



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

Esta es la decision de su Audiencia Imparcial. La decision del Departamento ha sido confirmada/invertido/remitido. Si usted tiene preguntas, por favor llame a Phillip Owens, 304-267-0100, ext. 71054

December 7, 2016

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

RE: [REDACTED]
ACTION NO.: 16-BOR-2969

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], Regional Executive Director

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

████████████████████,

Resident,

v.

Action Number: 16-BOR-2969

SHENANDOAH HEALTH VILLAGE CENTER,

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 December 1, 2016, on an appeal filed October 26, 2016.

The matter before the Hearing Officer arises from the October 17, 2016, decision by the Facility to discharge the Resident due to nonpayment of her cost of care.

At the hearing, the Facility appeared by ██████████, Business Office Manager, ██████████ ██████████ (Facility). Appearing as witnesses for the Facility were ██████████ ██████████, Regional Executive Director of the Facility, and ██████████ Social Services Director of the Facility. The Resident appeared *pro se* and testified on her own behalf. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Notice of outstanding balance due and request for payment, dated July 22, 2016
- F-2 Notice of outstanding balance due and request for payment, dated October 6, 2016
- F-3 Notice of outstanding balance due and request for payment, dated November 3, 2016
- F-4 Case notes from Resident's records
- F-5 Resident Transaction History Printout from June 2016 through December 2016
- F-6 Notice of Discharge, dated October 17, 2016
- F-7 DHHR Notice of Contribution of Cost of Care, dated March 4, 2016
- F-8 DHHR Notice of Contribution of Cost of Care, dated September 1, 2016

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 June 10, 2016.
- 2) Payment for the Resident's cost of care is partially provided by Medicare and Medicaid, with the Resident's cost of contribution from December 17, 2015 to January 27, 2016 of \$775.58 per month, and from June 30, 2016 to present of \$687.60 per month. (Exhibits F-7 and F-8)
- 3) As of October 17, 2016, the Resident owed the Facility \$3,923.60 towards her cost of care. (Exhibit F-6)
- 4) The Facility has notified the Resident of her outstanding account due and has made several collection attempts. (Exhibits F-1 thru F-4)
- 5) The Resident entered into a repayment agreement with the Facility in July 2016 of \$50 per month. (Exhibit F-4)
- 6) The Resident has made one \$50 payment, and a payment of \$100 which was returned as insufficient funds.
- 7) The Resident was notified by letter on October 17, 2016, of her proposed discharge from the Facility due to non-payment. (Exhibit F-6)
- 8) The notification of proposed discharge did not include the location to which the resident is being transferred or discharged as required by policy. (Exhibit F-6)
- 9) The current outstanding balance as of December 1, 2016 is \$5,198.80. (Exhibit F-5)

APPLICABLE POLICY

Medicaid regulations, found in the West Virginia Bureau for Medical Services Provider Manual (BMS policy) at §514.9.2, West Virginia 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.

BMS policy requires that the administrator or designee of a nursing home facility 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.

The nursing facility is required prior to transferring or discharging a resident, to 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. 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.

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.

See also, West Virginia Code of State Regulations, 64CSR13, §4.13 and Code of Federal Regulations, 42 CFR §483.12.

West Virginia Department of Health and Human Resources, Common Chapters Manual §710.22(K) directs that the Hearing Official shall weigh the evidence and testimony presented and render a decision based solely on proper evidence received at the hearing. In rendering a decision, the Hearing Official shall consider all applicable policies of the Department, state and federal statutes, rules or regulations and controlling court orders. The decision shall include reference to all pertinent laws or policies.

DISCUSSION

After making several attempts at collection of the overdue amount owed by the Resident for her contribution to the cost of care for her stay at the Facility from June 10, 2016, the Facility sent the Resident notice of its intent to discharge her. The Facility sent the Resident notification of her proposed discharge on October 17, 2016.

The Resident contested the Facility's proposed discharge stating that the Facility was discharging her to her home which was "unsafe" for her at this time. The Resident testified that although she and the Social Service Director of the Facility, [REDACTED], were in the process of obtaining services from "Take Me Home WV" to make some handicap modifications to her home, such as building a wheelchair ramp, this has not yet been achieved. [REDACTED] testified that there is no other placement facility available for the Resident at this time.

BMS policy permits the discharge of an individual if the individual 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.

Uncontested evidence confirms that the Resident has failed to make adequate payments to the Facility towards her cost of care. While the Facility is receiving payment from the Resident's Medicare and Medicaid towards her monthly cost of care, the unpaid monthly balance has continued to grow from June 2016, and was determined to be \$3,923.60 as of October 17, 2016, and has a current overdue balance of \$5,198.80 as of December 1, 2016.

While the evidence showed that the Facility has made reasonable attempts at collecting the outstanding balance for the Resident's contribution of her cost of care, and has given the Resident at least 30 days' notice of discharge, the October 17, 2016 notice of discharge does not meet the federal, state, and policy requirement of identifying a location to which the resident is to be transferred or discharged. The letter stated, in pertinent part, "We are hereby discharging you within thirty (30) days from the date of this letter. Our Social Services Director will attempt to handle the discharge planning procedures and assist you in any way she can, but your assistance will be required to aid in this transition. We have also notified Adult Protective Services in an effort to ensure you undergo a safe transition with this discharge." (See, Exhibit F-6) Although the testimony does show that discharge to home has been discussed, considered, and is in the process of being arranged, it is mandatory that the notice of discharge identify the location to which the resident will be transferred or discharged, which it did not.

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 and has accumulated an outstanding balance of \$3,923.60 as of October 17, 2016.

- 3) The October 17, 2016 notice of discharge sent to the Resident failed to comply with state and federal regulations in notifying the location to which the Resident will be transferred or discharged.
- 4) Whereas the Facility has not complied with all the state and federal regulations necessary to be included in the notice of discharge sent to the Resident, the Facility's action to proceed with the discharge of the Resident cannot be affirmed.

DECISION

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

ENTERED this 7th day of December 2016

Lori Woodward, State Hearing Officer