



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 23, 2015



RE: [REDACTED] V. [REDACTED] NURSING & REHABILITATION CENTER
ACTION NO.: 15-BOR-1600

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

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

Encl: Resident's Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED], Esq., [REDACTED] Nursing & Rehabilitation Center

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

██████████,

Resident,

v.

Action Number: 15-BOR-1600

██████████ **NURSING & REHABILITATION CENTER,**

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 16, 2015, on an appeal filed March 19, 2015.

The matter before the Hearing Officer arises from the February 26, 2015 decision by the Respondent to propose involuntary discharge of the Resident from its facility.

At the hearing, the Respondent appeared by ██████████, Esq., ██████████ Nursing & Rehabilitation Center. Appearing as witnesses for the Respondent were ██████████, Administrator, and ██████████, Business Office Supervisor, ██████████ Nursing & Rehabilitation Center. The Resident appeared by his daughter/representative, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Nursing Facility's Exhibits:

- NF-A Admission Agreement dated September 18, 2013
- NF-B Correspondence to ██████████ from ██████████ dated September 26, 2014
- NF-C Correspondence to ██████████ from ██████████ dated October 15, 2014
- NF-D Correspondence to ██████████ from ██████████ dated February 11, 2015
- NF-E Unsigned correspondence to ██████████ from the Facility dated February 25, 2015
- NF-F ██████████ Nursing & Rehabilitation Center Accounts Receivable information
- NF-G Notification of Transfer/Discharge dated February 26, 2015
- NF-H Certified Mail information (unclaimed mail)

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) [REDACTED] Nursing & Rehabilitation Center, hereinafter Facility, provided written notification to the Resident of its intent to initiate involuntary transfer or discharge proceedings on February 25, 2015 (NF-E). A 30-day written notice dated February 26, 2015 (NF-G) accompanied Exhibit NF-E and advised the Resident that involuntary discharge from the facility was necessary because the Resident had failed, after appropriate notice, to pay for a stay in the Facility. It should be noted that Exhibit NF-H indicates that the Resident's daughter/representative, [REDACTED], did not claim a copy of the Notification of Transfer/Discharge sent to her via certified mail. However, the Facility representative indicated that the notice was also sent to Ms. [REDACTED] via regular, first-class mail, and that letter was not returned to the Facility as undeliverable.

- 2) The Facility's witnesses proffered testimony to indicate that the Facility is proposing discharge of the Resident - who is a recipient of Long-Term Care Medicaid benefits - because he currently owes an unpaid balance of \$3,126.98 (see Exhibit NF-F). This total includes a current unpaid balance of \$2,479.70 for the month of April 2015, as well as unpaid balances of \$222.46 for March 2015, \$213.43 for February 2015, and \$211.39 for January 2015. The Facility provided Exhibits NF-B and NF-C to demonstrate that the Resident's payments had also been late at times in 2014, but the 2014 balances were subsequently paid. The Facility provided Exhibit NF-D to demonstrate that the Resident was also notified of an unpaid balance on February 11, 2015. The Facility representatives indicated they are willing to work with the Resident's representative concerning payment arrangements for the unpaid balance.

[REDACTED], Executive Director of the Facility, testified that she is uncertain about the location to which the Resident will be discharged, but the Facility is willing to provide assistance in locating a placement. It should be noted that Exhibit NF-G states that the Resident will be discharged to "another facility/home." However, Ms. [REDACTED] indicated that the Facility has had no contact with Ms. [REDACTED] about potential placements for the Resident.

- 3) Ms. [REDACTED] testified that there is a shortfall of around \$200 between the amount of her father's net income and the amount he must pay to the Facility each month. She indicated that she had been making up the shortfall with her own funds, but can no longer afford to make payments with her salary. Ms. [REDACTED] stated that she has lost her vehicle, and testified that she simply cannot afford to pay toward her father's monthly Long-Term Care cost with her own funds. She contended that it is not in her father's best interest to be discharged from the Facility.

APPLICABLE POLICY

Medicaid regulations, found in the West Virginia Bureau for Medical Services Provider Manual at §514.9.2, Code of State Regulations 64CSR13, and the Code of Federal Regulations (42 CFR §483.12), provide that transfer and discharge of an individual includes movement of a resident to a bed outside of the Medicaid-certified portion of the facility, whether that bed is in the same physical plant. Transfer and discharge does not refer to movement of a resident to a bed within the Medicaid-certified portion of the facility.

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

- The transfer or discharge is necessary for the resident's welfare when the needs of the resident cannot be met in the facility; or
- The transfer or discharge is appropriate because the health of the resident has improved sufficiently that the individual no longer meets the medical criteria for nursing facility services; or
- The safety of individuals in the facility is endangered; or
- The health of individuals in the nursing facility would otherwise be endangered; or
- 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 nursing facility services; or
- The facility ceases to operate; or
- The resident is identified by the State and/or Federal certification agency to be in immediate and serious danger.

Documentation must be recorded in the resident's medical record by a physician of the specific reason requiring the transfer or discharge. Discharge documentation is required regardless of the reason for discharge.

Before the nursing facility transfers or discharges a resident, the administrator or designee must notify the resident and/or the responsible party verbally and in writing, in a 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 medical record and a copy of this written notice must be sent to the State Long-Term Care Ombudsman or his/her designee. 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 30 days prior to the anticipated move to ensure a safe and orderly discharge to a setting appropriate to the individual's needs.

Waiver of this 30-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 30 days.

The written notice must include the following:

- The effective date of the transfer or discharge;
- Reason for the discharge;
- The location or person(s) to whom the resident is transferred or discharged;
- A statement that the resident has the right to appeal the action to the State Board of Review, during this time of appeal, the resident/member may choose to stay in the facility;
- The name, address and telephone number of the State long term care ombudsman;
- The mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled and mentally ill individuals.

DISCUSSION

Regulations provide that a nursing facility can involuntarily transfer/discharge an individual if 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 nursing facility services.

While transfer/discharge is permissible for non-payment, [REDACTED] Nursing & Rehabilitation Center failed to demonstrate that it followed regulatory requirements directing that the Resident's medical record include physician documentation indicating the specific reason transfer/discharge is necessary. In addition, the Notification of Transfer/Discharge provides no specific information concerning an appropriate discharge location for the Resident, who - as a Long-Term Care Medicaid recipient - has been determined to require a nursing facility Level of Care. Evidence reveals that the Facility failed to comply with all State and Federal regulatory requirements when issuing the Resident a 30-day involuntary discharge notice.

CONCLUSIONS OF LAW

Whereas evidence demonstrates that regulatory requirements have not been met, the Facility's proposed discharge/transfer cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Facility's proposal to discharge the Resident.

ENTERED this _____ Day of April 2015.

**Pamela L. Hinzman
State Hearing Officer**