



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

August 25, 2016

[REDACTED]

RE: [REDACTED]

ACTION NO.: 16-BOR-2295

Dear [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]

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

█,
Appellant,

v.

Action Number: 16-BOR-2295

█,
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 August 24, 2016, on an appeal filed July 13, 2016.

The matter before the Hearing Officer arises from the June 15, 2016 decision by the Facility to propose involuntary discharge of the Appellant from █.

At the hearing, the Facility appeared by █, Traveling Business Office Manager. Appearing as witnesses for the Facility were █ Administrator; █ Director of Social Services; and █, Assistant Business Office Manager. The Appellant attended the hearing and was represented by █ Regional Ombudsman, Legal Aid of WV. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Notice of Discharge dated 6/15/16
- F-2 Notice of Medicaid approval effective November 2015
- F-3 Billing Statement/Transaction History – unpaid amount owed effective June 30, 2016 was \$9,884.30
- F-4 Appellant's bank statement for the period of 7/1/16 through 7/31/16

Appellant's Exhibits:

- A-1 Code of State Regulations 64 CSR 13
- A-2 Code of Federal Regulations (42 CFR §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) On June 15, 2016, [REDACTED] (Facility) notified the Appellant of its intent to initiate involuntary transfer/discharge proceedings (F-1). The notice advised the Appellant that involuntary discharge from the facility was necessary because “you have failed, after reasonable and appropriate notice, to pay for a stay in the Facility.”
- 2) Appellant was initially admitted to the facility in August 2015, with payment for services covered by Medicare.
- 3) Pursuant to Exhibit F-2, Appellant was approved for Medicaid Long-Term Care benefits effective November 3, 2015, and his monthly cost of care/patient responsibility amount was determined to be \$1,746.70.
- 4) Uncontested evidence (F-3) confirms that while Facility is receiving some payment from Appellant’s Social Security benefits toward his monthly cost of care, the unpaid monthly balance has continued to grow since November 2015 and was determined to be \$9,884.30, effective June 30, 2016.
- 5) According to testimony proffered at the hearing, Appellant is reportedly fit to handle his own financial affairs, and an evaluation conducted in August 2016 only recently determined that he is unable to make his own medical decisions. Exhibit F-4 was submitted to show that the Appellant is receiving income from sources other than Social Security, and that banking transactions are occurring by phone.
- 6) Appellant’s representative contended that Facility’s transfer/discharge of Appellant is in violation of state and federal regulatory requirements, as there is no documentation in his clinical record indicating why transfer/discharge is necessary, and the discharge location cited in the notice was inappropriate because it was an out-of-state location that could not be paid by West Virginia Medicaid.

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 [emphasis added] and a copy of this written notice must be sent to the State Long-Term Care Ombudsman or his/her designee. Also see Code of Federal Regulations 42 CFR 483.12(a)(4)(ii). 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 [emphasis added]. See requirements found in the Code of State Regulations 64 CSR §13-4.13f (Orientation for Transfer or Discharge).

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.

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

Appellant is contesting the decision of [REDACTED] to initiate involuntary transfer/discharge proceedings.

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.

Undisputed evidence reveals that Appellant has not fully paid his monthly cost of care (patient responsibility) for any of the months he stayed at the facility during the period of November 2015 through June 2016 - and the unpaid balance, effective June 30, 2016 - has grown to \$9,884.30.

However, pursuant to the Code of Federal Regulations, found at 42 CFR §483.12(a)(4)(ii), the Facility must record the reason(s) in the resident's clinical record when the resident is notified of involuntary transfer/discharge. In addition, the transfer/discharge location indicated on the notice was not appropriate, pursuant to the requirements found in 64 CSR §13-4.13f. Whereas these regulatory requirements were not met, Facility's proposal to transfer/discharge the Appellant cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Facility's action to initiate transfer/discharge proceedings against the Appellant based on his failure to pay for a stay in the Facility is permitted by state and federal regulations.
- 2) The Facility failed to comply with the Code of Federal Regulations – Facility is required to document the reason for transfer/discharge in the resident's record as part of the "notice before transfer" procedure.
- 3) The Facility was non-compliant with Code of State Regulations "Orientation for Transfer or Discharge," as the Facility failed to identify a reasonably appropriate alternative placement prior to the proposed transfer or discharge.
- 4) Whereas Facility has failed to comply with the state and federal regulatory guidelines, Facility's action to proceed with the involuntary transfer/discharge of the Appellant 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 August 2016.

**Thomas E. Arnett
State Hearing Officer**