



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
416 Adams St., Suite 307  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

June 17, 2015



RE:

ACTION NO.: 15-BOR-1743

Dear Mr. [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,

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

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

cc: [REDACTED], Administrator, [REDACTED]  
[REDACTED], Regional Ombudsman, Legal Aid of WV, [REDACTED] WV

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

[REDACTED],

**Appellant,**

v.

**Action Number: 15-BOR-1743**

[REDACTED],

**Facility.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. 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 June 16, 2015, on an appeal filed April 7, 2015.

The matter before the Hearing Officer arises from the March 30, 2015 decision by the Facility to propose involuntary discharge of the Appellant from [REDACTED].

At the hearing, the Facility appeared by [REDACTED], Social Worker, [REDACTED]. Appearing as witnesses for the Facility were [REDACTED], Administrator, [REDACTED]; [REDACTED], RN/Unit Manager, [REDACTED]; [REDACTED], Office Manager, [REDACTED]; and [REDACTED], LGSW, Social Worker, [REDACTED]. The Appellant appeared by his representative, [REDACTED], Regional Long-Term Care Ombudsman, Legal Aid of West Virginia. Appearing as a witness for the Appellant was Katie Van Dyke, Adult Protective Services Worker, WVDHHR. All witnesses were sworn and the following documents were admitted into evidence.

**Facility's Exhibits:**

NF-1 30-Day Notice of Discharge dated March 30, 2015, accompanied by the Pre-Admission Screening (PAS) medical evaluation results (reviewed March 19, 2015); Notice of Denial for Long-Term Care (Nursing Home) dated March 27, 2015 (medical eligibility policy and Claimant's PAS appeal)

**Appellant's Exhibits:**

A-1 Code of State Regulations §64 CSR 13  
A-2a Physician's Orders for the period of March 10, 2015 through May 12, 2015  
A-2b Progress Notes for the period of March 3, 2015 through June 2, 2015

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] (Facility), notified the Appellant (verbally and in writing) of its intent to initiate involuntary transfer/discharge proceedings on March 30, 2015 (NF-1). The notice advised the Appellant that involuntary discharge from the facility was necessary because he no longer requires nursing facility services due to improvement in his medical condition.
- 2) Facility representatives proffered testimony to indicate arrangements were made for a safe and orderly transfer on April 6, 2015, to [REDACTED] - which was described as an assisted living facility where the Appellant previously resided for ten (10) years. However, Appellant refused transfer arrangements and appealed the involuntary transfer because he did not want to return to [REDACTED] facility.
- 3) As a matter of record, Appellant, by his representative, acknowledged that his medical condition no longer requires a nursing facility level of care, but indicated that the involuntary discharge notice (NF-1) issued by Facility did not meet State and Federal notification requirements. In addition, there was no documentation in the Appellant's medical record by a physician indicating the specific reason transfer or discharge is required, and the Appellant's representative contended that Appellant should have the right to refuse Facility's transfer destination.
- 4) The 30-day Discharge Notice (NF-1) clearly indicates the reason involuntary discharge is being initiated by Facility (Appellant's improved medical condition indicates he no longer requires a nursing facility level of care), and states that he can appeal the involuntary discharge, and includes contact information for the Regional Long-Term Care Ombudsman. However, the discharge notice fails to include the effective date of discharge, and the location or person(s) to whom the Appellant will be transferred or discharged.

### **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 (emphasis added) 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.

West Virginia Department of Health and Human Resources, Common Chapters Manual §710.20 directs that the Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy.

### **DISCUSSION**

The regulations that govern the Medicaid Long-Term Care Program provide that a nursing facility can involuntarily transfer/discharge a resident if the resident's medical condition has improved and he no longer requires a nursing facility level of care. While Appellant contended that he should have the right to refuse a transfer location, there were no regulations cited to support Appellant's position – policy only requires a setting appropriate to the individual's needs. However, [REDACTED] failed to follow regulatory requirements, as there is no physician documentation in the Appellant's medical record indicating the specific reason transfer/discharge is necessary, and the discharge notice did not include the effective date of transfer or a transfer destination. The evidence reveals that the Facility failed to follow State and Federal regulatory involuntary transfer/discharge requirements when issuing the Appellant a 30-day involuntary discharge notice.

### **CONCLUSIONS OF LAW**

- 1) Facility's action to initiate discharge/transfer proceedings against the Appellant based on his improved medical condition is supported by Medicaid regulations. However, there is no evidence of physician's documentation in the Appellant's medical record indicating the specific reason the transfer or discharge is required.

- 2) Facility failed to meet State and Federal notification requirements – the effective date and destination location were not included in the March 30, 2015 involuntary discharge notice.
- 3) Whereas the evidence clearly demonstrates regulatory requirements have not been met, 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 Appellant.

**ENTERED this \_\_\_\_\_ Day of June 2015.**

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**Thomas E. Arnett  
State Hearing Officer**