



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 19, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 16-BOR-2624

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], Facility Administrator

- 2) As of August 24, 2016, the Resident owed [REDACTED] \$36,120.49 (F-2) towards her cost of care.
- 3) [REDACTED] notified (F-1) the Resident by letter on August 24, 2016, of her proposed discharge from the facility due to non-payment.
- 4) The Resident is currently a private-pay resident. She applied for Long Term Care Medicaid on September 27, 2016, which as of the date of the hearing was reportedly pending for verification of assets.
- 5) The Resident has paid \$100 towards her cost of care.

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, even if 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. 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.

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

The Resident contested her proposed discharge from [REDACTED]. The Resident testified that she is unable to pay off the sizable debt owed to [REDACTED] while still maintaining her home in the community. The Resident testified that she could possibly reside with a family member if she were to be discharged.

The representative for [REDACTED] contended that the Resident was fully aware of her accumulating balance with the facility and rejected any efforts with assistance in her financial affairs. It was reported that [REDACTED] will pursue the discharge of the Resident even if Medicaid benefits are approved.

Federal regulations permit the involuntary discharge of an individual if the individual has failed, after reasonable and appropriate notice, to pay for a stay at the nursing facility. The Resident has

failed to make adequate payments to [REDACTED] towards her cost of care, and by her own statement, will be unable to pay her balance in full.

CONCLUSIONS OF LAW

- 1) The Facility's action to initiate discharge proceedings against the Resident based on her failure to pay for a stay in the Facility is permitted by state and federal regulations.
- 2) The Resident has not made regular payments towards her cost of care since her admission.
- 3) Whereas the Facility has complied with the state and federal regulatory guidelines, the Facility's action to proceed with the involuntary discharge of the resident is affirmed.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Facility's proposal to discharge the Resident due to non-payment.

ENTERED this 19th day of October 2016

Kristi Logan
State Hearing Officer