



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

March 3, 2010

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 25, 2010. Your hearing request was based on Nella's, Inc.'s proposal to transfer/discharge your brother 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 transfer/discharge is if the determination has been made that the transfer or discharge is necessary for the resident's welfare, the resident's needs cannot be met in the facility, or the resident poses a safety concern to individuals in the facility. (Code of Federal Regulations §42 CFR 483.12)

Information submitted at the hearing reveals that your brother's needs cannot be met at Nella's, Inc. and he poses a safety risk to staff and residents at the nursing facility.

It is the decision of the State Hearing Officer to **uphold** the proposal of Nella's Inc. to discharge/transfer your brother from its facility.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
-----, Esq., [REDACTED]
Administrator, Nella's, Inc.

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

-----,

Claimant,

v.

Action Number: 10-BOR-682

Nella's, 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 March 3, 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 telephonically on February 25, 2010 on a timely appeal filed January 20, 2010.

It should be noted that the Claimant has remained a resident at the nursing facility pending a hearing decision.

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 sister/Health Care Surrogate
-----, Esq., (representing Nella's, Inc.)
-----, Director of Nursing, Nella's, Inc.
-----, Social Worker, Nella's, 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 Nella's, Inc. was correct in its proposal to transfer/discharge the Claimant 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 Nurses Aide Monthly Record

NF-2 Nurses' Progress Notes

NF-3 Nurse's Medication Notes

NF-4 Notification of Transfer or Discharge

NF-5 Incident Reports

NF-6 Medical assessments and information from [REDACTED] Hospital

VII. FINDINGS OF FACT:

- 1) On or about January 1, 2010, the Claimant's sister/Health Care Surrogate -----was notified via a Notice of Transfer/Discharge (NF-4) that Nella's, Inc. intended to transfer/discharge the Claimant from its facility. According to Exhibit NF-4, the reason for the proposed transfer/discharge is "Unable to meet his needs related to his behavioral problems, not following treatment plans, etc."
- 2) The Claimant's sister filed a written appeal (received by the Department on January 20, 2010) contesting Nella's Inc.'s proposed transfer/discharge, stating that the Claimant had been at [REDACTED] Hospital since the date the Notice of Transfer/Discharge was received and that she is unable to care for him in her home. It should be noted that the Claimant has since been returned to Nella's, Inc.
- 3) Testimony received from the Nella's, Inc. representatives indicates that the Claimant – who has a diagnosis of alcohol-related dementia with behavior disturbance - has been a resident of the facility since August 2008. Director of Nursing ----- testified that the Claimant's inappropriate behavior has escalated over the past few months. The Claimant has reportedly damaged equipment, has refused medication, food and medical assessments, and has been physically and verbally abusive to residents and staff. Exhibits NF-1, NF-2 and NF-3 document several instances of non-compliance and verbal abuse, while Exhibit NF-5 includes incident reports documenting that the Claimant has caused physical injury to staff members. The incident reports include the following information concerning physical aggression by the Claimant:

November 28, 2008- Claimant grabbed a nurse's hair with his right hand and struck her in the right side and back of head with his left hand.

January 11, 2009- Claimant struck and scratched a nursing assistant's face.

December 1, 2009- Claimant cursed at a nursing assistant and punched her several times on both sides of her face.

December 30, 2009- Claimant rammed his wheelchair several times into the left ankle of a medical records department employee, causing an abrasion.

December 30, 2009- Claimant twisted a social worker's arm and threatened to break her arms.

December 30, 2009- Claimant twisted and bit the activity director's left arm.

The Nursing Director also indicated that the Claimant had attempted to choke a nursing aide and the aide received treatment at a hospital emergency room. Following the December incidents, the Claimant was taken to [REDACTED] Hospital, but he has since returned to Nella's and has been placed in a private room because other residents fear him. The Nursing Director indicated that the Claimant has been found with stockpiled razor blades and silverware in his room. She testified that Nella's, Inc. is an intermediate care facility and is not equipped to provide the specialized care needed by the Claimant.

-----, a Social Worker at the facility, also testified about the Claimant's behavior issues, indicating that he makes inappropriate gestures and writes negative notes to individuals. She has attempted to explain to the Claimant that his behavior is unacceptable, but the behavior has not improved. She indicated that she has attempted to find an alternative placement for the Claimant and has located a possible placement in Ohio at a facility for individuals with mental health issues. Several local facilities have reportedly refused to accept the Claimant as a patient.

- 4) The Claimant's sister did not dispute the Claimant's behavioral issues, but believes he has done well in a private room since his recent return to Nella's. She indicated that she was unaware that problems had occurred since the Claimant's return from [REDACTED] Hospital. The Claimant's sister said she prefers that the Claimant be transferred to a facility in the state of West Virginia, so that she could visit him more often. She stated that the Claimant has not been given a fair chance and suffers from confusion. She indicated that the Claimant behaves better when he is permitted to keep to himself.
- 5) 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 transferred/discharged from a nursing facility when the resident's needs cannot be met by the nursing facility. In addition, the resident can be transferred/discharged when the safety of individuals in the facility is endangered.
- 2) Testimony reveals that the Claimant has behavioral issues that have resulted in non-cooperation with his care plan, verbal abuse and physical violence. The nursing facility has documented numerous instances in which the Claimant violently attacked staff members, causing injuries that required medical treatment. It is evident that Nella's, Inc. is unable to provide specialized care for the Claimant's behavioral disorders and the Claimant's aggression has resulted in valid safety concerns for residents and staff.
- 3) The proposal of Nella's, Inc. to transfer/discharge the Claimant 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 Nella's, Inc. to transfer/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 3rd Day of March, 2010.

**Pamela L. Hinzman
State Hearing Officer**