



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 18, 2016

[REDACTED]

RE:

[REDACTED]
ACTION NO.: 16-BOR-1563

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED]

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

██████████,

Resident,

v.

Action Number: 16-BOR-1563

ELDERCARE HEALTH AND REHABILITATION,

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 May 5, 2016, on an appeal filed March 24, 2016.

The matter before the Hearing Officer arises from the Facility's February 23, 2016 decision to discharge the Resident for non-payment.

At the hearing, the Facility appeared by ██████████. The Resident appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- | | |
|-----|---|
| F-1 | Discharge notice from the Facility, dated February 23, 2016 |
| F-2 | Notice of eligibility for Medicaid, dated January 28, 2016 |
| F-3 | Facility transaction history with the Resident, listing cumulative balances due from February 2016 through May 2016 |

Resident's Exhibits:

None

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) The Resident was admitted to the Facility on January 13, 2016.
- 2) In February 2016, Medicare ceased to be the Resident's primary payer source for nursing home services.
- 3) The Resident was approved for Long Term Care Medicaid, effective February 1, 2016. (Exhibit F-2)
- 4) The Resident opted not to make the Facility the payee for his Social Security benefits, resulting in Medicaid approval with a monthly patient responsibility.
- 5) The Medicaid approval notice advised the Resident of his monthly patient responsibility of \$631.90 for in-facility days and bed hold days unless otherwise notified in writing. (Exhibit F-2)
- 6) The Resident did not pay this monthly resource amount for February 2016. (Exhibit F-3)
- 7) The Facility notified the Resident, on February 23, 2016 (Exhibit F-1), of their intention to discharge him within thirty days.

APPLICABLE POLICY

The Code of Federal Regulations, 42 CFR §483.12, sets the conditions under which residents may be discharged from a nursing facility. At 42 CFR §483.12(a)(2)(v), these regulations provide for discharge when "The resident has failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid..."

DISCUSSION

The Resident is appealing the decision of the Facility to discharge him for non-payment. The Facility issued the Resident a thirty-day discharge notice on this basis within the month his primary source of payment changed from Medicare to Medicaid, and appears to have relied partly on speculation regarding the Resident's intention to pay for nursing home services. However, not only was it known at the time of hearing that the Resident continued to miss his monthly resource payment (his share due while keeping himself as the payee for Social Security benefits) subsequent to the Facility's decision to discharge, it was known at the time the Facility made that decision that the Resident's payee arrangement would always leave him in arrears. The Resident explained the reasons for this payee arrangement, which effectively reduce to his

intention to keep both his residence outside the facility and his full Social Security check. Other nursing home residents are not afforded this luxury, and the Board of Review is unable to create exceptions to policy or law.

The Facility was correct in its determination that the Resident should be discharged for non-payment.

CONCLUSION OF LAW

Because the Resident has failed to pay his share of the nursing home charges allowable under Medicaid with the payee arrangement he chose, the Facility's determination that it may discharge the Resident is correct.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Facility's decision to discharge the Resident for non-payment of nursing home services.

ENTERED this ____ Day of May 2016.

Todd Thornton
State Hearing Officer