwest Management, Inc., indicated that she attempted to contact the Claimant's granddaughter in June 2009 and the granddaughter appeared dismissive regarding the payment issue, indicating the matter was the responsibility of WVDHHR.

The nursing facility provided Exhibit NF-5, an Admissions Agreement for the Claimant, which explains the resident's payment liability and cites reasons for potential discharge or transfer from the facility.

- 9) The Claimant's attorney indicated that he sent a letter to Sunwest Management, Inc. on behalf of [REDACTED] on September 16, 2009 detailing problems with the Claimant's bank statement balances. The Claimant received no response to the letters. The Claimant's attorney also indicated that he attempted to contact WVDHHR about the issue, but has received no response.

The Claimant's granddaughter/Power of Attorney testified that the Claimant's bank account statements are reflecting balances over the asset maximum of \$2,000 due to the timing of deposits and payments to The Heritage. She indicated that she has attempted to rectify the issue with WVDHHR, but has encountered difficulties in reaching the nursing home worker. The Claimant's granddaughter indicated that she has been paying all monies in her grandmother's account to The Heritage. She believes that WVDHHR should consider her grandmother's

account over a period of time – as opposed to a “snapshot” of the account - when determining assets.

- 10) The Code of Federal Regulations found at 42 CFR 483.12(a) provides regulatory guidelines regarding admission, transfer and discharge rights for the Long-Term Care Medicaid 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 governing the Long-Term Care Medicaid Program state that a resident can be transferred/discharged from a nursing home when the resident fails to pay his/her portion of the long-term care costs.
- 2) Information presented during the hearing reveals that the Claimant has been ineligible for Medicaid and unable to pay her total monthly nursing home costs for several months, and that the Claimant’s granddaughter/Power of Attorney was notified of the situation. The most recent account statements indicate that the Claimant owes The Heritage more than \$48,000.
- 3) The nursing facility followed Federal and State regulatory guidelines in regard to transfer/discharge procedures based on non-payment. Therefore, its proposal to discharge the Claimant is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of The Heritage, Inc. to involuntarily discharge the 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 12th Day of February, 2010.

**Pamela L. Hinzman
State Hearing Officer**