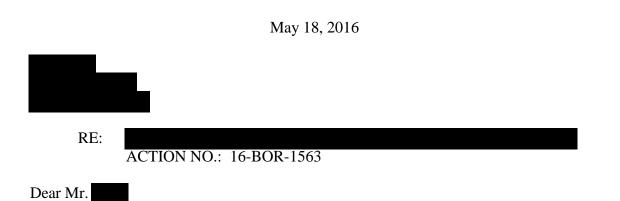


#### STATE OF WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES OFFICE OF INSPECTOR GENERAL BOARD OF REVIEW 2699 Park Avenue, Suite 100 Huntington, WV 25704

Karen L. Bowling Cabinet Secretary



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:

Earl Ray Tomblin

Governor

### 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 **the state of the state o** 

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 **a set of the set of the** 

#### 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.
- 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**