



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

April 16, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 2010. Your hearing request was based on Nella's Nursing Home's proposal to transfer/discharge you 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 needs cannot be met at Nella's Nursing Home and your behavior poses a safety risk.

It is the decision of the State Hearing Officer to **uphold** the proposal of Nella's Nursing Home to discharge/transfer you from its facility.

Sincerely,

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

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

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

-----,

Resident,

v.

Action Number: 10-BOR-969

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 April 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 April 13, 2010 on a timely appeal filed March 12, 2010. The hearing was originally scheduled for March 31, 2010, but was rescheduled at the request of the resident.

It should be noted that the resident has remained 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:

-----, Resident

-----, Administrator, -----

-----, Infection Control Nurse/Nurse Manager, Nella's

-----, Social Worker, Nella's

-----, Director of Nursing, Nella's
-----, Co-Director of Nursing, Nella's
-----, Facility Manager, Nella's

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 ----- was correct in its proposal to transfer/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 Code of Federal Regulations §42 CFR 483.12
- NF-2 Code of Federal Regulations §42 CFR 483.12(a)(2) and (3)
- NF-3 Pre-Admission Screening completed on March 26, 2010
- NF-4 WVDHHR Provider Manual §508.2 (dated January 1, 2005)
- NF-5 Notice of Discharge dated March 12, 2010
- NF-6 Progress Notes dated February 16, 2010
- NF-7 Progress Notes dated March 11, 2010
- NF-8 Progress Notes dated March 12, 2010
- NF-9 Progress Notes dated March 22, 2010
- NF-10 Hearing notice dated March 17, 2010
- NF-11 Nurses Aide Monthly Record
- NF-12 Physician's Orders dated March 3, 2010
- NF-13 Physician's Orders dated March 3, 2010
- NF-14 Physician's Orders dated March 3, 2010
- NF-15 Physician's Orders dated March 3, 2010
- NF-16 Nurses' Notes dated November 20-27, 2009
- NF-17 Nurses' Notes dated November 27, 2009
- NF-18 Nurses' Notes dated February 15-22, 2010
- NF-19 Nurses' Notes dated February 22, 2010
- NF-20 Nurses' Notes dated February 22-26, 2010
- NF-21 Information from Care Plan Conference
- NF-22 Psychosocial Well-Being Report

Resident's Exhibits:

VII. FINDINGS OF FACT:

- 1) On or about March 12, 2010, the resident was notified via a Notice of Transfer/Discharge (NF-5) that ----- intended to transfer/discharge her from its facility. According to the notice, the reason for the proposed transfer/discharge is "Needs cannot be met in this facility."
- 2) The resident filed a verbal appeal of the proposed transfer/discharge with the Department's Board of Review on March 12, 2010.
- 3) Nella's Nursing Home Social Worker ----- testified that the facility proposed the action because the resident – who has been at Nella's since 2003 and has been diagnosed with Obsessive Compulsive Disorder - hoards items in her room, some of which pose health and safety risks. The Social Worker maintained that the facility has repeatedly attempted to resolve these issues with the resident, however, there has been no appreciable change in the resident's hoarding behavior since 2006. The Social Worker indicated that Nella's is not licensed to provide behavioral health services and a Pre-Admission Screening (NF-3) completed for the resident on March 26, 2010 reveals that she does not require a nursing facility level of care. The resident has allegedly refused to release certain behavioral health information to the facility and the Social Worker contended that the resident becomes verbally aggressive when the possibility of transfer/discharge is addressed. The Social Worker testified that the facility wishes to work with the resident to transfer her to a suitable facility of her choosing.

-----, Facility Manager for Nella's, testified that the resident has been informed on numerous occasions that her room poses sanitation and safety issues. He indicated that the resident stacks boxes and papers throughout her room and that staff members have discovered rotten and molded food items in the room. The Facility Manager indicated that individuals visiting the resident or her roommate cannot sit on chairs due to stacked items and that the clutter prohibits the closing of privacy curtains. On one occasion, the Facility Manager indicated that emergency officials had difficulty accessing the room to assist the resident's roommate due to the excessive clutter.

-----, Director of Nursing, testified that many of the nurses feel intimidated/frightened by the resident and do not want to work with her. In addition, he stated that some employees have threatened to leave employment due to the resident's behavior. The Director of Nursing indicated that the resident refuses to allow staff members to accompany her to physician's appointments and that such medical information is critical in addressing the resident's needs.

Nella's Administrator ----- testified that the resident appears to dislike several nurses and that staff members only enter her room in pairs. She indicated that the resident has a degree of independence, schedules her own medical appointments, and will not

release medical documentation to staff. The Administrator stated that the resident requires her food to be processed in a certain manner and that the staff spends considerable time focusing on the resident when there are 83 other patients in the facility who also require attention. -----stated that the resident requires a lesser level of care than that provided in a long-term care facility and that Nella's does not provide behavioral modification services. Staff members believe that the resident would be better suited to a less restrictive environment.

-----, Infection Control Nurse/Nurse Manager, testified that she has been a nurse for about 40 years and has never observed an environment as unhealthy as the resident's room.

- 4) The nursing facility provided Nurses' Notes (NF-16 through NF-20) documenting incidents in which the resident has been advised that the condition of her room poses safety concerns. The Facility Manager testified that the resident has been given numerous deadlines by which to clean the room prior to inspections. The facility has also provided totes in which the resident can store items. NF-18 indicates that the Facility Manager and other staff members entered the resident's room on February 22, 2010 and began cleaning. The staff gathered two, 30-gallon garbage bags of newspapers, one full barrel of soiled linens, two small garbage bags filled with soiled and clean rubber gloves, numerous packets of salt and pepper, opened and unopened butter packets, soiled pillows and soiled lids from drinking cups. Nurses' Notes also indicate that soiled dishes and utensils have been found in the resident's room. The items in question were removed from numerous areas, including beneath the resident's pillow and bed, on the nightstand, in boxes, in the bathroom, and in bed linens and clothing.
- 5) The resident admitted that her room is messy, but denied that the facility had worked with her to formulate a plan to keep it clean. She indicated that she cannot clean out her chest of drawers because the staff would become upset if they observed items on her bed. The resident denied threatening staff members or having difficulty following rules, and believes that the facility is being "nitpicky" regarding her situation. She denied being particular about foods, making her own medical appointments and withholding information. She indicated that she does not wish for support staff to accompany her to medical appointments. The resident testified that she does not consider the nursing home setting to be restrictive and believes her health would be jeopardized if she is discharged from the facility. She provided testimony to indicate that the transfer/discharge notice provided by the facility did not meet all Federal requirements.
- 6) Progress Notes signed by Dr. [REDACTED] (NF-8) indicate that the physician believes the resident may benefit from a transfer to a facility that can meet her needs in regard to abnormal behavior. The physician stated that Nella's cannot meet the resident's needs and, as a result, her health is endangered. The resident alleged that the physician told her he had "just signed off" on the facility's recommendation.

7) 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. These regulations state:

(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 (NF-1). 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.

(3) Documentation (NF-2). 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.

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 facility. In addition, the resident can be transferred/discharged when his/her behavior poses a health and safety risk
- 2) Testimony reveals that the resident exhibits hoarding behavior that has caused a health and safety risk at Nella's Nursing Home. Information provided by the facility indicates that the staff has attempted to work with the resident to resolve unsafe/unsanitary conditions in her room, however, the resident has been non-compliant. Because Nella's Nursing Home is not equipped to offer behavioral health services, staff members and the resident's physician believe the facility cannot meet the resident's needs.

- 3) Policy reveals that notice requirements have been met and the proposal of Nella's Nursing Home to transfer/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 Nella's Nursing Home to transfer/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 April, 2010.

**Pamela L. Hinzman
State Hearing Officer**