



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

August 10, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 9, 2011. Your hearing request was based on -----'s proposal to 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, the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, or the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. (Code of Federal Regulations §42 CFR 483.12)

The information which was submitted at your hearing revealed that you failed to pay your past due balances for your stay at ----- after Medicare payments had been applied.

It is the decision of the State Hearing Officer to Uphold the proposal of ----- to discharge you from its facility.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

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

IN RE: -----,

Resident,

v.

ACTION NO.: 11-BOR-1367

-----,

Nursing Facility.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing 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 a timely appeal, filed June 23, 2011.

It shall be noted that the resident has remained in the facility pending a decision from the State Hearing Officer.

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
-----, Administrator-----
-----, Business Office Coordinator-----
-----, Social Worker-----

Presiding at the hearing was Eric L. Phillips, 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 ----- 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's Exhibits:

- NF-1 ----- Transaction History January 1, 2011 through September 30, 2011
- NF-2 Page 6 of PAS-2000 Nursing Home Medical Eligibility Determination
- NF-3 Notice of Discharge dated May 27, 2011

VII. FINDINGS OF FACT:

- 1) On May 27, 2011, the Resident was hand delivered Exhibit NF-3, Notice of Discharge informing him of -----'s intention to discharge him from its facility. Exhibit NF-3 documents in pertinent part:

This is your official notice of discharge from ----- . You are being discharged for the following reason that is marked below:

Your health has improved sufficiently so that you no longer need services provided by the facility.

Your bill for the services at the facility has not been paid after reasonable and appropriate notice to pay.

The specific allegations in support of the reason(s) are: You failed to pay the facility past due balance of \$17,435.64. If you can pay this balance in full this discharge will be voided.

The date of your discharge is 6/27/2011 either to your home or another facility. The Social Worker, -----, will assist you and your family with the discharge planning and arrangements.

- 2) The Resident filed a verbal appeal of the involuntary discharge with the Board of Review on June 23, 2011.
- 3) -----, Administrator from ----- indicated that the reasons for the Resident's discharge from the facility are two-fold. -----cited that the Resident's health has improved and he no longer requires the skilled services provided by the facility. -----provided Exhibit NF-2, PAS-2000 Nursing Home Medical Eligibility Determination which documents that the Resident has no serious medical conditions and does not require nursing home services as it relates to the medical eligibility determination. Additionally, testimony indicated that the Resident failed to pay the appropriate past due balance of services rendered at the facility and complete an application for Medicaid assistance.
- 4) -----, Business Office Coordinator from ----- provided Exhibit NF-1, ----- Transaction History for January 1, 2011 through September 30, 2011. The exhibit documents that the Resident has a past due balance of \$45, 875.64 which includes services for September 2011. This exhibit documents payments from Medicare reimbursement. -----stated that the facility charges a month in advance and the balance that the Resident currently owes is \$38, 417.64 and that the Resident has paid a total of \$3,874.00.
- 5) -----, Social Worker from ----- testified that the she has been assisting the Resident with finding alternative placement at the Veteran's Affairs nursing facility or alternate housing, but has been unsuccessful. -----indicated that the Resident had a goal of being accepted into the Armed Forces Retirement Home, which he was recently accepted, and plans to transfer to that facility on August 15, 2011 and ----- was assisting the Resident with the transfer to the new facility.
- 6) The Resident provided an outline of his experiences prior to his admission to ----- on January 31, 2011. The Resident stated that he had a toe removed and was in need of rehabilitation assistance and was admitted into the nursing facility. The Resident indicated that Medicare paid for the first twenty days of his care and that the Veteran's Affairs office informed him that they would pay for any additional care after the twenty days of service. The Resident believed that Veteran's affairs should pay for the additional services after the twenty days of rehabilitation services because they led him to believe they would cover such cost.

Additionally, the Resident described an incident in which he experienced a fall while residing at ----- that resulted in him breaking his patella. The Resident testified that his roommate pushed a dinner table tray into his chair which knocked some of his personal effects off the chair and onto the floor. The Resident indicated that when he was picking up the items, he slipped and fell onto his left knee. The Resident believed that [REDACTED] should be responsible for his additional care that resulted from his broken patella because one of their residents caused the fall. The Resident noted that he is over the income guidelines for Medicaid assistance and that he paid the nursing facility \$2,000.00 when nursing facility staff had requested payment. This payment is documented in Exhibit NF-1.

The Resident did not dispute the nursing facility's finding that his condition has improved and he no longer needs the care provided by the nursing facility.

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. 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 health has improved sufficiently so that the resident no longer needs the services provided by the facility. In addition, the resident can be discharged from the facility when the resident has failed, after reasonable and appropriated notice, to pay for the stay at the facility.

2) Testimony revealed that the Resident has a past due balance of \$38,417.61 which he owes to the facility for services rendered. Evidence reveals that the facility has received Medicare reimbursement for a twenty day rehabilitation stay and that the Resident had issued payment to the facility in the amount of \$2,000.00. Evidence reveals that there has been no payment made on behalf of the Resident since April 2011.

3) Whereas, the Code of Federal Regulations provide that the Resident can be discharged from the facility to pay for such stay after reasonable and appropriate notice. The proposal of ----- to discharge the Resident is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the proposal of ----- 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 _____ day of August , 2011.

**Eric L. Phillips
State Hearing Officer**