



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

July 1, 2015

[REDACTED]

RE: [REDACTED] v. [REDACTED] NURSING AND REHABILITATION CENTER
ACTION NO.: 15-BOR-1917

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,

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], Regional Ombudsman, Legal Aid of WV

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

██████████,

Appellant,

v.

Action Number: 15-BOR-1917

██████████ **NURSING AND 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 June 30, 2015, on an appeal filed April 28, 2015.

The matter before the Hearing Officer arises from the March 30, 2015 decision by the Facility to propose involuntary discharge/transfer of the Appellant from ██████████ Nursing and Rehabilitation Center.

At the hearing, the Facility appeared by ██████████, Business Office Manager, ██████████, Nursing and Rehabilitation Center. The Appellant appeared by her representative, ██████████, Regional Long-Term Care Ombudsman, Legal Aid of West Virginia.

Facility's Exhibits:

None

Appellant's (Claimant's) Exhibits:

- C-1 Notice of Transfer or Discharge dated April 14, 2015
- C-2 Code of State Regulations 64 CSR 13 §413
- C-3 Code of Federal Regulations 42 CFR §483.12
- C-4 State of West Virginia Operations Manual – Guidelines §483.12

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 and Rehabilitation Center (Facility) notified the Appellant (verbally and in writing) of its intent to initiate involuntary transfer/discharge proceedings on April 14, 2015 (C-1). The notice advised the Appellant that involuntary discharge from its facility was necessary because the Appellant failed, after reasonable and appropriate notice, to pay for, or to have paid by Medicare or Medicaid, a stay at the facility.
- 2) Facility's representative proffered testimony to indicate the Appellant has refused to pay her monthly Long-Term Care (Medicaid) resource amount – the monthly cost of her care for which she is responsible – since June 2014. As a result, the Appellant has amassed a debt to the Facility (through June 30, 2015) in the amount of \$2,848.49.
- 3) As a matter of record, Appellant, by her representative, acknowledged that Facility was correct in its calculations regarding the accumulated debt for the period of June 2014 through June 30, 2015 (\$2,848.49), but indicated that the involuntary discharge notice (C-1) issued by Facility did not meet State and Federal notification requirements. Specifically, the Notice of Transfer or Discharge fails to indicate a location/destination of transfer, as required in Code of State Regulations 64 CSR 13 §413 (C-2) and Code of Federal Regulations 42 CFR §483.12 (C-3).
- 4) The notice clearly indicates the reason involuntary transfer or discharge is being initiated by Facility and provides appeal procedure, as well as contact information for the Regional Long-Term Care Ombudsman. However, the discharge notice fails to include 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 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. However, [REDACTED] failed to follow regulatory requirements, as the discharge notice did not include a transfer destination. This information is required, as the regulations mandate that the facility must assist the resident in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge in order to minimize any transfer trauma to the resident. In addition, the Code of State Regulations, found at 64CSR13 §4.13g (C-2), stipulates that a nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will. As a result, the evidence demonstrates that Facility failed to follow State and Federal regulatory involuntary transfer/discharge requirements when issuing the Appellant a 30-day involuntary transfer or discharge notice.

CONCLUSIONS OF LAW

- 1) Facility's action to initiate discharge/transfer proceedings against the Appellant based on her failure to pay the monthly resource amount is supported by Medicaid regulations. However, Facility failed to meet State and Federal notification requirements – the destination/location was not included in the April 14, 2015 involuntary discharge notice.
- 2) 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 July 2015.

**Thomas E. Arnett
State Hearing Officer**