



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 3, 2016

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 16-BOR-1953

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], [REDACTED]

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

[REDACTED],

Resident,

v.

ACTION NO.: 16-BOR-1953

[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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on August 2, 2016, on an appeal filed May 24, 2016.

The matter before the Hearing Officer arises from the April 26, 2016 decision by the Facility to discharge her from [REDACTED] (herein [REDACTED]), the nursing home in which the Resident resides, because she no longer qualifies for Long-Term Care Medicaid.

At the hearing, the Facility appeared by Representative [REDACTED], director of [REDACTED] Social Services unit. The Resident appeared *pro se*. The participants were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Long-Term Care (Nursing Home) Medicaid Pre-Admission Screening (PAS) completed by a staff member of [REDACTED] on February 4, 2016
- F-2 Progress notes from February 1 through March 1, 2016, and Documentation Survey Report for February 2016 from [REDACTED]

Resident's Exhibits:

- R-1 Letter from Department to Resident dated May 9, 2016

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 a resident of [REDACTED], a nursing home in the [REDACTED] WV, area.
- 2) After a periodic re-evaluation of her eligibility for Long-Term Care Medicaid, the WV Department of Health and Human Resources (WV DHHR) discontinued her participation in the program.
- 3) The Resident requested a fair hearing to protest the WV DHHR's action to discontinue her participation. The WV DHHR's Board of Review upheld the action in a fair hearing decision, 16-BOR-1438.
- 4) [REDACTED] informed the Resident that she would be discharged from their facility.
- 5) The Resident requested a fair hearing to protest the proposal of [REDACTED] to discharge her from the facility.

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 before a nursing facility transfers or discharges a resident, the administrator or his/her 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 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.

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

██████████ proposed to discharge the Resident from its facility because she no longer qualified for Long-Term Care Medicaid and did not have other means to pay for her care at the facility. The Resident previously protested the WV DHHR's discontinuation of her receipt of Long-Term Care Medicaid, but that discontinuation was upheld by a fair hearing decision.

According to West Virginia Bureau for Medical Services policy, the nursing facility is obligated to give a resident at least 30 days before discharging, and to include certain information in the discharge notice.

Neither the Resident nor the facility representative provided a copy of the discharge notice, so it is not possible for the Board of Review to determine whether the notice contained the requisite information. However, since the Resident did not question the notice or its content, the Board of Review must assume the notice was proper and timely.

In the absence of information to the contrary, ██████████ acted correctly to discharge the Resident from the nursing facility.

CONCLUSION OF LAW

██████████ has proposed to discharge the Resident from the nursing home. ██████████ is correct to do so, pursuant to the West Virginia Bureau for Medical Services Provider Manual §514.9.2, Code of State Regulations 64CSR13, and the Code of Federal Regulations (42 CFR §483.12).

DECISION

It is the decision of the state Hearing Officer to **uphold** ██████████ proposal to discharge the Resident from its facility.

ENTERED this 3rd Day of August, 2016.

**Stephen M. Baisden
State Hearing Officer**