



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

August 3, 2011

Attn: -----

Re: -----

Case No.: 11-BOR-1428

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your client's hearing held July 29, 2011. Your client's appeal was filed to contest the proposal of Mapleshire Nursing & Rehabilitation Center to discharge him 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.

The 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. (West Virginia Provider Manual, Chapter 514.11 and the Code of Federal Regulations 42 CFR §483.12)

Information submitted at the hearing reveals that the transfer/discharge notice issued by Mapleshire fails to meet State and Federal regulatory requirements.

It is the decision of the State Hearing Officer to **reverse** the proposal of Mapleshire to discharge/transfer ----- from its facility.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

-----,

RESIDENT,

v.

Action Number: 11-BOR-1428

██████████ **Nursing & Rehabilitation Center,**

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 July 29, 2011 on a timely appeal filed July 1, 2011.

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:

-----, Claimant

-----, ----- – Claimant’s Representative

-----, Regional Ombudsman, ----- – Claimant’s Representative

-----, Administrator, ██████████ Nursing & Rehabilitation Center – Respondent’s Representative

██████████ Chief Operations Officer, ██████████ Healthcare – Respondent’s witness

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not [REDACTED] Nursing & Rehabilitation Center has correctly implemented discharge/transfer procedures against the Resident.

V. APPLICABLE POLICY:

West Virginia [Medicaid] Provider Manuals, Chapter 511.14 (Nursing Facility Services)
Code of Federal Regulations 42 CFR §483.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Respondents Exhibits:

- MS-1 Correspondence from -----, CNHA, dated June 2, 2011
- MS-1a Notice of Transfer or Discharge (Page 1) – effective 7/5/11
- MS-1b Notice of Transfer or Discharge (Page 2)
- MS-1c Statement of Residents unpaid balance on June 1, 2011
- MS-2 Social Service Progress Notes, 6/2/11 through 7/19/11 (3 pages, front and back)

Resident's Exhibits:

- R-1 Durable Power of Attorney – June 19, 2009
- R-1a Revocation of Durable Power of Attorney July 18, 2011
- R-2 Medical Power of Attorney – June 19, 2009
- R-2a Revocation of Medical Power of Attorney – July 18, 2011

VII. FINDINGS OF FACT:

- 1) On June 2, 2011, [REDACTED] Nursing & Rehabilitation Center, hereinafter [REDACTED] notified -----(Resident) verbally and in writing (MS-1, MS-1a, MS-1b and MS-1c) that an unpaid balance remained on his account and that discharge/transfer would be effective July 5, 2011 if payment was not made within 30 days.
- 2) The evidence demonstrates that there was an unpaid balance of \$3,775.00 on the Resident's account as of June 1, 2011 (See Exhibit MS-1c) as a result of not paying his monthly resource amount – the amount owed after Medicaid/Medicare or private insurance has paid. Representatives speaking on behalf of [REDACTED] indicated that the Resident's unpaid balance has continued to grow. Moreover, he is aware that an unpaid balance exists and he has made no effort, after reasonable and appropriate notice, to pay for or to have paid, his stay at the facility.
- 3) The Resident, through his representative, contends that discharge procedures have not been administered pursuant to the requirements found in the Code of Federal Regulations. The Resident asserts that the Respondent's notice fails to include the transfer/discharge location and further argued that there has not been sufficient preparation and orientation to the Resident to ensure safe and orderly transfer/discharge from the facility.

- 4) ██████████ representatives submitted Exhibit MS-2 (Social Service Progress Notes) to show that the facility attempted to locate several placements for the Resident but indicated he has been uncooperative. Documentation completed in Exhibit MS-2 dated June 29, 2011, further reveals that the Resident was advised verbally by ----, Nursing Home Administrator (NHA), he was going to be discharged to ██████████ House, a homeless shelter in ██████████ if he had no other place to go on the date of discharge. This, however, is the only documented evidence of any attempt by ██████████ to orientate the Resident. This documentation goes on to note that the Resident expressed concern about being transferred to ██████████ House when he learned that he would have to leave the shelter during the day.
- 5) West Virginia Medicaid Provider Manual, Chapter 514.11 (Nursing Facility Services)

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 does not refer to movement of a resident to a bed within the same certified facility.

The facility must permit each resident to remain in the facility, and not be transferred or discharged from the facility unless at least one of the following conditions is met:

- The transfer or discharge is necessary for the resident's welfare since the needs of the resident cannot be met by the facility;
- The transfer or discharge of the resident is appropriate because the health of the resident has improved sufficiently that the individual no longer meets the medical criteria for Medicaid nursing facility services;
- The safety of individuals in the nursing facility is endangered;
- The health of individuals in the nursing facility would otherwise be endangered;
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicaid) a stay at the nursing facility including but not limited to the amount of money determined by the financial eligibility evaluation as co-payment for the provision of services; and/or
- The facility ceases to operate or the residents are identified by the state and/or federal certification agency as in immediate and serious danger due to policies, practices and/or services provided by the nursing facility.

Documentation must be recorded in the resident's medical record by a physician of the specific reason and /or condition requiring the transfer and/or discharge if due to health and safety issues of the resident or others, the needs of the resident cannot be met or the medical needs of the resident no longer qualify for nursing facility level of service. Documentation of the reason for discharge must also appear in the record of the resident if the facility ceases to operate or must discharge residents due to certification requirements or financial requirements are not met by the resident or his/her representative.

The facility must notify the resident and/or his/her representative both in a written language and verbal language that is understandable to the parties of the intent and reason for transfer or discharge. The same information must be recorded in the resident's clinical record. Except in the case of immediate danger to the resident and/or others as documented, the notice of transfer or discharge must be provided at least thirty (30) days prior to the anticipated move.

Waiver of thirty day requirement may be appropriate if the safety of individuals in the facility would be endangered, the immediate transfer is required by the resident's urgent medical needs, or a resident has not resided in the nursing facility for thirty (30) days.

The written notice must include the reason for the transfer or discharge; the effective date of the transfer or discharge; the location or person(s) to which or whom the resident is transferred or discharged; a statement that the resident has the right to appeal the action to the State; the name, address and telephone number of the State long term care ombudsman; 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 and Bill of Rights Acts; and 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.

- 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.

- 7) The Code of Federal Regulations, 42 CFR §483.12(a)(4&6), addressed written notification regarding transfer and discharge and states that notice 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.
- 8) The Code of Federal Regulations, 42 CFR §483.12(a)(7) *Orientation for transfer or discharge*, states that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the Medicaid Long-Term Care Program state that a resident can be transferred/discharged from a nursing facility when payment for a stay at the facility has not been made.
- 2) The Respondent's decision to initiate discharge/transfer proceedings against the Claimant for non-payment is clearly supported by state and federal regulations, however, discharge notification requirements have not been met as the notice fails to include a discharge location. In addition, it is unclear if sufficient preparation and orientation has been provided to the Resident for the proposed discharge/transfer.
- 3) Whereas the evidence clearly demonstrates regulatory requirements have not been met, the Respondent's proposed discharge/transfer of the Resident cannot be affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] Nursing & Rehabilitation Center 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.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**