



**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**

**Karen L. Bowling
Cabinet Secretary**

January 29, 2015



RE:

ACTION NO.: 14-BOR-3818

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

cc: [REDACTED], Executive Director, [REDACTED]
[REDACTED], Steptoe & Johnson

[REDACTED]

V.

_____;

DECISION OF STATE HEARING OFFICER

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FINDINGS OF FACT

- 1) [REDACTED], hereinafter Facility, issued a verbal and written 30 Day Notice of Discharge (Exhibit 3) to Resident on November 11, 2014. This notice indicates that the necessary discharge from the facility will occur on December 11, 2014, because the Resident's health has improved and he no longer requires the services provided by Facility.
- 2) Facility proffered witness testimony from its Medical Director, [REDACTED], M.D., and [REDACTED], Executive Director, as well as supporting documentation (Exhibits 1 and 2) to indicate the Claimant's health has improved and that he no longer requires the level of skilled care and services provided at its nursing facility. Facility further submitted Exhibit D-4 which confirms the Claimant no longer meets Long-Term Care (nursing facility) medical eligibility criteria.
- 3) As a matter of record, the Resident acknowledged that he no longer meets the medical eligibility requirements for continued nursing facility care and that he should be discharged. However, Resident contended that Facility staff has sped up the process of involuntary discharge due to a personal vendetta against him. The Claimant indicated that the timing of the involuntary discharge is inconvenient and cannot be executed by Facility because discharging him to [REDACTED], a homeless shelter in [REDACTED] West Virginia, will not meet his needs.
- 4) Evidence submitted by Facility reveals that extensive efforts have been made to assist the Resident with securing disability income and housing, however, the Resident has been non-cooperative and refused to assist and/or provide Facility with necessary information. As a result, [REDACTED] is appropriate – the Resident no longer requires skilled nursing care - and it is the only discharge location available to the Resident.

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 a resident when the health of the resident has improved and he no longer meets the medical criteria for nursing facility services. The regulations require that the Facility ensure a safe and orderly discharge to a setting appropriate to the individual's needs. The Resident's contention that [REDACTED] is not an appropriate setting because his needs cannot be met is without merit, as the Resident's health has improved and he no longer requires skilled nursing care.

CONCLUSION OF LAW

Whereas the evidence clearly demonstrates the Facility has met regulatory requirements, Resident's proposed discharge/transfer is affirmed.

DECISION

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

ENTERED this _____ Day of January 2015.

**Thomas E. Arnett
State Hearing Officer**